Criminal Appeal No. 8 of 1972

Barberaga Dannang v. The Republic

11th September, 1972.

Motor Traffic Act 1937-1971 - section 21(1) - driving whilst under the influence of intoxicating liquor - driving need not be on a public road.

Appeal against conviction for driving whilst under the influence of intoxicating liquor. The appellant drove a motor vehicle on private land while under the influence of intoxicating liquor but did not drive it on a public road.

Held: The omission from section 21(1) of any requirement that the driving be on a public road was deliberate. Driving under the influence of intoxicating liquor anywhere in Nauru is an offence.

B. Dowiyogo for the appellant
P.H. MacSporran for the respondent

Thompson C.J.:

The appellant was convicted after trial by the District Court of the offence of driving a motor vehicle whilst under the influence of liquor; he was sentenced to pay a fine of $50 or to serve 21 days imprisonment in default of payment and his driving licence was suspended for nine months. He now appeals against the conviction and the order suspending his licence.

Mr. Dowiyogo put forward three grounds of appeal against conviction. First, he submitted that the vehicle was driven only of private land and that such driving does not come within the ambit of section 21(1) of the Motor Traffic Act 1937-1971, under which the offence was charged. He raised the point at the trial and the learned magistrate dealt with it in his judgment. He pointed out that, unlike the legislation in many other countries and in contrast with section 23 of the Act, section 21(1) does not

limit the prohibition to driving on a public highway. It seems clear that the limitation was deliberately omitted, probably because, as Mr. MacSporran pointed out in his judgment, there is little fencing of private land in Nauru and cars are driven along all sorts of small tracks, often near houses where people may be walking, sitting or lying down resting. Driving a motor vehicle whilst under the influence of liquor on such tracks is potentially as dangerous to the part of the public which lives in that area as driving on a main public highway is to the public at large. There is, therefore, no reason to consider that, as Mr. Dowiyogo has urged, the limitation was omitted due to an oversight and should be implied. The first ground of appeal against the conviction must, therefore, fail.

Mr. Dowiyogo's second ground was that the evidence did not establish that the appellant was under the influence of liquor when he was driving the motor car. He did not impugn the medical officer's finding that the appellant, when examined by him, was under the influence of liquor; but he suggested that, as the examination took place nearly an hour after the appellant had ceased driving, it was not proof that he was under the influence of liquor when he was driving.

However, there was ample evidence of other witnesses which, if believed by the learned magistrate, was adequate to prove that the appellant was in an apparently drunken state from the time when he was driving until the examination took place; and that he had no opportunity during that time to consume more alcohol. That evidence was believed. Together with the evidence of the medical officer, it established that the appellant was under the influence of liquor when he was driving the motor car. The only evidence that the appellant had consumed only three glasses of whisky and water was given by himself; in view of the strong evidence of the appellant's drunken condition the learned magistrate rightly gave little weight to the evidence of the appellant on this point.

The third ground of appeal against the conviction is that the Court permitted the prosecuting officer to put a leading question to one of his witnesses. The fact put to the witness if the form of a leading question had been elicited by the proper examination of

a previous witness and that witness had not been cross-examined on that evidence by Mr. Dowiyogo, who represented the appellant at his trial also. It is usual for Courts, where the parties are represented, to permit leading questions to be put about matters apparently not in dispute, unless the other party objects. Mr. Dowiyogo did not object to the question being put nor did he cross-examine that witness to suggest that that part of his evidence was not correct. This ground of appeal is, therefore, entirely devoid of merit.

With regard to the appeal against the order suspending the appellant's licence, in view of his two previous convictions in 1959 and 1968 for similar offences, I regard both the fine and the order of suspension as lenient. He is fortunate he was not sentenced to a term of imprisonment and a considerably longer period of suspension of his licence.

The appeals against the conviction and the sentence are dismissed.