

PUBLIC PROSECUTOR
AND
MD AZEEM RAHIMI BIN ABU ZAINI

(HIGH COURT OF BRUNEI DARUSSALAM)
(CRIMINAL APPEAL NO. 3 OF 2024)

Hj Abdullah Soefri bin POKSM DSP Haji Abidin, JC

2nd July 2024

Criminal Law and procedure – dangerous driving – section 28(1) of the Road Traffic Act – disqualification – section 28 (2) of the Road Traffic Act – uplift of disqualification – section 44 of the Road Traffic Act

Case referred to:

Mohammad Suffian Bin Hj Suhaili Vs Public Prosecutor (High Court Criminal Appeal No. 32 of 2009)

Prosecuting Officer Syazwani Binti Jumat for Public Prosecutor/Appellant.

Defendant/Respondent in person and unrepresented.

RULING

Hj Abdullah Soefri, J.C.:

Introduction

The Defendant was convicted and sentenced after he pleaded guilty to the 4th charge which is contrary to Section 28(1) of the Road Traffic Act. The Magistrate below on 26th February 2024 sentenced him to a fine of \$1000 in default to one-month's imprisonment.

Additional 4th Charge

“That you, on the 12th day of February 2024, at about 2045 hrs, along Jalan Jaya Negara, Kuala Belait, when driving a white-coloured Toyota Corolla EE 110 bearing the registration number KM 5392, in a manner which was dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and the use of the road, and the amount of traffic which was actually at that time, or might reasonably be expected to be, on the road, by suddenly reversing the said Toyota Corolla while at the vicinity of Jalan Jaya Negara heading to Seria and driving against the flow of the traffic along Jalan Jaya Negara heading to Kuala Belait, and subsequently involved in a head-on collision with the right front side of a Hyundai Tucson bearing the registration number KR 5637 which was driving slowly along Jalan Jaya Negara heading to Kuala Belait, and you have thereby committed an offence punishable under Section 28 (1) Road Traffic Act (Cap 68) “

The Prosecution (Appellant) filed the notice of appeal on the 2nd March 2024 on the following ground:

“(a) The Honourable Acting Senior Magistrate had erred in law for not ordering the Defendant to be disqualified from holding or obtaining a license to drive a motor vehicle for a period not being more than 3 years from the date of such conviction as the court may think proper upon the Defendant’s conviction, as mandated under Section 28(2) Road Traffic Act (Cap 68). The defendant at the time of the commission of the offence did not possess any valid driving license.”

The Road Traffic Act, Cap 68 provides as follows:

Reckless or dangerous driving

28. (1) Any person who drives a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition, and use of the road, and the amount of traffic which is, or which might reasonably be expected to be on the road at the time, is guilty of an offence and liable on conviction to a fine of \$10,000 and imprisonment for 2 years and, in the case of a second or subsequent conviction, to a fine of \$20,000 and imprisonment for 4 years.

(2) On a first conviction under subsection (1), the court shall order —

- (a) particulars of such conviction to be endorsed on any license to drive a motor vehicle held by the person convicted; and*
- (b) that such person be disqualified from holding or obtaining a license to drive a motor vehicle for such period not being more than 3 years from the date of such conviction as the court may think proper unless the court, for special reasons (which shall be set out in the order of the court) thinks fit to order otherwise.*

Conclusion

There is nothing in the Magistrate’s notes to state that she has imposed any disqualification as mandated by Section 28 (2) and there is nothing in her notation that she has ordered otherwise and laid out the special reason for doing so.

The Defendant/Respondent has told this Court that he has nothing to say on the appeal of the Prosecution and only enquired if the disqualification is forever and the Court’s response was that the disqualification is for a period of not more than three (3) years.

Is there any special reason for not imposing any disqualification?

Having had read the statement of facts which the Defendant has admitted to and that the Defendant has not given any special reason after being invited by this Court, by virtue of Section 28(2)(b) of the Road Traffic Act, after he has been convicted of Section 28(1) offence, I am satisfied that the Defendant is to be disqualified from holding or obtaining any driving license for any class of vehicle for a period of 24 months

with effect from 26th February 2024. This Court also orders for his conviction for the offence under Section 28(1) to be endorsed on any driving license for any classes of vehicle that he will obtain contrary to Section 28(2)(a) of the Road traffic Act, Cap 68.

Thus, the appeal is allowed and the Defendant is to serve disqualification from obtaining or holding any driving license for a period of 24 months with effect from 26th February 2024 and also order for his conviction for the offence under Section 28(1) to be endorsed on any driving license for any classes of vehicle that he will obtain. Other sentences imposed by the Magistrate will remain.

I would like to highlight the guidelines on removal of Disqualification under section 44 of the Road Traffic Act as stated by the Chief Justice Dato Seri Paduka Steven Chong, in ***Mohammad Suffian Bin Hj Suhaili Vs Public Prosecutor (High Court Criminal Appeal No. 32 of 2009)***. The Chief Justice stated that:

“Section 44 states that the court may remove a disqualification “if it thinks proper having regard to the character of the person disqualified and his conduct subsequent to the conviction or order, the nature of the offence, and any other circumstance of the case.” in my view, once disqualification has been ordered an offender should expect the disqualification to run its course. The discretion of the court to remove any disqualification should be exercised only in exceptional cases particularly where a serious offence such as drink driving is committed.”

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner