

DISTRICT COURT
CRIMINAL CASE NO. 389/80

THE REPUBLIC v MONIBA STARR

JUDGMENT

The accused having denied the charge of driving whilst under the influence of liquor c/s 21 (1) of the M.T.A 1937 - 1973 it has to be seen how far the Prosecution has been able to bring home the charge.

It is admitted by accused that he had just consumed two shots of gin that morning and that he was not under the influence of liquor while driving his car. It is held in the recent decision of the Supreme Court that the Court has to assess the degree of intoxication and that it is such that the intoxication is likely substantially to impair the driving skills. In other words, it has to find out on facts that the intoxication had substantially detrimental effect on the driving skills.

It is not in dispute that the accused was driving his datsun sedan at about 7 a.m. on 21st October on the airport road bound towards Meneng from Yaren District. It is also not in dispute that he attracted the observation of the police officers on duty while they were going in their police car when the accused drove onto the main road from the left side coming from D. Bills place and then he drove onto the right hand side of the main road almost touching the gutter, and then obstructed the oncoming cars from Meneng side, instead of driving on to the left hand side of the road. Thus on so attracting the attention of the police officers, P.W.1 and P.W.2, who were in the police car behind his car he drove further on. While so driving it is spoken to by the two police constables that he was often driving on the right side of the road or on the centre of the road instead of keeping to the left. As they followed and trailed his car, they found that he did not stop and proceed at the "Y" junction at the Yaren end of the airstrip. Then from there, he is stated to have gone to the right side of the road while taking a turn instead of keeping on to the left side of the road. According to their evidence even thereafter his driving was really bad since he was driving mostly on the right hand side or centre of the road. With this way of zig zagging by accused, they stopped him near D. Cannon's place and questioned him as to his improper driving in that manner as above and if he was drunk. They further found his eyes were bloodshot who was smelling of alcoholic drinks. He appears to have told them that he had taken a few drinks. After arresting on a suspected charge of d.u.i. and while he was walking into the police car he was swaying in a zig zag manner. As if this was not sufficient at the police station at the desk sargents desk he was found leaning on the table to support his stance.

It is also disclosed in evidence there were others in the car including D.W. 2 D. Bill. The two other persons in the rear seat are stated to be drunk and were drinking. According to their evidence as above, at most of the places in a distance of about half a mile the car of accused was swerving on the right hand side of the road apart from the two times i e. at the start and at the "Y" junction.

Indeed it is the evidence of accused that on the morning two of his friends came to his house and he had two shots of gine and tonic with them. Since he did not relish the drink he told his friends that they will go round the island after taking another friend, D.W.2, D. Bill. As he was to start from D. Bills place he with his vehicle and the heavy weight of his friends in the car, with the on he moved fast and that way he might have gone to the right hand side of the main road as he entered it. He further explains since there was no traffic on either side of the road near the "Y" junction after observing at both the sides, he took a turn without stopping there. He further explains that in the process of driving he might have been a little over the other side of the road as at that time he was laughing and really concentrating at the jokes by his friends in the back seat. According to him these facts as to his being not exactly on the left side of the road he was not drunk and not under the influence of liquor he having consumed only tow shots of gine. But it is to be observed his defence witness D.W.2 does not refer to any of these jokes and of his enjoying any jokes. In fact according to him those two persons in the back seat were talking between themselves and he does not know even if they were drinking or otherwise and if there were any drinks in the car. The evidence of D.W.2 is not of any help to accused nor does it throw any light as to accused being drunk or otherwise. No doubt he gives a that he was not smelling of alcohol and that his driving capacity was quite alright. By the way this witness speaks to I am not inclined to place any reliance.

As the other hand, the evidence of the two police constables is cogent and convincing as the features of drunkenness on accused and as to the manner of his driving as referred to supra. It is admittedly accused that he did observe the green police vehicle coming behind him. If he was not under the influence of liquor certainly the sight of the police car would have alerted him from the manner of his driving.

It is rather unnecessary to discuss further the entire evidence. It is not disclosed clearly to what extent Mr D. Bill's house is from the main road. The level on the left side of the road on the airport road is lowered but not uniformly low. It differs from place to place through admittedly it is on a slightly lower level from the road. That being so, one has got to be extra careful.

when one enters the main road, ~~there~~ being other traffic on the main road. It is in evidence that this sort of driving by accused did affect the movement of the oncoming car who slowed down to avoid collision. Whatever the explanation of accused the way he was driving the car even after that sufficiently disclose that he must have been under the influence of liquor, irrespective of the fact how much liquor he had consumed before. ~~There~~ is nothing to disbelieve the evidence of P.W.1 and 2 as referred above. ~~with~~ the discussions as above and with the evidence on record it has to be held on facts that the accused's ability to drive i e his driving skill had been substantially impaired on account of the influence of intoxicating liquor. The only redeeming feature of his driving is ~~he~~ was within the speed limit allowed. When he was driving ~~at~~ that speed, there was no reason for him to stray on to the centre of the road and to the right hand side of the road. The offence is clearly made out.

With the discussion as above the prosecution has been able to bring home the charge against the accused with which he stands charged. Accordingly I convict the accused in terms of the charge c/s 21 (1) of the M.T.A. 1939-1973

G P. Jagadeesh

27/11/80

I sentence the accused to one months imprisonment with h 1.

Further as a consequence thereof his driving licence is suspended for a period of six months.

G P. Jagadeesh

27/11/80