REPUBLIC OF NAURU

SUPREME COURT

CRIMINAL APPEAL NO. 14 OF 1980

DONALD F. CRAGGS

v.

DIRECTOR OF PUBLIC PROSECUTIONS

J U D G M E N T

In order to prove the offence of driving a motor vehicle under the influence of intoxicating liquor the prosecution must prove intoxication likely to have had a substantially detrimental effect on driving skills (D.P.P. v Andrew Toneewani /1980/ Criminal Appeal No. 4).

In many cases the fact that the intoxication has indeed had that effect is obvious from the manner in which the accused persons were driving. In other cases it is not clear, e.g. where the person is trying to start the vehicle; in such cases the magistrate must give particular attention to the question whether the degree of intoxication proved is such as to be likely to substantially impair driving skills. This present case - at least from the facts disclosed by the evidence as recorded - is such a case. The speed of the motor cycle was in excess of the speed limit but not so high as to indicate the recklessness of serious intoxication. The only other fault in the appellant's riding which is recorded in the evidence was the fact that at one point, as he came out onto the road, he nearly drove into the gutter. That by itself is not a very serious fault.

That being so, the learned magistrate should have turned his mind specifically to the issue whether the degree of intoxication was such as to have been likely to substantially impair the appellant's driving skills. He did examine at some length the evidence of his intoxication but he made no clear findings of fact in relation to the degree of his intoxication. He referred to the fact that rum is strong liquor and that the appellant admitted to have had three glasses of it; he also referred to the possible effect of six cans of rum and coca cola. But he made no finding as to how much rum the appellant had imbibed; it can, I think, safely be said that three glasses, taken over four hours, would not bring about a degree of intoxication likely seriously to impair driving skills, even if each glass contained a double tot. In the absence of any finding of fact as to the quantity of alcohol consumed by the appellant the learned

the police officers and his manner of riding his motor cycle. If he had done so and had come to the conclusion that the degree of intoxication was such as to have been likely substantially to impair the appellant's driving skills, this Court might possibly have allowed the conviction to stand. But as he did not turn his mind fully to the issue and he made no finding expressly in respect of it, the conviction cannot be left to stand.

The conviction is quashed and the fine set aside.

I.R. Thompson

CHIEF JUSTICE

10th November, 1980