

IN THE DISTRICT COURT OF NAURU
CRIMINAL CASE NO: 165/82

THE REPUBLIC

vs.

JACK TOM

JUDGMENT

Two policewomen P.W.2 Const. Ebodo and P.W.3 Const. Druseilla had gone to drop off-duty Const. Joseph Hubert at his house in Anetan District at about 7.30 A.M. on 22nd April 1982. Const. Knox was also with them. Thereafter they returned anti-clockwise and reached Catholic Mission in Ewa District where they noticed an orange-coloured car going in the same direction ahead of them. It was zig-zagging. They followed the car and sounded the horn but it did not stop. The chase continued and it was observed that the car was being driven mostly on its right side. It stopped opposite Bawo's place and there P.W.2 and 3 noticed that the accused was driving that car. Const. Knox approached him and told him that he was being arrested for driving whilst under influence of liquor. P.W.2 noticed that the accused looked sleepy, had blood-shot eyes and was not talking sensibly. P.W.3 also smelt intoxicating liquor from the accused and observed his bloodshot eyes. He was brought to police station where he was produced before P.W.1 Const. Darcy Deigarik, Desk Sergeant, who observed him as drunk. He also noticed that his speech was slurred, that he was swaying and that he smelt of intoxicating liquor. He then detained the accused.

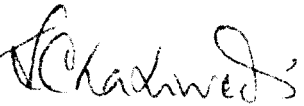
This led to prosecution of the accused u/s 21(1) of Motor Traffic Act 1937-73 (hereinafter called 'the Act'). The PWs mentioned above gave evidence as hereinbefore summed up. In cross-examination P.W.2 stated about the car zig-zagging on the entire stretch of road between Catholic Mission and Bawo's place and most of the time driving on the right side. P.W.3 stated in cross-examination that the accused was on right side and went to left side and again went to right side. But most of the time he remained on the right side. He could not say how many times he went on left side. The accused himself gave evidence in which he stated that he was going for his work that morning and opposite Oscar's house in Ewa district he saw cars and children on the road and also a bus parked. He drove between the bus

on his right and children on his left. He claimed to be extra careful because it was hard to drive on account of wobbling wheels of his car. He heard the sound of horn from a car behind him and, when he realised that it was being done for him, he stopped. He explained his going right and left by saying that the car was bad because wheels wobbled. He filed a report Ext. P1 about the condition of the car. He denied that he had been drinking. He did not know why he had bloodshot eyes. He admitted taking drinks in the previous evening between 5 and 7 P.M.

This is the entire evidence on record. The witnesses have deposed about the actual condition of the accused and his manner of driving. P.W.1 made a specific statement about it that his speech was slurred, that he smelt of intoxicating liquor and was swaying. According to his observation, the accused was drunk and he informed him so when detaining him. Not a single question challenging this part of his statement was put in cross-examination to P.W.1 and so the statement stands as it is and is liable to be accepted. P.W.2 was only questioned about the distance of zig-zagging and she gave that distance. It was not challenged in cross-examination that what she said was not correct. The distance of zig-zagging was considerable and most of the time the accused drove on the right side of the road which indicates that his manner of driving was adversely affected — his denial thereof and explanation with regard to it notwithstanding. Similarly P.W.3 further explained in cross-examination that the accused was on right side and then he went to left side and again right side and remaining most of the time on right side. She has not been able to give an exact number of times he went from this side to that side but she has impliedly stated that it happened several times. According to the accused, he drove with extra care because the car was hard to drive on account of wobbling wheels. Even if it is true that the car had wobbling wheels (although Ext. P1 does not relate to the date of this incident and is vague with regard to the duration of this defect), it would be only the wheels that would wobble and not that the entire car would start zig-zagging moving from left to right and right to left and so on. The accused has tried to explain this zig-zagging by attributing it only to the wobbling of wheels which does not inspire confidence on account of the improbability involved therein. Then, there is evidence of bloodshot eyes, slurred speech, looking sleepy and not talking sensibly. In these circumstances, zig-zagging can only be because

of his condition on account of having consumed intoxicating liquor which had substantially impaired his driving ability. The assertion of the accused with regard to the children on the road and parked bus was not at all put to prosecution witnesses in cross-examination. To conclude, the defence case of having had no drinks is not at all made out. There is adequate corroboration in prosecution evidence and the defence put forward by the accused in his own statement in no way rebuts the case of the prosecution as deposed to by P.Ws.

I find the prosecution case established beyond all reasonable doubts and so I convict Jack Tom accused of charge u/s 21(1) of the Motor Traffic Act 1937-73.


(S.C. Chaturvedi)
15.7.82

July 15 1982

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