

Daniel Arif bin Peranhis

and

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 21 of 2017)**

**Pg DP Hjh Rostaina Pg Hj Duraman, J.C.
30th August, 2017**

*Criminal Law --- appeal against disqualification --- driving under the influence of alcohol ---
section 26(1)(a) of the Road Traffic Act, Cap 68*

Cases cited in the Judgment:

PP vs Lim Jin Lee and Salina binti Mohd Salleh (CA No 25 of 2000) 2 JCBD 217

Muhammad Shahrul Abdullah Asun (CA No 128 of 2002)

PC 5326 Mohammad Azmee bin Hj Ani vs PP (CA No 13 of 2011) 2 JCBD 1

PP vs Muhd Addey Redaniel Nur Ashraf bin Abdullah Sumin (CA No 12 of 2015)

Appellant in person.

DPP Dr Mohammad Hussin Ali bin Idris and assisted by DPP Hjh Samiyyah Emeralda binti
POKLSDSLJ Hj Abas for Public Prosecutor (Respondent).

JUDGMENT

Pg DP Hjh Rostaina, JC

1. The appellant filed his Notice of Appeal on 22nd July 2017. In the Magistrate's Court, on 17th July 2017, he was convicted upon his own admission to one count of traffic offence under section 26(1) (a) of the Road Traffic Act, Cap 68.

Charge

That you did at about 2240 hours on the 23rd day of February 2013, at the vicinity of Jalan Junjongan in Brunei Darussalam, did drive a motor vehicle registration number BAA 8185 (Hyundai Tucson 2.0), while you are under the influence of alcohol, to wit, 138.76 milligramme ethanol per 100 millilitre 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 punishable under the same.

Penalty under section 26(1) 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 for 4 years.
- 2) On a conviction under subsection (1), the court shall order:-
 - (a) particulars of such conviction to be endorsed on any licence to drive a motor vehicle held by the person convicted; and
 - (b) that such person be disqualified from holding or obtaining a licence to drive any motor vehicle for such period not less than 3 years from the date of such conviction or, where he is sentenced to imprisonment from the date of his release from prison, 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) thinks fit to order otherwise.

2. Briefly stated the admitted facts were that on the night of the incident, the appellant was driving his car from Limbang intending to return home through Jalan Junjongan, when he lost control of his car and collided into the concrete wall and metal fence of the bridge along the said road. He claimed he steered to the left to avoid an oncoming car that was encroaching towards his lane. His car sustained minor damages and damages to government property was involved. There were no injuries caused to any members of the public from the incident except to him. He suffered injuries that were constituted as "hurt". Upon analysis his blood sample was found to contain 138.76 mg of ethanol per 100 ml of sample.
3. He was fined \$1,600 and in default of payment to 1 month imprisonment and he was also disqualified from holding or obtaining a driving license for all classes for a period of 3 years with effect from 17th July 2017.
4. He now appeals against that disqualification. He tells me that the disqualification has caused great inconvenience to him. Since his mobility is restricted, he finds it difficult to go to work and risks being dismissed. When the accident happened in 2013, he was 18 years old. He had just finished school and was not employed yet. He is now aged 26 years when he was charged and sentenced in the Magistrate Court on 17th July 2017, and has been in the employ of the Marine Construction Yard, Kuala Belait, for the last 3 years.
5. Driving under the influence of alcohol is a serious offence. In the case of **PC 5326 Mohammad Azmee bin Hj Ani vs PP (CA No 13 of 2011) 2 JCBD 1**, DP Steven Chong J commented, "An intoxicated driver places not only himself but other road users at risk of injury or death. Our roads must be made as safe as possible for all law abiding road users". In that case the appellant was sentenced to 2 months', disqualified from driving for 3 years and ordered to pay compensation for the property damage caused by the accident. See also **Muhammad Shahrul Abdullah Asun (CA No 128 of 2002)** where he commented that, severe sentences are necessary to produce a deterrent effect. In the appellant's case, it is fortunate there was no report of any injuries caused to any members of the public from the incident.
6. Upon conviction under section 26(1) of the Road Traffic Act, 3 years disqualification is mandatory, unless there are "special reasons".

7. As much as I sympathise with him, it is well established in previous cases that special reasons must be directly connected with the commission of the offence itself and not to the hardship or being inconvenienced, which may be caused to the offender by the disqualification. **See: *PP vs Lim Jin Lee and Salina binti Mohd Salleh (CA No 25 of 2000) 2 JCBD 217; PP vs Muhd Addey Redaniel Nur Ashraf bin Abdullah Sumin (CA No 12 of 2015)*.**
8. In the circumstances, the sentence imposed can hardly be said to be excessive, let alone manifestly so. I find there is no merit in this appeal and it is dismissed accordingly.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner
30th August 2017