

Mohammad Iswandy Bin Sallehie

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 27 of 2015)**

Dato Seri Paduka Hj Kifrawi, C.J.
3rd October, 2015.

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 Risk) Cap.90.

Appellant In Person.

DPP Dk Siti Nurul Fairuz Bte Pg Rosli for Public Prosecutor.

Cases cited in the Judgment:

Knowler v Rennison (1947) 1 KB 488

Muniandy, Re (1954) MLJ 168

P.P. v Mohd Isa ([1963] MLJ 135)

Siti Hajar Bte Abdullah v Public Prosecutor (2006) 2 SLR(R) 248

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Defendant, Mohammad Iswandy Bin Sallehie, was charged in the Magistrate’s Court on 23/7/2015 as follows –

1st Charge

That you did at about 1140 hours on the 23rd day of September 2014, at the vicinity of Km 40 Tutong/Muara Highway towards Muara, in Brunei Darussalam, did drive a motor vehicle registration number KR 4947 (Mitsubishi Lancer), whilst the motor vehicle license (road tax) of the said motor vehicle expired on 31st day of January 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.

(Penalty) – U/Sec 8(2) RTA CAP 68
Imprisonment 3 months and a Fine \$4,000 (Four Thousand Dollars)

2nd Charge

That you did at about 1140 hours on the 23rd day of September 2014, at the vicinity of Km 40 Tutong/Muara Highway towards Muara, in Brunei Darussalam, being the driver of a motor vehicle registration number KR 4947 (Mitsubishi Lancer), did drive the said motor vehicle on the road when the insurance policy has expired since 31st day of January 2014 and that you have committed an offence under section 3(1) and punishable under section 3(2) Motor Vehicle Insurance (Third Party Risk) Cap 90.

(Penalty) – U/Sec 3(2) MVIA CAP 90
Imprisonment 12 (Twelve) Months and Fine \$10,000 (Ten Thousand Dollars) Mandatory Disqualification of 12 months

The Defendant pleaded guilty to both charges and admitted to the following statement of facts –

Statement of Facts

1. The Defendant is a Bruneian and during the incident the Defendant resides at Kg Danau Tutong and works at JPMC, Jerudong.
2. On the 23rd day of September 2014 @ 1140 hours, the Defendant was driving one car bearing registration number KR 4947 (Mitsubishi Lancer) proceeding from his home and intended to go to his workplace via Tutong/Muara Highway towards Muara.
3. Whilst proceeding along the said road, the Defendant was stopped by police personnel conducting roadblock duty.
4. Upon investigation conducted, the Defendant was found driving the said car:
 - a. With an expired Road Tax since 31st January 2014,
 - b. With an expired Insurance Policy since 31st January 2014
5. Upon further investigation conducted, the Defendant admitted to the offences.
6. On record, the Defendant is a first offender.

The Defendant pleaded for a lenient sentence. He told the Magistrate that he was a driver at Jerudong Park Medical Centre (JPMC) and that his wife was about to give birth. He only had one car which he used to go to work. He also said he did not have enough money to renew the road tax and insurance.

The Magistrate took into consideration that the Defendant had pleaded guilty and a first offender. The Magistrate sentenced him as follows:

- 1st Charge: Fine \$250 in default one week's imprisonment;
- 2nd Charge: Fine \$750 in default 3 weeks' imprisonment and disqualified from driving, holding/obtaining driving licence for 12 months with effect from 23/7/2015 as there are no special reasons.

The Magistrate has rightly taken into consideration the mitigating factors that he pleaded guilty and that, the Defendant was a first offender. The Magistrate imposed a total of \$1,000 fine for the two charges. The total sentence of imprisonment in default of payment of fine would be 1 month (4 weeks' imprisonment). He was also disqualified for 12 months from driving.

The Defendant appealed against sentence.

In *P.P. v Mohd Isa* ([1963] MLJ 135 the Headnote of the case states:

" Road traffic – Permitting unlicensed person to drive motorcycle while insurance policy was not in force – Magistrate imposing fines – No disqualification of driving licence – Whether "special reasons" exist – Road Traffic Ordinance, 1958, ss.25, 74.

The respondent was convicted on his plea of guilty on a charge of permitting an unlicensed person to drive his motorcycle and of allowing his motorcycle to be used while an insurance policy was not in force in contravention of sections 25(2) and 74 of the Road Traffic Ordinance. He was fined \$10 on the first charge and 420 on the second charge. The Magistrate refrained from making an order relating to his driving licence on the grounds that the respondent required the use of his motorcycle to get to his place of work; that he had many dependants to support and that he was a sick man. The Public Prosecutor appealed against the sentences on the ground that they were inadequate.

