

**Ak Nasiruddin bin Pg Hashamuddin**

**and**

**Public Prosecutor**

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**(High Court of Brunei Darussalam)  
(Criminal Appeal No. 32 of 2016)**

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**Pg DP Hjh Rostaina Pg Hj Duraman, J.C.  
4<sup>th</sup> April, 2017**

*Criminal Law --- Sentence --- Driving under the influence of alcohol --- Driving without a valid driving licence --- section 26(1) and section 16 of the Road Traffic Act, Cap.68.*

**Cases cited in the Judgment:**

*Gindau ak Ambayang vs PP (2000) JCBD 127*

*PC 5326 Mohammad Azmee bin Awg Hj Ani vs PP (HCCA No.13 of 2011)*

*Othman bin Hj Mohamed Zain vs PP (HCCA No.14 of 2011)*

*Shariful bin Hj Sahari vs PP (HCCA No.34 of 2011)*

*Chiew Kuan Ming vs PP (HCCA No.17 of 2014)*

Mr Hj Mohamad Daud bin Hj Ismail of Messrs Daud Ismail for the Appellant.

DPP Vuina Song assisted by Mr Qamarul Affyian bin Abdul Rahman for Public Prosecutor/  
Respondent.

**JUDGMENT**

***Pg DP Hjh Rostaina, JC***

1. The appellant filed his Notice of Appeal and Petition of Appeal on 25<sup>th</sup> October 2016 in person. I first heard this matter on 14<sup>th</sup> February 2017. At that time, he was unrepresented and in person. By 21<sup>st</sup> February, he had obtained legal representation.
2. On 22<sup>nd</sup> October 2016, the appellant was convicted upon his own admission to two traffic offences namely under section 26(1)(b) and section 16 of the Road Traffic Act, Cap 68.
3. In the end result, the Magistrate sentenced him for the 1<sup>st</sup> charge to one month imprisonment and he was also disqualified from holding or obtaining a driving license for a period of 3 years. For the 2<sup>nd</sup> charge, he was fined \$350 and in default of payment to 1 week imprisonment.
4. The charges were:-

### **1<sup>st</sup> Charge**

That you did at about 0430 hours on the 2<sup>nd</sup> day of October 2013, at the vicinity of Jalan Masjid Omar Ali Saifuddien towards Jalan Stoney, in Brunei Darussalam, being the driver of a motor vehicle registration number BAC 7076 (Suzuki Stoney), while you are under the influence of alcohol, to wit, 245.17 milligramme ethanol per 100 millilitre of sample, that the proportion of such alcohol in your blood exceeds the prescribed limit of 80 mg of alcohol in 100 ml of blood and that you have thereby committed an offence punishable under section 26(1)(b) of the Road Traffic Act Chapter 68.

### **2<sup>nd</sup> Charge**

That you did at about 0430 hours on the 2<sup>nd</sup> day of October 2013, at the vicinity of Jalan Masjid Omar Ali Saifuddien towards Jalan Stoney, in Brunei Darussalam, did drive a motor vehicle registration number BAC 7076 (Suzuki Stoney), on the road when your Driving License Class 3 expired since 29<sup>th</sup> day of September 2013 and that you have thereby committed an offence punishable under section 26(1)(b) of the Road Traffic Act Chapter 68.

5. Briefly, the admitted facts were that on 2<sup>nd</sup> October 2013 at 0430 hours, the appellant was driving, a Suzuki Swift BAC 7076 proceeding within Jalan Masjid Omar Ali Saifuddien, when his car hit against a stationary vehicle that was parked along the right side of the said main road. He admitted he drove whilst being under the influence of alcohol. The presence of alcohol in his blood sample was found to contain 245.17 mg percentage of ethanol. The collision had caused both motor vehicles to sustain heavy damages and injuries towards the appellant himself.
6. Further, he was driving when his Class 3 driving licence had expired on 29<sup>th</sup> September 2013 which was 4 days prior to the incident.
7. Before me, the Counsel for the appellant submitted that initially the appellant in his earlier Petition of Appeal had stated only one ground of appeal namely that he feared his employment with the Royal Brunei Armed Forces would be jeopardized. He appealed for the 1 month custody period to be set aside and instead a fine to be imposed.
8. The DPP submitted on the seriousness of an offence of driving whilst being intoxicated. She also highlighted the sentences that have been passed in previous drink driving cases: 3 months' imprisonment [*Gindau ak Ambayang vs PP (2000) JCBD 127*]; 2 months' imprisonment [*PC 5326 Mohammad Azmee bin Awg Hj Ani vs PP (HCCA No.13 of 2011)*]; 3 months' imprisonment [*Othman bin Hj Mohamed Zain vs PP (HCCA No.14 of 2011)*]; and 3 months' imprisonment [*Shariful bin Hj Sahari vs PP (HCCA No.34 of 2011)*].
9. She further submitted that the Magistrate had properly taken into consideration the appellant's guilty pleas, previous clean driving record and his blood alcohol of more than three times the prescribed limit.

10. She conceded that there was delay in prosecuting this case and she pointed out that the Magistrate had taken this into consideration by passing a much lower sentence of 1 month imprisonment compared to the usual sentence passed in this type of offence.
11. That the sentences imposed on the appellant were within the range imposed and not manifestly excessive.
12. Counsel for the appellant had cited a number of cases on behalf of the appellant. In the case of *Chiew Kuan Ming vs PP (HCCA No.17 of 2014)* it was highlighted that *"guidelines are only guidelines and that the judges must depart from them if there is good reason from either the circumstances of the offender or of the offence for doing so"*. He also advanced many grounds of appeal against the appellant's custodial sentence and urged the court to impose a lenient sentence by substituting the appellant's custodial sentence with a fine.
13. He submitted that the appellant is single, aged 28 years old. He has been employed with Royal Brunei Armed Forces since 2009 and due to complete his service by 2027. That he has good service records and was even promoted to Lance Corporal on 1<sup>st</sup> June 2015. That he had pleaded guilty to committing those offences at the earliest opportunity. He was a first offender. He was cooperative during the investigation. The damages suffered by the other car had been fully settled. There was no injuries caused to any members of the public from the incident except to the appellant himself. He faced summarily dealings from his employer on 3<sup>rd</sup> October 2013 in relation to matters arising from the offence and was reprimanded to 14 days military detention. As part of his punishment, he was also deprived of his end of the year bonus amounting to \$1,152.00. That he had been punished enough. He is not appealing against the 3 years disqualification from holding or obtaining a driving license. He accepted that as part of his punishment. Neither is he appealing against the sentence passed in the second charge. Since he lives at Kg Mata-Mata with his parents and works at Lumut, he suffers for his daily routine. He now has to depend and take rides from friends and family members in order to get to work every day and in to order to keep his job.
14. I am prepared to interfere with the sentence for two reasons. Firstly, I am much persuaded that the appellant has had this charge hanging over him for over 3 years before he was charged, produced in court and sentenced by a Magistrate on 22<sup>nd</sup> October 2016. This is a length of time which is difficult to excuse for an offence of this nature.
15. There is nothing on record to show that any sense of urgency was present. Instead, the DPP only received this file from the District Traffic Office on 14<sup>th</sup> April 2016 and it took another 6 months for his case to be produced in court.
16. I find in between the long interval, he had moved on with his life and was even promoted to Lance Corporal on 1<sup>st</sup> June 2015.
17. Secondly, this is a sentence of a deterrent nature. The prescribed penalty in cases of this kind for a first offender is a maximum fine of \$10,000 and imprisonment for 2

years with the particulars of the conviction to be endorsed on the license and be disqualified from the date of such conviction for not less than 3 years from holding or obtaining a motor vehicle driving license unless there are special reasons.

18. The appellant had expressed his remorse and that he would not repeat the offence. At the same time, given the 3 years disqualification period, he will be reminded over the years ahead what he did was wrong and so the deterrent objective of the sentence is preserved.
19. The appeal against the custodial sentence is allowed to the extent that the 1 month imprisonment imposed on the appellant is quashed and substituted by a penalty of fine of \$3,000 and in default of payment, 1 month term of imprisonment to be imposed. He has until the end of the month to pay.
20. Appeal against sentence allowed, sentence reduced.

**PG DP HJH ROSTAINA BTE PG HAJI DURAMAN**  
**Judicial Commissioner**  
**4<sup>th</sup> April 2017**