

18th. day of October, 1948.

Judge:

The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

The Police versus Lt. Cdr. John Robert Walter Groves

**Traffic — Driving of a Vehicle in a State
of Drunkenness — Sect. 14 Chap. 105.**

Maltese Law prohibits the driving of a motor vehicle in the case of a driver who is under the influence of intoxicant liquor. This prohibition, however, although the law does not state expressly so, must be taken to mean that the driver must be under the influence of drink to such an extent as to be incapable of having proper control of the vehicle. So that in order to convict on a charge of driving whilst under the influence of intoxicant liquor, it is necessary to satisfy the Court that the state of drunkenness was such as to affect the driving, making it unsafe.

In this judgment the Court enumerates the various signs or symptoms which show definitely that a person is drunk in the sense aforesaid.

This is an appeal entered by defendant against a judgment given by the Criminal Court of Magistrates on the 17th. September, 1948, whereby he was found guilty of having driven a car at an excessive speed and whilst under the influence of drink, and of having involuntarily, that is, through imprudence, negligence and non-observance of regulations, caused damages to another car with which defendant's car collided. Defendant was sentenced to the payment of a fine (multa) of £5, and moreover the Court below ordered the suspension of his driving licence for a period of three months;

As may be seen from the appeal petition and the process verbal recorded at page 16, this appeal is restricted to

the issue touching the charge of having driven a car whilst under the influence of drink.....;

This Court again heard the witnesses.....;

The state of the evidence with regard to the issue of drunkenness is as follows;

Police Sergeant Bonett..... stated.....;

In assessing this evidence this Court comes to this conclusion. All the witnesses agree that the defendant's breath smelt of drink. This fact may, therefore, be taken to be satisfactorily established; in point of fact, defendant admits..... The gist of the evidence, therefore, in so far as it can be safely accepted, is that defendant's breath smelt of drink;

The circumstances of the collision have been urged upon the Court as auxiliary evidence of drunkenness. The merits of the collision are not in issue before this Court, in view of the restricted nature of the appeal; but in so far as they have a bearing on the point brought for decision on appeal, it is permissible to state that, even as considered by the Magistrate, the collision may have occurred owing to the fact that the defendant did not keep a proper look-out for traffic in front of him, and failed to keep at such a distance from the car preceding him as to be able to stop in time in case it should be necessary, as, in point of fact, it became necessary. These omissions on the part of defendant do not "per se" imply drunkenness, as even a perfectly sober driver may well be negligent in that sense. It is true that Police Sergeant Bonett states that defendant, on being questioned by him as to how the collision had occurred, replied.....; but apart from the fact that defendant denied having said those words, his reply might also imply want of attention, or alternatively that defendant claimed that it was a case of sudden emergency;

Having thus fixed the facts, it is now proper to approach the legal aspect of the case;

Maltese Law on this point says simply "driving whilst under the influence of intoxicating liquor" (sec. 14, Chap. 105). The English Law is worded differently. In fact, according to section 15 of the Road Traffic Act, it is an of-

fence, punishable on indictment or summarily, to drive a motor vehicle when under the influence of drink to such an extent as to be incapable of having proper control of the vehicle". Now, this Court takes the view that, even though the words "to such an extent as to be incapable of having proper control of the vehicle" do not occur in Maltese Law, they should be logically read into the section in order to have a reasonable construction. In fact, in the provision in question forming part of the Traffic Ordinance, the purpose of the law is not to envisage the offence of drunkenness as such (as for instance in section 352 (dd) Ch. 12), but to safeguard traffic by punishing anyone who, because of drink, is unfit to drive and, therefore, likely to cause accidents. In order to convict on a charge under section 14 (driving whilst under the influence of intoxicating liquor), it is therefore necessary to satisfy the Court that the state of drunkenness was such as to affect the driving, making it unsafe;

The point, therefore, is: was defendant drunk? That is, was he so far under the influence of alcohol as to have his faculties impaired to such an extent that he was unable to drive safely? The subject is, admittedly, an exceedingly difficult one, and the Court has deemed it its duty to make a thorough study of the matter, not only for the proper decision of this case, but also for the purpose of setting down certain principles to which, it is hoped, the Police Authorities will give their earnest attention in future cases;

In the latter part of 1925, the attention of the British Medical Association was drawn to the wide publicity given in the lay press in England to cases of conviction in the Courts of persons charged with "drunkenness", particularly in connection with motor-car cases. The public, having its own idea of the significance of the word "drunk", was perplexed at the decisions given in certain cases, and became confused by the varying standards of the tests applied. Motorists in particular had a feeling of apprehension that they might at any time find themselves charged with a serious offence, and that there was no certainty that the tests applied were of such a nature as to give them a fair chance of vin-

dicating their personal reputation. It was this which led the Council of the British Medical Association to appoint a special committee to report and make recommendations. The Association was fortunate in securing the services of very distinguished medical practitioners, police surgeons, magistrates and scientists. Its report was completed on the 9th. February, 1927. It was hoped that, as a result of its labours, a standard method of procedure would be drawn up and put into universal practice;

The Committee came to the following conclusions, which this Court will give in detail, in as much as they are necessary to decide the case now before it;

The word "drunk" in similar cases should always be taken to mean that the person concerned was so much under the influence of alcohol as to have lost control of his faculties to such an extent as to render him unable to execute safely the occupation on which he was engaged at the material time;

The Committee then proceeded to enumerate the signs or symptoms which, in the absence of pathological conditions, show definitely that the person is drunk in the sense aforesaid. In order to come to an affirmative conclusion, it is necessary that the person's breath smells of alcoholic liquor. Provided, however, this be accompanied with "all" or "most" of the following groups of signs or symptoms:— (i) dry furred tongue or, conversely, excessive salivation; (ii) irregularities in behaviour, such as insolence, abusive language, loquacity, excitedness or sullenness, and disorder of dress; (iii) suffusion of the "conjunctivæ" and reaction of pupils. The pupils may vary from a state of extreme dilatation to extreme contraction and may be equal or unequal; (iv) loss or confusion of memory, particularly as regards recent events and appreciation of time; (v) hesitancy and thickness in speech and impaired articulation; (vi) tremors and errors of co-ordination and orientation;

The Committee further stated that there is no single test which by itself would justify a medical practitioner in deciding that the amount of alcohol consumed had caused a person to lose control of his faculties to such an extent as to

render him unable to execute safely the occupation on which he was engaged at the material time. A correct conclusion can only be arrived at by the result of the consideration of a combination of several tests, such as general demeanour, state of the clothing, appearance of "conjunctivae", state of the tongue, smell of the breath, character of the speech, manner of walking, turning sharply, sitting down and rising, picking up a pencil or coin from the floor, memory of incidents within the previous few hours and estimation of their time intervals, reaction of the pupils, character of the breathing especially in regard to hiccup. Other tests taken by themselves were less reliable, such as rapid pulse, repetition of set words or phrases, character of handwriting, walking along a straight line, and failure of convergence of the eyes;

Six months after the publication of this report in the *British Medical Journal* (Supplement 19th. February, 1927), a certain Dr. Godfrey Carter emphasised the value of estimating the quantity of alcohol in the urine as a measure of alcoholic intoxication, and thus suggested a further test;

Now, coming down to the merits of the case before this Court, it is proper to enquire how far those methods of ascertaining whether a person is drunk and unfit to drive in consequence thereof, have been satisfied in the present instance;

The only fact emerging from the evidence is that defendant's breath smelt of drink and, according to Dr. Sansone's certificate, there was a slight tremor in his fingertips. With regard to the odour of the breath, it is no doubt one of the signs of drunkenness, for the obvious reason that one cannot be drunk without the ingestion of alcoholic beverages. Without that, there would be other pathological conditions. But, as William Brend says in his text-book on *Medical Jurisprudence and Toxicology*, page 274, "if the breath smells of alcohol, it is conclusive evidence that the person concerned has taken alcoholic liquor within a recent time, but no more than this". Together with that symptom there must be at least most of the other signs or symptoms mentioned above. Now, in the case of the present appellant, the doctor mentions only a slight tremor of the finger-tips. This alone is manifestly insufficient to prove the case, when

one considers that the other symptoms are fairly numerous. In fact, as stated above, there are six groups including various symptoms. One alone is not sufficient to say that a person is so affected with alcohol that, as Brend says, "his judgment as a driver has become impaired". All the more so, when in the present case Dr. Sansone goes on to state that the defendant "was co-ordinate in his speech", thus practically excluding the commonly accepted symptom of hesitancy, or thickness of speech or impaired articulation. It is true that witnesses Montfort and Musu gave it as their opinion that defendant was the worse for drink, but it is well settled that the question does not fall to be decided by the mere opinion of a witness, but there should be some indication of fact on the line of the symptoms mentioned above;

In the opinion of this Court, therefore, the case has not been proved on the issue of driving whilst under the influence of drink. The Police Sergeant acted quite properly in having the defendant examined, but the medical examination does not appear, on the face of it, to have been adequate. This Court did not have the opportunity of hearing Dr. Sansone, as he is away from the Island, and neither the Prosecution nor the defence pressed for an adjournment until his return. Still, it would not appear that the doctor would in any case have gone beyond his certificate. This Court deems it necessary to say that it would be very desirable if, in similar cases, the form of medical certificate adopted by the Ministry of Justice of Denmark, and drawn by the Danish Medico-Legal Council, be followed — this was the recommendation of the Committee afore mentioned, and the form in question is printed in an appendix to the report. In this form there are eleven very comprehensive questions, which the doctor has to answer, including various suggested tests, and then, by way of conclusion, the doctor has to answer three further questions. Any such certificate would, no doubt, be of invaluable help to the administration of justice, removing on the one hand the possibility of a person who has had a few drinks, but is not drunk, from being convicted of a charge of that nature, and on the other hand punishing those irresponsible persons who take to the road in such a state of

inckness as to be a positive danger to the life and limb pedestrians and to other vehicles;

With regard to the punishment inflicted on the defendant by the First Court, the exclusion of the charge of driving whilst under the influence of drink must operate as a mitigation.....;

For the afore going reasons;

This Court disposes of this appeal as follows;

Allows the plea in the sense of declaring the defendant guilty of the charge of driving whilst under the influence drink, and acquits him thereof;

Reduces the fine from a fine (multa) of £5 to a fine (ammenda) of £3. payable within two days;

Reduces the period of suspension of the driving licence from three months to eight days;

A copy of this judgment is to be forwarded to the Honorable the Minister for Justice for any action which he may consider proper to take in connection with the suggestions contained in the judgment.
