

CRIMINAL CASE 380/80

ORDER

THE ACCUSED STANDS CHARGED FOR D.U.I. CONTRARY TO SECTION 21 (A) OF THE M.T.A. WITH THE EVIDENCE ON RECORD, IT IS VEHEMENTLY URGED FOR THE ACCUSED BY THE LEARNED PLEADER B. DOWIYOGO THE PROSECUTION HAS NOT ADDUCED EVIDENCE TO MAKE OUT A PRIMA FACIE CASE AGAINST THE ACCUSED AND WANTED A DECISION BY THE COURT ON THIS ASPECT BEFORE THE ACCUSED COULD ENTER UPON HIS DEFENCE.

WITH THIS, IT HAS TO BE SEEN HOW FAR THE EVIDENCE LET IN WOULD INDICATE PRIMA FACIE CASE AGAINST THE ACCUSED. IT IS FIRMLY LAID DOWN BY HIS HONOUR THE CHIEF JUSTICE IN CRIMINAL APPEAL No. 9/80, D.P.P. v. ANDREW TONEEWANI; FURTHER CONFIRMED IN CRIMINAL APPEAL 19/80, D. CRAGGS v. D.P.P., IN ORDER TO PROVE AN OFFENCE AS THIS, THE PROSECUTION MUST PROVE INTOXICATION LIKELY TO HAVE HAD A SUBSTANTIALLY DETREMENTAL EFFECT ON DRIVING SKILLS.

FACTS ARE ALL ADMITTED BY BOTH SIDES. IT IS ADMITTED BY ACCUSED TOO THAT HE DID HAVE SOME DRINK AT THE UBENIDE CLUB ON THAT NIGHT. HE WAS RETURNING HOME LATE IN THE NIGHT, I.E. IN THE EARLY HOURS OF THE MORNING. HE HAPPENED TO OVERTAKE THE POLICE VEHICLE BY SPEEDING. IT IS THEN HE CAUGHT THE EYES OF THE LAW, THE POLICE. THEY TRAILED HIM AND FOUND HIM TO BE SPEEDING AT 70 TO 80KM PER HOUR. THEN THEY OVERTOOK HIM, STOPPED HIM AND P.W.1 OBSERVED THAT HE WAS SMELLING OF INTOXICATING LIQUOR. HE HAD BLOOD SHOT EYES. HIS SPEECH WAS SLIGHTLY SLURRED, WITH THIS, HE WAS TAKEN TO THE POLICE STATION AND PRODUCED BEFORE THE DESK SERGEANT, WHO IS EXAMINED AS P.W.2. IN FACT, EVEN THIS WITNESS REFERS TO SMELLING OF ALCOHOL, AND BLOOD SHOT EYES. WITH THESE OBSERVATIONS, HE DECIDED TO BOOK THE ACCUSED FOR D.U.I. AFTER SAYING ALL THES, HE WAS GIVEN AN OPPORTUNITY ~~SO~~ ~~SAYSAY~~ IN THE CRUCAL ASPECT, THAT THE BEHAVIOUR OF THE ACCUSED WAS VERY GOOD AT THE TIME. ACCORDING TO HIM, THE ACCUSED APPEARS TO HAVE REQUESTED HIM TO TAKE HIM HOME AS HE WAS ON HIS WAY HOME AND THAT HE WANTED TO OBLIGE HIM THAT WAY BUT THE TWO CONSTABLES WHO HAD BROUGHT HIM DID NOT CO-OPERATE WITH HIM TO DO SO.

WITH THIS, IT COULD BE GATHERED HE DID NOT WANT TO TAKE ANY RESPONSIBILITY AND HE DECIDED TO CHARGE HIM, LEAVING THE MATTER TO BE DECIDED BY THE COURT. AS COULD BE GATHERED, FROM THE CROSS-EXAMINATION, IT IS THE STAND OF ACCUSED HE HAD TAKEN SOME DRINKS AT THE UBENIDE CLUB. HE WAS ON HIS WAY HOME CARRYING \$1,400 IN HIS POCKET. WITH SUCH AMOUNT OF MONEY HE WOULD NOT HAVE BEEN NEGLIGENT ENOUGH TO GET DRUNK AND TO GO HOME IN THAT CONDITION. HE WAS NOT REALLY DRUNK THAT WAY SO AS TO GET HIS DRIVING SKILLS IMPAIRED AS URGED BY THE LEARNED PLEADER FOR ACCUSED. THIS ASPECT

OF ACCUSED HAVING SO MUCH OF MONEY IS ADMITTED BY THE DESK SERGEANT. FURTHER, IT IS TO BE OBSERVED THERE IS NO SPECIFIC MATERIAL TO INDICATE TO WHAT EXTENT HIS DRIVING SKILLS HAD BEEN IMPAIRED OR ADVERSLY AFFECTED BY THE INTOXICATION. ALL THAT IS REFERRED TO IS HE OVERTOOK THE POLICE CAR WHEN THEY WERE COMING IN NORMAL SPEED. WHEN THEY TRAILED HIM, CHASING, THEIR SPEEDOMETER INDICATED 70 TO 80 KM. GIVING SOME ALLOWANCE THAT THEY HAD TO SPEED UP TO MAKE UP THE SEAWAY, HE MIGHT BE GOING AT A SPEED BETWEEN 60 TO 70KM. AND AT BEST, IT WOULD BE AN OFFENCE OF SPEEDING. THE REAL INGREDIANTS OF THE OFFENCE OF D.U.I. IS NOT MADE OUT IN CLEAR TERMS. THERE OUGHT TO BETTER EVIDENCE FOR A CHARGE AS THIS. INDEED IT IS TRUE HE HAD ALL THE FEATURES OF HAVING CONSUMED INTOXICATING LIQUOR. BY THOSE FEATURES ITSELF, IT IS UNFAIR TO CONCLUDE HE WAS REALLY INTOXICATED AND WAS UNDER THE INFLUENCE OF LIQUOR AND HOLD HIM GUILTY OF THE OFFENCE CONTRARY TO SECTION 21 (A) OF THE M.T.A.

KEEPING IN VIEW THE WELL-LAID PRINCIPLES AND THE QUESTION OF FACT RULED BY THE SUPREME COURT IN THE DECISIONS REFERRED ABOVE, THE ACCUSED IS ENTITLED FOR AN ACQUITTAL FROM THE CHARGE OF D.U.I. BUT ALL THE SAME, ~~WHETHER~~ THE EVIDENCE ON RECORD, THE OFFENCE OF SPEEDING CONTRARY TO SECTION 28 (A) IS MADE OUT BEYOND DOUBT, THE ACCUSED HAVING NOT DISPUTED THIS ASPECT AS COULD BE GATHERED IN THE COURSE OF CROSS EXAMINATION.

WITH THE DISCUSSION AS ABOVE, IT IS HELD ~~THROUGH~~ THE PROSECUTION EVIDENCE DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE OFFENCE UNDER SECTION 21 (1) OF THE M.T.A., THE OFFENCE OF SPEEDING UNDER SECTION 28 (A) IS CLEARLY MADE OUT.

G.P. JAGADEESH,  
21/11/80