

SAADATUL HIJRAH BTE HJ MOHD YASSIN

AND

PUBLIC PROSECUTOR

(High Court of Brunei Darussalam)
(Criminal Appeal No 18 of 2016)

Hairol Arni Majid, J.

21st September 2016

Road Traffic – Sentence – Careless driving – Second offender – Lapse of time between convictions – Section 29(1) and 29(2) of the Road Traffic Act Cap 68 – Special Reason.

Applicant unrepresented

DPP Dk Hazirah Pg Mohd Yusof for Respondent

Cases cited:

Awang Ahmad Haji Alias v Public Prosecutor, (Criminal Motion 26 of 2012)

Awang Hj Mustafa BPK Hj Abd Wahid v Public Prosecutor (Criminal Appeal No 14 of 2011)

Public Prosecutor v Lim Jin Lee and Salina Mohd. Salleh [2002] 2 BCBD 217

J U D G M E N T

The appellant pleaded guilty to an offence of careless driving under section 29(1) of the Road Traffic Act (RTA) Cap 68. She was sentenced to a fine of \$550, in default of the fine, 2 week custodial sentence. She was also disqualified from driving for 18 months for being a second offender. It is this disqualification order that she is appealing against.

On record the appellant 1st conviction for careless driving was in 2009 which was some 6 years ago.

Section 29(2)(b) of the RTA states that

“(2) On a second and subsequent conviction under subsection (1), the court shall order.

(a)....

(b) that such person be disqualified from holding or obtaining a license to drive any motor vehicle for such period not less than 18 months from the date of such conviction as they may think proper unless the court having regard to the lapse of time since the date of the previous or last conviction as for any other special reasons (which shall set be set out in the order of the court) thinks fit to order otherwise.”

Obviously, the Magistrate had overlooked this section and I believe if she had sight of this, I am sure she would have come to a different decision. I believe that a lapse of less than 6 years between convictions constitutes special reason to justify the court the discretion not to disqualify.

In *Awang Hj Mustafa BPK Hj Abd Wahid v Public Prosecutor (Criminal Appeal No 14 of 2011)* and *Awang Ahmad Haji Alias v Public Prosecutor, (Criminal Motion 26 of 2012)*, the court ruled that a lapse of 15 years and 6 years respectively, between convictions constitutes a special reason not to disqualify. (Also see *Public Prosecutor v Lim Jin Lee and Salina Mohd Salleh [2002] 2 BCBD 217*).

For the foregoing reason, I allow the appeal and the Magistrate order of disqualification is quashed.

Dato Paduka Hairol Arni Majid
Judge, High Court