



Lim Eng Bin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 30 of 2015)**

**Steven Chong, J.
11 January 2016**

Criminal law – Sentence – Causing death by dangerous driving – Disqualification for life from driving – Special reasons.

Mr. Rudi Lee (M/S Rudi Lee, Annie Kon & Associates) for the Appellant.
DPP Kamaliah Fadhilah Bte Haji Ibrahim for the Public Prosecutor/Respondent.

Cases cited:

Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh [2002] 2 JCBD 217.

Whittal v Kirby [1947] 1 KB 194.

Steven Chong, J.:

On 17 June 2015 in the Magistrate's Court the appellant pleaded guilty to causing death by dangerous driving contrary to section 27(1) of the Road Traffic Act.

Magistrate Dewi Norlelawati Binti Haji Abdul Hamid sentenced the appellant to 5 months' imprisonment and disqualified him for life from driving any motor vehicle from the date of conviction.

No complaint is made of the sentence of imprisonment but the appellant is dissatisfied with the disqualification order.

Shortly stated the admitted facts were that on 29 June 2014 at about 6.45 pm the appellant was driving his car along Jalan Stadium Negara Hassanal Bolkiah when



he lost control after swerving and braking on seeing “*something*” crossing the road. The appellant’s car mounted a pedestrian sidewalk and collided into Chola Kumari Pariyar Darji, who was taking an evening walk, killing her.

At the time the appellant was driving at a speed of 70 kph in an area subject to a limit of 50 kph and the road was wet as it had rained.

Upon conviction for causing death by dangerous driving the penalty is a fine of \$20,000 or imprisonment for 7 years. Additionally, unless there are special reasons, the court must order disqualification from driving for life.

The Magistrate decided that there were no special reasons to exercise her discretion not to order disqualification.

Mr. Lee submits that the Magistrate was wrong to order disqualification as there are special reasons:

- a) The accident occurred because the appellant was trying to swerve to avoid hitting “*something*” crossing the road.
- b) The victim was on the grass area near the sidewalk when she was hit. It would have been “*different*” if she was hit while crossing the road.
- c) The offence was not deliberate.
- d) The appellant pleaded guilty.
- e) The appellant is a person of good character.
- f) The appellant co-operated with the police.

In my view none of those factors amount to a special reason not to order disqualification.

What is a special reason? In *Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh* [2002] 2 JCBD 217, Silke, J.A., delivering the judgment of the Court of Appeal, said at p. 223:

“We reiterate that, to be a special reason, the reason must be an extenuating or mitigating circumstance:



It must not amount in law to a defence: it must be directly connected with the commission of the offence and not with the offender: it must be a matter which the Court ought properly to take into account when considering sentence."

In relation to factor (a), by his plea and admission to the statement of facts, the appellant acknowledged that he had driven in a dangerous manner. I cannot find any mitigating circumstances. Speed must have been a decisive factor in the appellant losing control of his car when he took evasive action to avoid "something" crossing the road. The appellant demonstrated a reckless disregard for the safety of himself and other road users in driving at an excessive speed well above the speed limit when the road was wet and it was dusk at the time. This is certainly not a case of momentary inattention or error of judgment.

I entirely agree with the Magistrate that this excessive speed is an aggravating feature of the case.

As to factor (b), I do not accept that the offence is mitigated by the fact that the appellant's car collided into the victim when she was on the sidewalk and not crossing the road at the time. Given that victim was walking on the sidewalk as she was supposed to when she was knocked down by the appellant's car, I think his culpability is arguably higher in the circumstances.

Concerning factor (c), of course the appellant did not intend to cause a fatal accident. But this cannot be a mitigating factor. He did cause the death of the victim by driving in a dangerous manner.

Turning to factors (d), (e) and (f), the appellant's guilty plea, good character and co-operation with the police are general reasons and not special reasons and special is the antithesis of genera: *Whittal v Kirby* [1947] 1 KB 194.

Mr. Lee further submits that the court should consider the following "*special personal and peculiar circumstances*" in deciding whether to order disqualification":

- a) the appellant is a mature 59 year old experienced driver;
- b) the appellant had been driving for over 38 years; and
- c) more importantly, the appellant is a taxi driver and disqualification would deprive him of his livelihood.



Applying the principles enunciated in *Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh* (supra), these “*personal and peculiar circumstances*” are just that: they are personal and peculiar to the appellant and they have no direct connection to the commission of the offence and so they do not constitute special reasons.

I am conscious of the disastrous consequence to the appellant of the disqualification order since he earns his living as a taxi driver. But he can always seek alternative employment. For Chola’s family her death caused by the appellant’s dangerous driving is a loss they will suffer for the rest of their lives.

For the foregoing reasons I conclude that the Magistrate was right to order disqualification for life.

The appeal is dismissed.

DATO PADUKA STEVEN CHONG
Judge, High Court