Sahari bin Osman

vs

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 42 of 2015)

Pg Hjh Rostaina bte Pg Hj Duraman, J.C.
3rd and 5th December, 2015.

Sentence --- Driving a motor vehicle without being insured --- insurance policy had expired for more than 2 years prior to the offence --- special reasons --- extension of grace period --- financial difficulties --- hindrance to the deterrent sentence --- administrative burden to the court section 3(1) and 3(2) of the Motor Vehicles Insurance (Third Party Risks) Act, Cap 90 --- disqualified from driving a motor vehicle for 12 months.

Cases referred:
Public Prosecutor vs Lim Jin Lee and Salina binti Mohd Salleh, (CA No.25 of 2000)2 JCBD 217.
Mitchell Brian Burke vs Public Prosecutor, (HC CA No.58 of 2011)
Public Prosecutor vs Marcus Tee Peng Tan, (HC CA No.8 of 2011)
Khairul bin Haji Kula vs Public Prosecutor, (CA No.24 of 2014)
Abdul Hadzi bin Haji Kula vs Public Prosecutor, (CA No.25 of 2014)
Public Prosecutor vs Khairul bin Haji Kula and Abdul Hadzi bin Haji Kula (CA No.26 of 2014)

Facts

The facts as stated in the brief facts are as follows: the Appellant, was stopped by the police on 18th November 2014 and was found to have driven whilst the motor vehicle licence (road tax) of the said vehicle had expired since 31st October 2012. Further investigation revealed that he was not covered by Third Party Risks Insurance. The insurance policy has expired since 31st October 2012.

On the 27th October 2015, the Appellant was convicted on his own pleas of the above two traffic offences and was sentenced accordingly. The Magistrate had also imposed the mandatory disqualification order for the period of 12 months.

The Appellant appealed against this sentence of 12 months mandatory disqualification on the ground that it will cause him inconvenience. He also appealed for a longer grace period to pay his fines as he is facing financial difficulties.

Held, allowing the appeal in parts:

1. The offence under section 8(1) of the Road Traffic Act, Chapter 68 and punishable under section 8(2) of the same which prescribes a fine of $4,000 and imprisonment for 3 months.

2. The offence under section 3(1) and punishable under section 3(2) of the Motor Vehicle Insurance (Third Party Risks), chapter 90 which prescribes a fine of $10,000 and

imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are “special reasons”.

3. Unless a defendant can forward “special reasons” for the Magistrate not to disqualify see ***Public Prosecutor vs Lim Jin Lee and Salina binti Mohd Salleh (C.A. No.25 of 2000)2 JCBD 217*** and other authorities, the mandatory disqualification will apply.

4. The Appellant’s financial position and means are taken into consideration.

5. The Appellant was advised to write to the Registrar, Subordinate Court to ask the Magistrate concerned 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.

Appellant in person. Unrepresented.
DPP Mohammad Danial bin DSP Haji Kifrawi for the Public Prosecutor/Respondent.

Pg Hjh Rostaina, J.C.:

JUDGMENT

1. On the 27th October 2015, the Appellant was convicted on his own pleas of two traffic offences, which are as follows:

   1st charge
   That you did at about 1430 hours on the **18th day of November 2014**, at the vicinity of Jalan Beribi towards Gadong, in Brunei Darussalam, did drive a motor vehicle registration number BP 4822 (Mitsubishi Galant), whilst the motor vehicle license (road tax) of the said vehicle **expired on 31st day of October 2012** and that you have thereby committed an act contrary to Section 8(1) of the Road Traffic Act Chapter 68 and punishable under Section 8(2) of the said Act.

   2nd charge
   That you did at about 1430 hours on the **18th day of November 2014**, at the vicinity of Jalan Beribi towards Gadong, in Brunei Darussalam, being the driver of motor vehicle registration number BP 4822 (Mitsubishi Galant), did drive the said motor vehicle on the road when the **insurance policy has expired since 31st day of October 2012** and that you have committed an offence under Section 3(1) and punishable under section 3(2) Motor Vehicle Insurance (Third Party Risks Act) Chapter 90.

2. Accordingly, for the 1st charge, the Appellant was fined $250 and in default 1 week imprisonment. For the 2nd charge, he was fined $550 in default 2 weeks imprisonment and was imposed the mandatory 12 months disqualification from driving.

3. Before me, the Appellant appealed against the decision made by the Magistrate on the ground that the mandatory disqualification order of 12 months ought not to have been imposed. He also appealed for a longer grace period to pay his fines.

SPECIAL REASONS

4. The penalty prescribed for the second charge is a fine of $10,000 and imprisonment for 12 months, with a mandatory disqualification of 12 months unless there are "special reasons".

5. According to him, his ex-wife is no longer residing in Brunei and he is a single parent raising and looking after his two children. He needs to send them to school and his immediate family members will not be able to assist him because they reside in Seria at Belait District. He and his children are residing at Jerudong area. Therefore, if his driving licence is taken away from him, he and his children will be greatly inconvenienced.

6. The Deputy Public Prosecutor submitted that these matters could not amount to "special reasons" and referred to the decision in the case of ***Public Prosecutor v Lim Jin Lee and Salina Binti Mohd Salleh (C.A.No.25 of 2000)2 JCBD 217*** where Silke J.A., said that, "….. to be "special reasons" the reason must be an extenuating or mitigating circumstance; it must not amount in law to a defence".

7. 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."

8. 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.

EXTENSION OF GRACE PERIOD

9. The Appellant appealed for a longer grace period of more than 4 months to pay his total fines as ordered by the Magistrate on 27th October 2015, as he can only afford to pay BND$50 per month towards the fines.

10. In mitigation, the Appellant explained his financial position in detail and his account is supported with some documents marked as A1(1-22); with allowance he earns BND$1,345 and out of this there are substantial deductions. He is left with very little to support himself and his children. Even his daughter is willing to assist him from her monthly school allowance.

11. It is clear from the facts put forward by the Appellant that due to financial difficulties he is unable to pay his fines within 4 months and in the alternative this will trigger the 'in default' sentence. As a result, he may be out of work and in a far worse position.

12. He had also expressed his remorse and informed the court, that soon after the convictions, he had purchased and renewed his insurance policy. This was supported by his documents.

13. In his submission, the DPP submitted if the Appellant is allowed a longer grace period to pay his fines this would be a hindrance to the deterrent sentence that the court had imposed. This will send a wrong message to any future offenders. Further, it will also cause administrative burdens to the court to monitor such installment payments of $50 per month, as it will take him 16 months to pay the total fines of $800.

14. He also submitted, if the court is minded to grant such extension of time, it ought to be reasonable and a reasonable proposal for payment by the applicant should be made.

15. In the case of ***Khairul bin Haji Kula vs Public Prosecutor, [CA No.24 of 2014] and Abdul Hadzi bin Haji Kula vs Public Prosecutor, [CA No.25 of 2014]*** the COA Justices on, "fines as a punishment" said the following:

    "The severity of such a sentence depends upon the ability of the accused to pay. A small fine on a poor man may be severe punishment whereas a substantial fine to a wealthy man may be insignificant."

ORDERS

16. 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.

17. I dismiss the Appellant's appeal and hereby order the Appellant be disqualified from driving a motor vehicle for 12 months with effect from today.

18. For the reasons above and the Appellant's current financial position, I allow the appeal and hereby order the extension of the grace period from 4 months to 10 months with effect from today.

19. The Appellant is also advised to write to the Registrar, Subordinate Court to ask a 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 HJH ROSTAINA BTE PG HJ DURAMAN
Judicial Commissioner
5th December 2015