Held: (1) the fines were inadequate;

(2) the special reasons mentioned in section 74 of the Ordinance are not special reasons connected with the offender but special reasons connected with the commission of the offence. In this case as the special reasons mentioned by the learned Magistrate were special reasons connected with the offender the disqualification mentioned in the section must be imposed.

Where an order for disqualification is made, except in serious cases of being drunk in charge or dangerous driving, the quantum of the monetary penalty is of minor importance.

"Reasons special to the offender" and "reasons special to the offence" explained.

Cases referred to:-

- (1) *Public Prosecutor v Yap Hon Min Selangor*
Criminal Appeal No. 4 of 1960 (to be reported in 3 M.C.).

(2) *Whittall v Kirby* [1947] K.B.194. “

Thomson, C.J. stated on pg.136:

“But when I speak of reasons special to the offender I mean just the sort of reasons that the Magistrate acted on in this case, that is that it will be difficult for him to get to his work, that he is a poor man and so forth. These are reasons special to the offender and they are not reasons on which a Magistrate is entitled to act.

The reasons on which he is entitled to act are reasons special to the offence and it will perhaps be sufficient to give one example. That is the case where it is urgently necessary to take a sick person to hospital and the only conveyance available is a motor vehicle whose insurance has happened to run out. If that happened it would be a reason special to the offence and could be a reason for the Magistrate, if he saw fit, to exercise his discretion under the section to refrain from making an order for disqualification.

In the present case there were no such reasons. No such reasons were stated before the Magistrate and I have been at some pains to ascertain from the respondent that there were in fact no special reasons.

In the circumstances the law demanded that he should be disqualified for a period of at least one year and the Magistrate not having made that order and the case now being before me it is now my duty to make it. “

In *Knowler v Rennison* (1947) 1 KB 488 the High Court allowed the appeal by the informant, a superintendent of Police. The High Court reimposed the disqualification order made by the Justices in petty sessions.

The petty sessions court convicted the respondent for causing his motorcycle to be used on a road without a policy of insurance, covering, third party risks, being in force in respect of such user.

Lord Goddard C.J. stated on pg.496:

“It must be understood that disqualification is part of the punishment which Parliament has prescribed for certain motoring offences. Everyone will agree that certainly where a fine and not imprisonment is imposed, it is the most serious part of the punishment. That it often inflicts hardship, and in many cases grievous hardship, none will deny. But it is the punishment which Parliament has ordained, and moreover has enacted that prima facie, at least, it is to be imposed in all cases to which this penalty applies. There are in the statute book laws which in terms allow the courts to take, or refrain from taking, steps on the ground of exceptional hardship, but there is no such provision in the Road Traffic Acts. This court has already laid down that financial hardship is not a matter which can be taken into account in this respect, and we desire to emphasize that this applies to any other form of hardship. It may often be distasteful to a court to impose a penalty, or to take a certain course which it may think is disproportionate to the offence, but it is not for them to question what the legislature has enacted. It is no doubt true that disqualification may work very hardly in a case where a man drives for his living, and have little effect in the case of another who can afford to employ someone to drive him while the disqualification is in force. Parliament has not seen fit to draw that distinction, and the decisions may now be said to be uniform throughout the United Kingdom that hardship is not a special

reason for refraining from imposing this punishment. It is the duty of all courts to apply the law as enacted and as interpreted by the courts. “

In *Muniandy, Re* (1954) MLJ 168 Spenser Wilkinson, J. highlighted this comment by Lord Goddard. He stated:

“In the present case there is to my mind no doubt that the accused, as a result of the disqualification, will suffer hardship which may appear to be out of all proportion to the gravity of the offence which he committed. On the other hand the very great hardship which innocent persons may suffer through being injured by someone driving an uninsured vehicle must not be overlooked, and unless and until the legislature sees fit to alter the law the Courts must enforce it.”

In *Siti Hajar Bte Abdullah v Public Prosecutor* (2006) 2 SLR(R) 248 the Headnote states:

“Criminal Procedure and Sentencing – Sentencing – Disqualification order – Accused permitting use of car without valid third-party insurance – Whether any “special reasons” warranting exemption from mandatory disqualification – Section 3(3) Motor Vehicles (Third-Party Risks and Compensation) Act (Cap 189, 2000 Rev Ed).

Facts

The appellant was convicted for allowing her cousin, one Muhammad Yazid bin Ahmad Mashon (“Yazid”), to drive her car without valid third-party risks insurance. Yazid did not have a valid licence, and therefore was not covered by any insurance policy. The appellant was sentenced to a fine and one year’s disqualification from driving. In the present proceedings, she sought a reduction of the period of disqualification, claiming that there were “special reasons” to exempt her from the mandatory one-year period of disqualification under s 3(3) of the Motor Vehicles (Third-Party Risks And Compensation) Act (Cap 189, 2000 Rev Ed) (“the MVA”).

Held, dismissing the appeal:

- (1) The test for “special reasons” within the meaning of s 3(3) of the MVA was a stringent one and would only be satisfied in exceptional circumstances. The MVA had to be construed strictly in order to preserve its policy of protecting road users. A less restrictive approach would render the legislative stipulation of mandatory disqualification nugatory and defeat its underlying objectives: at [8].
- (2) The appellant’s alleged need for medical attention at the time of the offence did not qualify as a “special reason” excusing her from disqualification under s 3(3) of the MVA. First, the appellant did not produce a scintilla of evidence to support the urgency of her need for medical assistance. Second, the appellant had not shown that she did not have any other viable modes of transport to bring her to a doctor. An emergency could not be a “special reason” under s 3(3) unless the only reasonable option was to use a vehicle without valid third-party risks insurance: at [11], [12], [13] and [16].
- (3) The appellant’s mistaken belief that Yazid had a valid licence, and therefore that he was validly insured, was not a “special reason” justifying non-imposition of disqualification. Such a mistaken belief could only be a “special reason” if it was both innocent as well as based on reasonable grounds. The appellant’s belief could hardly be said to be reasonable since it

stemmed from her omission to seek Yazid's confirmation that he had a licence, though it would have taken minimal effort to do so: at [19] and [20].

- (4) The appellant's need to ferry her elderly grandparents, which was a circumstance referable to her particular situation, was not a "special reason" under s 3(3) of the MVA. A "special reason" would have to relate to the commission of the offence and not to the circumstance of the offender. The fact that disqualification would cause the appellant hardship, in the form of great expense and inconvenience, was insufficient to dispense with mandatory disqualification: at [21] and [22].

Case(s) referred to

Chua Chye Tong v PP [2004] 1 SLR® 22; [2004] 1 SLR 22 (folld)
Kanapathipillai, Re [1960] MLJ 243 (folld)
Knowler v Rennison [1947] 1 KB 488 (refd)
Muniandy, Re [1954] MLJ 168 (folld)
MV Balakrishnan v PP [1998] 2 SLR(R) 846; [1998] 3 SLR 586 (folld)
PP v Mohd Isa [1963] MLJ 135 (folld)
Sivakumar s/o Rajoo v PP [2002] 1 SLR(R) 265; [2002] 2 SLR 73 (folld)
Sriekaran s/o Thanka Samy v PP [1998] 3 SLR(R) 1; [1998] 3 SLR 402 (folld)
Stewart Ashley James v PP [1996] 3 SLR(R) 106; [1996] 3 SLR 426 (folld)
Whittal v Kirby [1947] 1 KB 194 (folld)

Yung Pong How, C.J. stated:

21. The third and final ground which the appellant relied upon to justify exemption from disqualification was her need to ferry her elderly grandparents for religious and medical purposes. It is trite law that a "special reason" under s 3(3) of the MVA must be one which relates to the commission of the offence and not to the circumstance of the offender: see, eg *Kanapathipillai* ([8] supra) at 243; *Chua Chye Tiong* ([8] supra) at [59]. The appellant's need to hold a driving licence so that she could chauffeur her grandparents clearly fell within the latter category of being a circumstance referable to her particular situation and it therefore could not constitute a "special reason".

22. In her Petition of Appeal, the appellant referred to the inconvenience and expense that the disqualification order had caused her thus far. It is clear from the authorities that the fact that disqualification is likely to cause hardship, whether financial or otherwise, is insufficient to dispense with mandatory disqualification: *Knowler* ([19] supra) at 496, affirmed in *Re Muniandy* [1954] MLJ 168. For instance, the fact that an accused would be deprived of his livelihood by the disqualification order is not a "special reason": *Chua Chye Tiong* ([8] supra) at [63]. This reasoning applies a fortiori to the appellant, who, far from being deprived of her livelihood, would only be inconvenienced and subject to greater expense by having to ferry her grandparents via taxi. "

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. I also find the Appellant's explanation unreasonable. He could afford to drive a car but yet no money to pay for the insurance.

For the reasons I have given, I find the sentence passed by the Magistrate neither manifestly excessive nor wrong in principle. I, therefore, dismiss the appeal.

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

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