

Reymund Martinez

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 33 of 2015)**

Pg DP Hjh Rostaina Pg Hj Duraman, J.C.
8th October, 2016

Criminal Law --- Sentence --- Driving under the influence of alcohol --- Section 26(1) of the Road Traffic Act.

Cases cited in the Judgment:

P.P v Lim Jin Lee and Salina Binti Mohd Salleh, [CA No. of 2000] 2 JCBD 217

Muhammad Shahrul Abdullah Asun v P.P, CA No.128 of 2002

Samuel Nebre Tiu v P.P, CA No. 14 of 2004

Mohammad Suf'fian bin Hj Suhaili v P.P, CA No.32 of 2009

Tan Ming Ming v P.P, CA No.1 of 2016

Appellant in Person.

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

Pg DP Hjh Rostaina, JC:

1. On 16th September 2015, the appellant pleaded guilty to driving a car when he was under the influence of alcohol, contrary to section 26(1)(b) of the Road Traffic Act.

2. The charge is as follows:

Charge

That you did at about 2119 hours on the 8th day of May 2014, at the vicinity of Jalan Kuala Lurah towards Junjungan Roundabout, in Brunei Darussalam, being the driver of a motor vehicle registration number BH 7413 (Toyota Corolla), did drive the said motor vehicle while you have so much alcohol in your body, to wit, 84.59 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.

Penalty under section 26(1) of the Road Traffic Act, Chapter 68

- 1) *A Fine of \$10,000 and imprisonment for 2 years, and in the case of a second or subsequent conviction, a fine \$20,000 and imprisonment for 4 years.*
- 2) *On a conviction under subsection (1), the court shall order:-*
 - (a) *particulars or such conviction to be endorsed on any licence to drive a motor vehicle held by the person convicted; and*
 - (b) *that such person be disqualified from holding or obtaining a licence to drive any motor vehicle for such period not less than 3 years from the date of such conviction or, where he is sentenced to imprisonment from the date of his release from prison, -as the court may think proper unless the court, having regard to the lapse of time since the date of the previous or last conviction or for any other special reasons (which shall be set out in the order of the court) thinks fit to order otherwise.*

3. Briefly, the admitted facts, were that at about 2119 hours on 8th May 2014, the appellant was driving a Toyota Corolla BH 7413, proceeding from Limbang and intended to return home through Jalan Limau Manis towards the Junjungan roundabout when he was stopped by the police conducting a Roadblock Operation.
4. He was suspected of driving whilst being under the influence of alcohol and this was confirmed by the breathalyzer test conducted on him. He failed this test. The presence of alcohol in his blood was further confirmed from the result of his blood sample which revealed 84.59 milligrams of ethanol per 100 millilitres of blood.
5. The Chief Magistrate sentenced the appellant to a fine of \$2,000 or 3 months' imprisonment in default of payment and disqualified him from holding a driving licence for a period of 3 years.
6. The appellant appealed against the 3 years disqualification order. He asked for it to be set aside on the ground for employment purposes in order to support his family.
7. Upon conviction under section 26(1) of the Road Traffic Act, disqualification is mandatory, unless there are special reasons.
8. The law relating to special reasons is well established in ***PP vs Lim Jin Lee and Salina bte Mohd Salleh (CA No.25 of 2000) 2 JCBD 217***. A special reason must be directly connected with the commission of the offence which the court ought properly to take into consideration.
9. The appellant is an engineer and surveyor working for a company in Brunei. He provides for his wife and two children who are in the Philippines. It is clear from the facts put forward by the appellant the disqualification order had caused hardship to him. In order not to jeopardise his employment from his monthly earning of BND\$1,300, he now has to pay BND\$600 towards securing alternative means of transport.
10. I find his argument that it is necessary for him to hold a driving licence because of his work is personal to him and not related to the offence at all. I find there is no special reason for not disqualifying him.

11. Driving under the influence of alcohol is a serious offence. In the case of ***Muhammad Shahrul Abdullah Asun, CA No.128 of 2002***, the appellant placed his life and that of other road users in danger when he chose to drink and drive. DP Steven Chong J commented that, *“on 28th May 2002, there was an amendment to section 26(1) which increased the maximum sentence to a fine of \$10,000 and 2 years’ imprisonment and the disqualification period was enhanced to a period of not less than 3 years. That the reform to the law shows the intention of the state to protect the safety of road users by targeting those who are in danger to the public when they drive under the influence of alcohol or drugs. Severe sentences are necessary to produce a deterrent effect”*.
12. The appellant confessed he had consumed alcohol. He was not aware it had the effect of elevating his blood alcohol to above the prescribed limit. It is fortunate, there was no report of any road traffic accident involved in this case.
13. There is no merit in this appeal and it is dismissed accordingly.

PG DP HJH ROSTAINA BTE PG HAJI DURAMAN
Judicial Commissioner