

Tan Ming Ming

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 1 of 2016)**

Dato Seri Paduka Hj Kifrawi, C.J.

9th April, 2016.

Criminal Procedure and Sentencing – Disqualification Order – driving under the influence of alcohol – whether any ‘special reason’ warranting exemption from mandatory disqualification – Section 26(1)(a) of the Road Traffic Act, Cap.68.

Appellant In Person.

Dk Didi-Nuraza Bte Pg Latif for Public Prosecutor.

Cases cited in the Judgment:

Mohammad Iswandy Bin Sallehie v Public Prosecutor High Court Criminal Appeal

No. 27/2015

Taylor v Rajan 1974 RTR 304

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

1. Charge

The Appellant, Tan Ming Ming was charged in the Magistrate’s Court for drunk driving.

The Charge is as follows:

That you did at about 0230 hours on the 11th day of May 2012, at the vicinity of Beribi Gadong, in Brunei Darussalam, being the driver of a motor vehicle registration number BY 5528 (Kia Sportage), while you are under the influence of alcohol, to wit, 198.37 milligram of sample, to such extent as to be incapable of having proper control of the

said vehicle, and that you have thereby committed an offence punishable under section 26(1)(a) of the Road Traffic Act Chapter 68 and punishable under the same.

Penalty under Section 26(1)(a) of the Road Traffic Act Chapter 68

- 1) A Fine of \$10,000 and imprisonment for 2 years, and in the case of a second or subsequent conviction, a fine \$20,000 and imprisonment of 4 years.
- 2) On a conviction under subsection (1), the court shall order:-
 - a) Particular or 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 any motor vehicle for such period not less than 3 years from the date of such conviction as the court may think proper unless the court, having regard to the lapse of time since the date of the previous or last conviction or for any other special reasons (which shall be set out in the order of the court) think fit to other otherwise.

2. Statement of Facts

He pleaded guilty to the charge. He admitted to the following statement of facts:

'Statement of Facts

- 1) The Defendant is a Malaysian, during the incident, the defendant resides at Kampong Jangsak and works as a General Manager at Sin Hup Huat Company, Gadong.
- 2) On the 11th March 2012, at about 0230 hours, the defendant was driving one motor vehicle bearing the registration number BY 5528 (KIA Sportage) proceeding from Rizqun Hotel, Gadong and had intended to go to Kampong Jangsak via Beribi, Gadong.
- 3) Whilst the Defendant was proceeding along the vicinity of Beribi, Gadong at a speed of 60 km/hr to 70km/hr, the Defendant had claimed that he saw a dog crossing the road from the left to the right and as the Defendant had been drinking alcohol, the Defendant was incapable of having proper control of his vehicle which has caused the Defendant's car to hit against the stairway of a pedestrian bridge situated on the left side of the main road.

- 4) Subsequently, after the impact of the collision against the said pedestrian bridge stairway, the Defendant reversed his car out and had drove his car back onto the said main road on his right, however, when doing so, at the same time, there was one motor vehicle bearing the registration number, KA 8663 (Renault Megane) proceeding on the said main road and upon seeing the Defendant's car entering the said main road in front at a close distance, the said car, KA 8663 (Renault Megane) to consequently collide with one motor vehicle bearing registration umber, BAG 7054 (Mitsubishi Lancer EX) that was proceeding on the said right from behind.
- 5) Further investigation had revealed that Analysis Report on the blood sample that was sent for process on the 12th March 2012 to the Department of Scientific Services confirmed that the Defendant's blood was found to contain 198.37 mg% of Ethanol.
- 6) A Medical Report (Police 9) which states that the injuries caused towards the Defendant whilst driving the said car, BY 5528 (KIA Sportage) during the accident constitutes as 'Hurt'.
- 7) The collision had caused all three motor vehicles to sustain moderate damages. However there are damages caused towards government property.
- 8) On record, the Defendant has had no previous conviction for under Section 26(1)(a) of the RTA Cap. 68.'

3. Magistrate's Ruling

He was convicted and sentenced to pay fine \$2,000 in default 2 months imprisonment after taking into consideration the usual mitigating factors. The Magistrate also ordered that he be disqualified for 3 years from driving.

4. Appeal/Ruling

He appealed against the disqualification order. The Appellant submitted that he needed the driving license because of his demanding job. The Court would not impose a disqualification order if the Appellant can give special reasons. Whether the facts are, or are not, capable of amounting to special reason is a matter of law, not of fact. A special reason is a mitigation or extenuating circumstances, not amounting to a defence to the charge and must be directly connected with the commission of the offence. A circumstances connected to the offender, but not to the offence is not a special reason.

In my view when the Appellant complained that he needed a driving license because of his demanding job as General Manager at Sin Hup Huat Company his reason is directly connected to his personal requirement and not to the commission of the offence.

I have decided in a recent case *Mohammad Iswandy Bin Sallehie v Public Prosecutor* High Court Criminal Appeal No. 27/2015 exceptional hardship including financial hardship are not 'special reasons'. In *Mohammad Iswandy's* case I stated in my judgment;

'I agree with the Magistrate that there is no special reason why he should not be disqualified. The fact that he could not afford to pay the road tax and insurance and that his wife was pregnant at that time are not 'special reasons'. Before me, he also explained that he needed to drive a car to send his children to the clinic. He also said if he is allowed to drive he could earn overtime pay. 'Special reasons' are connected to the offences not to the person. The Appellant may submit that his financial hardship is connected to the offence. In law, financial hardship is not to be treated as 'special reasons'.

It is clear from the authorities exceptional hardship including financial hardship are not 'special reasons'. Therefore the fact that disqualification would cause the Appellant's hardship in the form of greater expense and inconvenience was insufficient to dispense with mandatory disqualification. '

The Appellant also claimed that he saw a dog crossing the road from the left to the right and he intended to avoid the dog and therefore he was in an 'emergency situation'. Even assuming this is a 'special reason', it does not automatically mean the offender will not be disqualified. The Court should separately consider whether the discretion must be exercised in favour of the offender.

In deciding whether to disqualify or not Lord Widgery, CJ stated in *Taylor v Rajan* 1974 RTR 304 that, in considering the whole of the circumstances of the case, a sentencing court was required to have regard to the following:

'...the manner in which the defendant drove, because if he committed traffic offences, such as excessive speed or driving without due care and attention, this again is a consideration which tells against his having the discretion exercised in his favour, and they should generally have regard to whether the defendant acted responsibly or otherwise....Last, but by no means least, if the alcohol content in the defendant's body is very high, that is a very powerful reason for saying that the discretion should not be exercised in his favour....'

In this appeal case, the alcohol content in the Appellant's body was very high. The Court in this case should exercise its discretion to disqualify the Appellant from driving.

For the reasons I have given, I dismiss the appeal.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice