



Public Prosecutor

AND

Mohammad Hassanahamizan Bin Mohd Ibrahim

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 27 of 2014)**

**Steven Chong, J.
23 October 2014**

Criminal law – Road rage – Appropriate sentence.

DPP Sharon Yeo for the Public Prosecutor/Appellant.
Defendant/Respondent unrepresented.

Case cited:

Thirumalai Kumar v Public Prosecutor [1997] SLR 434.

Steven Chong, J.:

This is an appeal by the Public Prosecutor against sentence. The case is an appalling example of road rage.

On 10 May 2014 in the Magistrate's Court the defendant was convicted after a trial of the following charge:

"That you, on 1st September 2011 at the vicinity of Jalan Jerudong in Brunei Darussalam, which is a public way, did commit an act so rashly as to likely cause hurt, or injury to another person, to wit, by driving a vehicle, a Ford Ranger with registration number BU419 and whilst you were driving behind a red Lexus bearing registration number BV1314, you hit the said Lexus three times with such force as to cause severe damage to the rear bumper of the said Lexus and you have thereby committed an offence punishable under section 279 of the Penal Code."



The Magistrate sentenced the defendant to 2 months' imprisonment.

Although the Magistrate was minded to disqualify the defendant from driving she did not because she was of the view that there was "*no provision*" giving the court power to order disqualification.

In brief the facts found by the Magistrate were that the defendant had intentionally used his Ford Ranger to ram into the rear of the Lexus driven by Muhd Sunni three times after being overtaken. The defendant on his own admission in evidence said he was angry with Muhd Sunni for overtaking him and he wanted to "*get his attention*".

DPP Ms Yeo submits that: (1) the sentence of imprisonment of 2 months is manifestly inadequate; (2) the Magistrate was wrong in thinking that there was "*no provision*" for ordering disqualification from driving; and (3) the defendant should be disqualified from driving.

Reference was made to *Thirumalai Kumar v Public Prosecutor* [1997] SLR 434, where on appeal, in respect of a charge against the defendant of rash driving in a manner as to endanger human life contrary to section 279 of the Penal Code, Yong Pung How, C.J. enhanced the sentence of a fine of \$1,000 imposed by the District Court to include 4 weeks' imprisonment and 4 years disqualification from driving.

The facts in the case were that the defendant committed the offence of rash driving whilst indulging in a high-speed race to avoid apprehension by a traffic policeman. The penalty for the offence then was imprisonment of up to 6 months and a fine of up to \$1,000 or both.

Reverting to the facts of this case the defendant behaved like a road bully. His deliberate act of ramming his vehicle (which had a "*bull bar*" fixed to the front-end) into the car which had overtaken him shows a total disregard for his own safety and that of other road users. It is fortunate that no accident occurred and nobody was hurt or killed.

There is a strong element of public interest in discouraging such displays of hooliganism on the roads. As our roads become increasingly congested each year the potential for misunderstandings amongst motorists increases. A minor traffic incident between two drivers should not escalate into a violent



confrontation. Generally, custodial sentences are to be imposed even for first offenders where there is physical violence in cases of this nature.

I agree with the Deputy Public Prosecutor that the sentence of 2 months' imprisonment imposed by the Magistrate is unduly lenient. An appropriate sentence on the facts would have been 9 months' imprisonment bearing in mind the defendant was convicted after a trial. A sentence of 6 months' imprisonment would be proper on a guilty plea.

The Magistrate also erred in not disqualifying the defendant from driving. She was mistaken in thinking there was "*no provision*" for imposing disqualification.

Section 40 of the Road Traffic Act states:

"Any court before which a person is convicted of an offence in connection with the driving of a motor vehicle may:-

(a) if the person convicted holds a driving licence, suspend the licence for such time as the court thinks fit, or cancel the licence and declare the person convicted disqualified from obtaining another licence for a stated period....."

As the defendant was convicted of an "*offence in connection with the driving of a motor vehicle*" the Magistrate is given the discretion to order disqualification from driving pursuant to section 40 of the Road Traffic Act notwithstanding that the offence falls under the Penal Code.

I think the defendant should be disqualified from driving for a substantial period in order to deter him and others who are likeminded from such outrageous conduct.

However, this court is in difficulty insofar as the sentence of imprisonment is concerned. The defendant who is now aged 22 has served his sentence of 2 months' imprisonment and moved on with his life. He says he is presently studying for his 'O' level examination to be taken in 2 weeks and intends to continue his education. In the circumstances I do not think it would serve the interest of justice to re-sentence the defendant to a further term of imprisonment.



For the foregoing reasons I allow the appeal to the extent that the defendant is disqualified from driving all classes of vehicles for 2 years and this order is to be endorsed on his driving licence.

DATO PADUKA STEVEN CHONG

Judge, High Court