REPUBLIC OF NAURU

SUPREME COURT OF NAURU

CRIMINAL APPEAL NO. 8 OF 1981

DIRECTOR OF PUBLIC PROSECUTIONS V. FREDERICK TEBOUA

J U D G M E N T

The respondent was acquitted by the District Court of driving a motor vehicle whilst under the influence of intoxicating liquor. This appeal is brought by the Director of Public Prosecutions on the ground that, on the evidence adduced at the trial, the learned magistrate could not reasonably have found otherwise than that the respondent was guilty.

The magistrate found that, although the respondent had consumed a quantity of alcohol and was driving a motor vehicle which swerved across onto the wrong side of the road and nearly collided with a police vehicle travelling in the opposite direction, there was an innocent explanation for the manner in which he drove and he was not seriously intoxicated.

In a criminal trial the burden of proof lies on the prosecution throughout and the standard of proof required is proof beyond all reasonable doubt. If the person on trial raises a reasonable doubt, he is entitled to be acquitted. In this appeal the appellant has submitted that the state of the evidence - in particular the evidence given by the respondent himself - was such that no reasonable doubt could properly have remained in the mind of the learned magistrate.

The fact that the respondent was driving a motor vehicle and the manner in which he did so were not in dispute. Apart from the one swerve onto the wrong side of the road, he was driving normally; but that swerve nearly resulted in a head-on collision with a police vehicle travelling in the opposite direction. Evidence by the third prosecution witness that the respondent was staggering when stopped by the police and required to get out of his vehicle was not challenged; nor was the evidence of the first prosecution witness that, when the respondent was brought to the police station, his eyes were bloodshot, his breath smelled strongly of alcohol and he was swaying a lot.

In his evidence the respondent gave an explanation of most of these facts. His expl nation was that he suffers from fits which cause him sudden dizziness and that he suffered such a fit just before his vehicle swerved. He gave evidence that he also started spitting blood; that part of his evidence was confirmed by prosecution witnesses. However, he also gave evidence that he suffers such fits if he has been "drinking strong liquor like spirits", and that he had consumed three or four glasses of whiskey and coca cola between 9 a.m. and 1 p.m. that day and some more liquor, apparently brandy, from about 1.30 p.m. onwards. The driving which was the subject of the charge took place at about 4 p.m.

In my view, the learned magistrate properly regarded it as reasonably possible that the respondent's inability to control his vehicle adequately when it swerved was due to his having suffered a fit of dizziness. If that fit had been unrelated to the consumption of alcohol by him, it would have afforded an innocent explanation of that inability - at least in respect of the charge before the Court, although not necessarily in respect of a charge of dangerous driving. But, on the respondent's own admission, the fit was the result of the ingestion of the alcohol, i.e. of its toxic effects; and furthermore the respondent knew that alcohol caused him to have such fits. That being so, the occurrence of the fit could not afford an innocent explanation of the respondent's inability to control the vehicle properly; it was the medium by which the respondent's intoxication substantially impaired his driving skills.

Accordingly, the appeal is allowed. The finding of not guilty is quashed and a finding of guilty of the offence charged is substituted for it. The order of acquittal is set aside and the respondent is convicted of driving a motor vehicle under the influence of intoxicating liquor contrary to section 21 (1) of the Motor Traffic Act 1937 - 1973.

I. R. Thompson

5th May, 1981

CHIEF JUSTICE