

Muhammad Amir

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 26 of 2016)**

Pg DP Hjh Rostaina Pg Hj Duraman, J.C
21st September 2016

Criminal Procedure and Sentencing – Sentencing – Disqualification Order – Use of car without valid third-party insurance – Whether any “special reasons” warranting exemption from mandatory disqualification – Section 3(2) Motor Vehicle Insurance (Third Party Risks) Cap.90.

Cases referred to:

P.P v Lim Jin Lee and Salina Binti Mohd Salleh, [2000] 2 JCBD 217

Mohammad Iswandy bin Sallehie v P.P, CA No.27 of 2015

P.P v Muhd Addey Redaniel Nur Ashraf bin Abdullah Sumin, CA No.12 of 2015

Appellant In Person.

DPP Kamaliah binti Haji Ibrahim and PO Nor ‘Adliatul Hidayah bte Hj Md Zaidi for Public Prosecutor (Respondent).

JUDGMENT

Pg DP Hjh Rostaina, J.C

1. On the 8th August 2016, the Appellant was convicted on his own pleas of two traffic offences. The charges were:-

1st charge

That you did at about 2045 hours on the 20th day of May 2015, at the vicinity of Jalan Babu Raja 2 towards Beribi Roundabout in Brunei Darussalam, being the driver of the motor car registration number BAF 1596 (Chevrolet Orlando), whilst the road tax of the said motor car expired since 28th day of February 2014 and that you have thereby committed an act contrary to section 8(1) of the Road Traffic Act Cap 68 and punishable under section 8(2) of the same.

2nd charge

That you did at about 2045 hours on the 20th day of May 2015, at the vicinity of Jalan Babu Raja 2 towards Beribi Roundabout, in Brunei Darussalam, being the driver of a motor car registration number BAF 1596 (Chevrolet Orlando), did drive the said motor car on the road when the insurance policy has expired since 28th day of February 2014 and that you have committed an offence under section 3(1) and punishable under section 3(2) Motor Vehicle Insurance (Third Party Risks) Cap 90.

2. Accordingly, for the first charge, the Appellant was fined \$250 and in default 1 week imprisonment. For the second charge, he was fined \$500 in default 3 weeks imprisonment and was imposed the mandatory 12 months disqualification from driving.
3. The offence under section 8(1) of the Road Traffic Act, Cap 68 and punishable under section 8(2) of the same prescribes a fine of \$4,000 and imprisonment for 3 months.

The offence under section 3(1) and punishable under section 3(2) of the Motor Vehicle Insurance (Third Party Risks), Cap 90 prescribes a fine of \$10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are “special reasons”.

4. The Appellant appealed against the decision made by the Chief Magistrate on the ground that the mandatory disqualification order of 12 months ought not to have been imposed because he needs his driving license for his daily transportation to the hospital in order to visit and look after his grandfather, as well as for personal needs since he intends to further his studies.
5. He is aged 24, single and has just completed his studies. That even though his grandfather has other family members but it is his mother and himself who cares for his grandfather. They attended to his daily needs since his stay in the hospital from July, 2016. His grandfather suffers from Parkinson disease.
6. The Deputy Public Prosecutor submitted that this could not amount to “special reasons” and submitted several authorities. The decision in the case of **Public Prosecutor v Lim Jin Lee and Salina binti Mohd Salleh (CA. No 25 of 2000) 2 JCB 217** where Silke J.A, said that, “... to be “special reasons”, the reason must be a extenuating or mitigating circumstance; it must not amount in law to a defence”.

In the decision of Lord Goddard in **Whittall v Kirby (1947)1KB 194** which governs what is and what is not a special reason, Lord Goddard approved and adopted what was said in the Northern Ireland decision of **R.V. Crossen (1939)1N.1. 106** saying: “..... a special reason within the exception is one which is special to the facts which constitute the offence. It is, in other words a mitigating or extenuating circumstance, not amounting in law to a defence to the charge, yet directly connected with the commission of the offence and one which the Court

ought properly to take into consideration when imposing punishment. A circumstance peculiar to the offender, as distinguished from the offence, is not a special reason within the exception”.

7. As much as I sympathise with him, it is established by previous cases that special reasons must relate to the commission of the offence itself and not to the hardship which may be caused to a defendant by the disqualification.
8. There is no merit in this appeal and it is dismissed accordingly.

The Appellant is advised to write to the Registrar of the Subordinate Court to apply to the Magistrate to consider the removal of the disqualification order under **section 44(1) of the Road Traffic Act, Cap 68**, at any time after the expiration of 6 months from the date of the order and apply to the court before which he was convicted to remove the disqualification order.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner