CRIMINAL CASE NO. 453/80

THE REPUBLIC V. ALEC HARRIS

JUDGMENT

THE ACCUSED WHO STANDS CHARGED FOR OFFENCES UNDER SECTION 21 (1) AND 28 (A) OF THE MOTOR TRAFFIC ACT 1937/1973, HAVING DENIED THE CHARGE, PROSECUTTON HAS EXAMINED THREE WITNESSES, THE POLICE CONSTABLE WHO FOUND THE ACCUSED DRIVING HIS CAR UNDER THE INFLUENCE OF INTOXICATING LIQUOR; THE DESK SERGEANT AND THE LEGAL OFFICER.

THE ACTS ARE PRACTICALLY ADMITTED AS TO ACCUSED HAVING HAD A FEW BEERS THAT NIGHT AT THE STAFF CLUB AND THEREAFTER, HIS DRIVING HOME IN HIS CAR AS SPOKEN TO BY P.W.1. ACCUSED ADMITS HIS SPEEDING BUT VEHEMENTLY CONTESTS THE OTHER CHARGE FOR D.U.I. CONTENDING HE HAD BECOME A MARKED MAN FOR THE NAURU POLICE AND PARTICULARLY TO P.W.1 NELSON TAMAKIN BECAUSE OF HIS CRITICISMS IN THE NAURU POST WRITING LETTERS TO THE EDITOR.

THAT, APART IT HAS TO BE SEEN HOW FAR THE PROSECUTTON HAS BEEN ABLE TO BRING HOME THE CHARGE FOR D.U.I. THE PROSECUTION OUGHT TO PROVE THAT THE ACCUSED WAS DRIVING WHILST UNDER THE INFLUENCE OF INTOXICATING LIQUOR AND AS A RESULT OF HIS CONSUMING LIQUOR AND AS A RESULT OF HIS CONSUMING SUCH LIQUOR, THE DRIVING ABILITY OF THE ACCUSED HAD BEEN SUFFICIENTLY IMPAIRED AND WAS ADVERSELY AFFECTED. AS ALREADY REFERRED TO, ACCUSED ADMITS OF HIS HAVING CONSUMED A FEW CANS OF BEER (6 CANS) AT THE STAFF CLUB ON THE PREVIOUS NIGHT, HE HAVING BEEN CAUGHT AT ABOUT 3.30 A.M. ACCORDING TO PROSECUTTON AND AT ABOUT 2.00 A.M. ACCORDING TO THE ACCUSED. FURTHER THE ACCUSED WAS SPEEDING TO THE EXTENT OF 90 K. ..H. IS PROVED AND ADMITTED TOO.

IT IS THE EVIDENCE OF P.W.1, NELSON TAMAKIN, WHEN HE WAS ON HIS ROUNDS IN THE COURSE OF HIS MOBILE PATROL DUTY IN THE POLICE CAR DRIVEN BY CONS ABLE JOSEPH HUBERT, HE NOTICED THE YELLOW CAR WHILE TAKING ATURN TOWARDS THE AIRPORT ROAD NEAR THE AIWO PRIMARY SCHOOL, TAKING SUCH A TURN WITHOUT INDICATING ANY SIGN OF THE CAR GOING IN THAT DIRECTION, ASKED HIS JUNIOR POLICE CONSTABLE TO FOLLOW THE SAID CAR. AS THEY FOLLOWED HIM, AFTER THIS CAR HAD PASSED SOMEWHERE NEAR THE ONION STORE, IT STARTED PICKING UP SPEED. AS THEY FOLLOWED HIM, KEEPING ADDISTANCE OF 40 TO 50 YARDS BEHIND, HE FOUND THE SPEEDOMETER INDICATING 90 K.P.H. IN A FAIRLY LONG DISTANCE. THEN HE STOPPED THE ACCUSED NEAR MR JOHN WILLIS' PLACE. FURTHER, IN THE COURSE OF THIS TRAILING, HE OBSERVED THE SAID CAR TOUCHING THE CENTRE LINE THRICE IN THAT DISTANCE. ON GETTING DOWN FROM THE CAR, P.W.1 NOTICED THAT IT

WAS DRIVEN BY ACCUSED. HE FURTHER OBSERVED HE WAS SMELLING OF LIQUOR AND HIS SPEECH WAS SLURRED IN THE OOURSE OF HIS CONVERSATION. AFTER THE FORMAL QUESTIONS, HE DROVE THE CAR OF THE ACCUSED, TELLING THE ACCUSED THAT HE IS ARRESTED FOR SPEEDING AND D.U.I. NOT MINDING THE SAY OF ACCUSED THAT HE WAS NOT DRUNK. THIS WITNESS APPEARED TO HAVE FURTHER OBSERVED AT THE POLICE STATION, AFTER GETTING DOWN THE CAR, THAT HE WAS NOT STEADY ON HIS FEET. IN FURTHER CORROBORATION OF THESE FEATURES OF DRUNKENESS ARE A S SPOKEN TO BY THE DESK SERGEANT P.W.2, ALOYSIUS IWUGIA. HE ALSO FOUND THAT S EYES WERE RED (BLOODSHOT). IT IS QUITE UNNECESSARY TO REFER AT LENGTH F THE OTHER FORMAL EVIDENCE OF P.W.2.

CONCEDING THAT THE ACCUSED HAD ALL THESE ABOVE FEATURES OF DRUNKENESS, IT HAS TO BE SEEN TO WHAT EXTENT THIS EFFECT HAD IMPAIRED THE DRIVING SKILL OF THE ACCUSED AND WHETHER IT HAD SUBSTANTIALLY IMPAIRED THE DRIVING ABILITY. IN THIS REGARD, THE ONLY RELEVANT ASPECT SPOKEN TO BY P.W.1 IS IN THE ENTIRE STRETCH FROM THE AIRPORT ROAD TILL HE WAS STOPPED, THRICE THE CAR OF THE ACCUSED TOUCHED THE CENTRE LINE. INDEED THE ACCUSED DENIES OF IT. BUT IT IS TO BE BORNE IN MIND ADMITTEDLY THE CAR WAS BEING DRIVEN AT A SPEED OF 90 K.P.H. THERE WAS NO OTHER TRAFFIC FROM EITHER SIDE APART FROM THE POLICE VEHICLE. WITH THE WIDTH OF THE ROAD, THE ROAD BEING NOT VERY BROAD EACH WAY, TOUCHING THE CENTRE LINE THAT WAY WITH THE SAID SPEED, WOULD NOT SPECIFICALLY INDICATE DRIVING UNDER THE INFLUENCE. NO SUCH CONCLUSION CAN BE DRAWN WITH THE BACKGROUND OF THE EVIDENCE OF P.W.1 WHO HAD NOT NOTICED ANY UNTOWARD DRIVING APART FROM SPEEDING BY ACCUSED. THEN AGAIN, HE GIVES A CERTIFICATE TO ACCUSED IN THE COURSE OF CROSS EXAMINATION. "THE HANDLING OF THE VEHICLE BY ACCUSED WAS ALRIGHT AND THERE WAS NO PROBLEMS", WHEN THE ACCUSED STOPPED HIS CAR AT THE CALL OF P.W.1. APART FROM THIS ONE FEATURE OF TOUCHING THE CENTRE LINE T THRICE, THERE IS NO OTHER REFERENCE TO INDICATE AND ASSESS THE DRIVING SKILL OF THE ACCUSED IN THE COURSE OF THIS EVENT.

FURTHER ON WHILE ACCORDING TO P.W.2 ACCUSED WAS VERY TALKATIVE WHILE HE WAS AT THE POLICE STATION, WHEREAS P.W.1 STATES "IN FACT (THE ACCUSED) HE DID NOT TALK MUCH". THEN AGAIN, IT IS COMMENTED ON BY P.W.2 IN THE COURSE OF HIS EVIDENCE IN CROSS EXAMINATION THAT ACCUSED WAS NEVER UPSET. "HE LAUGHED AND WAS SARCASTIC AS SUGGESTED TO ME NOW". THESE ASPECTS DOES DILUTE THE PROSECUTION'S EVIDENCE TO AN EXTENT, SO AS TO CLOUD THE ISSUE THAT THE ASPECT OF ACCUSED'S DRIVING ABILITY BEING SUBSTANTIALLY IMPAIRED. WITH THESE FIRM EVIDENCE ACCUSED WOULD BE ENTITLED FOR THE BENEFIT OF DOUBT, THE COURT BEING NOT CONVINCED TO APPRECIATE AND ASSESS THE PROSECUTION'S EVIDENCE TO COME TO A FIRM DECISION IN SUPPORT OF THE CHARGE UNDER D.U.I.

WITH THESE DISCUSSIONS AS ABOVE ON THE MATERIAL ASPECT OF THE PROSECUTION'S EVIDENCE, IT IS QUITE UNNECESSARY TO REFER TO AT LENGTH OF THE VOLUMINOUS EVIDENCE REFERRED TO IN CROSS EXAMINATION. THE COURT FEELS MOST OF IT WAS NOT VERY RELEVANT TO THE POINT AT ALL ON THE CASE. IT LOOKS THAT ACCUSED IN HIS ANXIETY TO GET HIMSELF CLEARED HAS OVERSHOT HIMSELF, MAKING MUCH OF HIS CRITICISM OF POLICE AND HIS OWN IMPRESSION ON THIS ACCOUNT, HE WAS MARKED AND HELD ON THAT NIGHT IN THE EARLY HOURS. IT IS RATHER DIF ICULT TO HOLD IF THERE WAS ANY SUCH BIAS AGAINST THE ACCUSED BY THE POLICE AS SUCH BY P.W.1, PARTICULARLY WITH THE ASSISTANCE OF P.W.2. THE EVIDENCE OF PROSECUTION BEING SUBSTANTIALLY PROVED EXCEPT FOR THE PART OF THE DRI ING ABILITY BEING SUBSTANTIALLY IMPAIRED AND IN THAT VIEW OF THE MATTER, IT IS UNNECESSARY TO REFER TO THE LENGTHY EVIDENCE OF ACCUSED AND HIS WITNESSES. IN CONTRAST TO THIS, THE PROSECUTION$S EVIDENCE IS CRISP AND INVOLVING, FALLING SHORT ONLY ON ONE ASPECT AND FACT AS ALREADY REFERRED TO SUPRA.

WITH THESE DISCUSSIONS AS ABOVE SUFFICE IT TO SAY, THE PROSECUTION'S EVIDENCE FALLS SHORT OF BRINGING HOME THE CHARGE OF D.U.I. (21 (1) OF THE MOTOR TRAFFIC ACT), AGAINST THE ACCUSED BEYOND ALL REASONABLE DOUBT AS TO THE DRIVING ABILITY OF ACCUSED HAVING BEEN IMPAIRED SUBSTANTIALLY BY THE INFLUENCE OF INTOXICATING LIQUOR. THE ACCUSED FOR THE REASONS DISCUSSED AS ABOVE IS ENTITLED FOR THE BENEFIT OF DOUBT IN HIS FAVOUR AND ACCORDINGLY, I ACQUIT THE ACCUSED FROM THE CHARGE ON COUNT 1.

AS FOR THE CHARGE ON COUNT 2., THERE IS SUFFICIENT EVIDENCE ON RECORD TO HOLD IT WAS PROVED APART FROM THE FACT THE ACCUSED ALSO CONCEDES THAT. WITH THIS, I CONVICT THE ACCUSED FOR THE OFFENCE ON COUNT 2 UNDER SECTION 28 (A) OF THE MOTOR TRAFFIC ACT.

G.P. JAGADEESH,
RESIDENT MAGISTRATE
17/12/80

FURTHER ORDER AS TO SENTENCE

THE ACCUSED APPEARS TO HAVE NO PREVIOUS CONVICTIONS. THE POINTS URGED AS TO SENTENCE IS BORNE IN MIND. THE SPEED WITH WHICH THE ACCUSED WAS GOING AFTER HAVING CONSUMED SOME LIQUOR WAS INDEED BAD ENOUGH. WITH THESE OBSERVATIONS, I SENTENCE THE ACCUSED TO PAY A FINE OF $100, I.D. TWO MONTH'S H.L.

G.P. JAGADEESH,
RESIDENT MAGISTRATE
17/12/80