

Public Prosecutor

AND

CPL 3182 Epindi Anak Anto

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 22 of 2021)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC

Date of Hearing : 26th February 2022.

Date of Judgment : 19th March 2022.

*Road traffic offences – incapable of having proper control –Delay – Conditional discharge-
Disqualification of Driving Licence*

DPP Muhammad Qamarul Affyian Bin Abd Rahman for the Public Prosecutor.
Defendant In Person.

Cases cited:

Kalaiarasi d/o Marimuthu Innasimuthu v PP [2012] SGHC 58

Muhammad Shahrul Abdullah Asun v PP (High Court Criminal Appeal No. 128 of 2002)

Ak Nasiruddin Bin Pg Hashamuddin V PP (High Court Criminal Appeal No. 32 of 2016)

Muhammad Syuriah bin Abdullah @ Suresh Janardanan v PP (High Court Criminal Appeal No. 26 of 2007)

Reymund Martinez v PP (High Court Criminal Appeal No. 33 of 2015)

Daniel Arif bin Peranchis v PP (High Court Criminal Appeal No. 21 of 2017)

Othman bin Haji Mohammad Zain v PP (High Court Criminal Appeal No. 14 of 2011)

PP v Lim Jin Lee and Salina bte Mohd Salleh (High Court Criminal Appeal No. 25 & No. 26 of 2000)

Tan Ming Ming v PP (High Court Criminal Appeal No. 1 of 2016)

Farziah Hatikah Bte Hj Haziz v PP (High Court Criminal Appeal No. 45 of 2001)

Taylor v Rajan 1974 RTR 304

JUDGMENT

Hj Abdullah, J.C.:

This is an appeal by the Prosecution (Appellant) against the sentence imposed on the Defendant (Respondent) in the Magistrate Court on 15th of November 2021.

The Defendant (Respondent) Cpl 3182 Epindi Anak Anto was charged and convicted after trial for the following offence:

Charge:

"That you did at about 0510 hours on the 15th Day of February 2010, at the vicinity of Jerudong Park Playground Roundabout, in Brunei Darussalam, being the driver a motor vehicle registration number KK 5684 (Mitsubishi Starwagon), while you are under the influence of alcohol to wit, 143.51 milligrams ethanol per 100 milliliter 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:

The Magistrate imposed the following sentence:

- 1) Conditional discharged by virtue of Section 8 of the Offenders (Probation and Community Service) Act, Cap 220 and also did not impose any disqualification as the Magistrate rules that delay constitutes as a special reason.

The Magistrate in his sentence has taken the delay and other extenuating factor when he imposed the sentence.

"However, due to the delay as well as other extenuating factor in this case, i.e. the defendant has served the country so well that he has been promoted to a Sergeant Major, I hereby substitutes the penalty above to the following; by virtue of Section 8 of the Offenders(Probation and Community) Service Act, Chapter 220, I hereby discharge the defendant on a condition that he shall not commit other offence for a period of 12 months with effect from today. If he commits another offence during the period of a conditional discharge he shall be liable to be sentenced for the original offence above as well as the new offence he committed during the period of discharge."

The Prosecution (Appellant) was of the views that the sentence imposed on the Defendant is manifestly inadequate.

They submitted that the Magistrate erred in principle in failing to give sufficient weight on the circumstances and facts of the case.

Prosecution submitted the case of ***Kalaiaarasi d/o Marimuthu Innasimuthu v PP***, a Singapore High Court case where it provides a useful guideline for determining whether it would be appropriate to grant an absolute or conditional discharge:

"In considering these factors, the court should pay close attention to the nature of the offence and the interest which the offence seeks to protect. In addition, some of the factors, the court should consider:

- a) The particular circumstances of the offender.*
- b) The particular circumstances of the offense.*

- c) *Factor independent of the offender: for example, a delay in the prosecution of an offence, may justify some form of a discharge*".

Prosecution (Appellant) submitted that there is nothing that could fairly be described as an exceptional either about the Respondent or the nature of his offence. Prosecution (Appellant) further submitted that the driving whilst unfit to drive because of drink is a serious offence and apart from the offender putting himself in danger or injury or death, it also demonstrates a selfish disregard for the safety of other road users (**Muhammad Shahrul Abdullah Asun v PP**).

The Prosecution (Appellant) also cited the case of **Ak Nasiruddin Bin Pg Hashamuddin V PP** whereby the appellant was sentenced to \$3,000 fine and 3 years disqualification delay in prosecution and his good service records and even promoted to Lance Corporal".

In this case, the offence took place on 2nd of October 2013 and has brought to court in October 2016.

"In between the long interval, he had moved on with his life and has even promoted to Lance Corporal on 1st of June 2015".

The Prosecution (Appellant) also cited 4 cases:

1. **Muhammad Syuriah bin Abdullah @ Suresh Janardanan v PP**
2. **Reymund Martinez v PP**
3. **Daniel Arif bin Peranchis v PP**
4. **Othman bin Haji Mohammad Zain v PP**

In all the cases fines were imposed except for Othman's case where imprisonment was imposed.

The Prosecution (Appellant) informed the court that all cases that he cited, there was no delay in prosecution.

From the Magistrate's note, the Magistrate has indicated that he is minded of the penalty of the offence, he also indicated:

"However, before the said penalty be imposed, there are other factors that should be considered and this includes the delay factor,"

He had highlighted that;

"There is an extensive delay in managing the case. From the charge itself, we know that the offence was committed in 2010 and the defendant was first brought to court in 2012 where he pleaded not guilty. Then this matter was set for trial, however, could not proceed due to prosecution was not prepared for the case and the court then ordered for the defendant to

be discharged not amounting to acquittal and this was on 12th of February 2013. The defendant was recharged again on 11th of March 2019”.

The Prosecution (Appellant) admitted of the delay and was not able to provide any reason. Prosecution (Appellant) has also indicated that there is no known cases where a conditional discharge was imposed after a trial for a drink driving charge and a conditional discharge in cases of the nature has diluted the deterrent effect called for.

Turning back to the Magistrate’s decision in imposing a conditional discharge, I would have agreed with the Prosecution (Appellant) that the sentence imposed would have been manifestly inadequate if there is no delay or only a short delay such as in the case of **Ak Nasiruddin Bin Pg Hashimuddin v PP** where the delay is about 3 years.

However, in the present case the delay can be divided into two periods:

1st period is when he was discharged not amounting to an acquittal. He was only first brought to court in 2012 two years after the incident happen in 2010 and after a year waiting for trial, the Prosecution was not ready for trial on 12th of February 2013.

2nd period is the time taken to recharge him again. He was discharged not amounting to an acquittal in 2013 but only recharge in 2019 which is about 6 years lapse.

None of these delays were caused by the Defendant and it is an ordinate delay.

Coming back to the Singaporean case **Kalaifarasi d/o Marimuthu Innasimuthu v PP**, one of the factors whether it is appropriate to grant an absolute or conditional discharge:

- a) Factors independent of offender e.g. a delay in the prosecution of an offence, may justify some form of a discharge.

No doubt offences under Section 26(1)(a) of RTA Cap 68 is a serious offence and the defendant put himself in danger or injury or death and demonstrates a selfish disregard for safety of other road users and he is a police officer.

The Defendant (Respondent) have moved on with his life and was promoted to a Sergeant Major within the period of the delay.

I have no doubt that if there is no delay or if there is only a short delay, the Magistrate below would have imposed a different sentence.

Thus, I am satisfied that the sentence imposed by the said magistrate is not manifestly inadequate and I therefore dismiss the appeal on the sentence.

Now I will turn to the appeal against Magistrate’s decision for not imposing disqualification.

In **PP v Lim Jin Lee and Salina bte Mohd Salleh**, it has been decided that the ‘special reason’ must relate to the circumstances of the offence itself and not that of the offender.

Prosecution (Appellant) submitted the case of **Tan Ming Ming v PP** and also to the case of **Farziah Hatikah Bte Hj Haziz v PP (High Court Criminal Appeal No 45 of 2001)** where it was stated:

“An unreasonable delay by itself should not constitute a special reason.”

The Magistrate below in his sentence stated:

“I will also not order for the disqualification of the defendant’s driving license because of the delay constitutes as a special reason”

It is clearly stated in **PP v Lim Jin Lee and Salina bte Mohd Salleh** case that “special reason” must relate to the circumstances of the offence itself and not the offender.”

It is also stated in **Tan Ming Ming v PP** where Lord Widgery CJ was quoted in **Taylor v Rajan 1974 RTR 304**

“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 favor”

As to the delay, **Farizah Hatikah Bte Hj Haziz v PP** is relevant.

Having had said all the above I am satisfied that the Magistrate was wrong in taking delay as a special reason and for not imposing disqualification.

I therefore allow the Prosecution (Appellant) appeal and replace the Magistrate’s order for non-disqualification to Disqualification as provided by the law and order as follows:

Defendant to be Disqualified from holding or obtains any driving license to drive any motor vehicle for 3 years with effect from 15th of November 2021, (Date of Conviction).

Appeal against non-disqualification is allowed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner