

Public Prosecutor

AND

Mohammad Khairul Adzmie Bin Sahari

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 4 of 2022)**

Criminal law – Dangerous driving – Sentence

Steven Chong, C.J.

20 August 2022

PO Hajah Siti Mu'izzah Binti Haji Sabli for the Appellant.

Respondent In Person

Case cited:

Public Prosecutor v Koh Thiam Huat [2017] 4 SLR 1099 at [41]

Steven Chong, C.J.:

Introduction

This is the Public Prosecutor's appeal against sentence on the ground that it is manifestly inadequate.

On 16 May 2022 in the Magistrate's Court Mohammad Khairul Adzmie Bin Sahari (*"the respondent"*) pleaded guilty to two charges under the Road Traffic Act: dangerous driving contrary to section 28(1) (*"1st Charge"*); and refusing to stop his car when directed to do so by a police officer contrary to section 39(1)(a).

In relation to the 1st Charge the respondent was sentenced to a fine of \$2,000 or 2 months' imprisonment in default of payment and ordered to be disqualified from driving for the mandatory minimum 3 years.

Turning to the 2nd Charge the respondent was sentenced to a fine of \$500 or 2 weeks' imprisonment in default of payment.

The Magistrate allowed a period of 6 months for the respondent to make payment.

The facts

In the evening of 2 February 2021 narcotics officers went to the respondent's house in Kampong Sibut Temburong to arrest him for a drug offence. Arriving at the vicinity of the respondent's house the narcotics officers saw him in his Toyota Corolla car. The respondent sped off when the narcotics officers approached him. The narcotics officers gave chase and also contacted Bangar Police Station for assistance and a roadblock was deployed at Jalan Labu to stop the respondent.

As the respondent neared the roadblock he suddenly made a u-turn in the face of oncoming vehicles to evade the police. The oncoming vehicles had to brake to avoid collision. A police car then joined the narcotics car in the pursuit of the respondent's car which headed towards Jalan Negalang. The respondent drove "*erratically*" and when the police car tried to overtake him the respondent manoeuvred to the middle of the road despite the approach of vehicles from the opposite direction.

Eventually, the police car managed to overtake the respondent. The police car then slowed down to force the respondent to reduce his speed. The respondent instead of slowing down rammed his car into the rear of the police car and both vehicles came to a stop after the collision. The respondent then tried to flee in his car but crashed into a roadside barrier and was immediately arrested.

Sentencing remarks

The Magistrate considered as aggravating factors the respondent's evasion of the police roadblock; driving his car "*erratically*" and moving to the middle of the road to prevent the police car from overtaking him; crashing his car into the rear of the police car after being overtaken; and trying to escape even after that collision.

While the Magistrate acknowledged that the action of the respondent was "*selfish and dangerous*" as it showed disregard for the safety of other road users, she concluded that "*fortunately there were no injuries reported . . .*" and as he had pleaded guilty and was a first offender a fine was adequate punishment.

Submissions of the prosecution

The Public Prosecutor argues that the Magistrate failed to place sufficient weight on the aggravating factors in the case. Firstly, the respondent had driven in a dangerous manner in an attempt to escape from the narcotics officers. Secondly, the respondent had made a u-turn to evade a police roadblock in blatant disregard for the safety of other road users. Thirdly, the respondent had driven "*erratically and dangerously*" to evade police arrest. Fourthly, the respondent crashed his car into the rear of the police car causing damage and putting the lives of the police officers in danger. Finally, after the collision with the police car the respondent

tried to escape in his car and hit the roadside barrier causing further damage to government property.

The Public Prosecutor submits that those aggravating factors warrant a custodial sentence of at least one month.

Respondent's reply

The respondent argues for the fine imposed by the Magistrate to be upheld and that he be permitted to pay by monthly instalments. He collects scrap metal to sell to earn a living and receives welfare assistance of \$339 monthly.

A custodial sentence would cause hardship to his wife and five children who are dependent on him.

Decision

I agree with the submission of the prosecution that the Magistrate erred in failing to accord proper weight to the aggravating features in the case and in imposing a fine when a custodial sentence was warranted. However, with respect, I disagree with the length of the sentence of up to one month suggested by the prosecution. In my view a longer sentence is justified for the reasons that follow.

On the facts presented by the prosecution and admitted unreservedly by the respondent in the court below we do not know the speed at which the respondent drove; distance travelled; visibility and volume of traffic on the road at the material time. These factors are relevant to the seriousness of the offence of dangerous driving.

Nonetheless, on the basis of the facts as they stand this is a very bad case of dangerous driving. The respondent's culpability was high. It was a prolonged, persistent and deliberate course of dangerous driving by the respondent to avoid arrest. His behaviour demonstrates a selfish disregard for the lives of others and a defiance of the law.

Apart from actual harm caused the court must also have regard to the potential harm that can result from the respondent's dangerous acts: see *Public Prosecutor v Koh Thiam Huat* [2017] 4 SLR 1099 at [41]. It is true that the respondent's acts only caused damage to government property. But his acts could have resulted in injuries or death to the narcotics and police officers involved in the pursuit of the respondent and other road users on the road at the time.

Notwithstanding the respondent's guilty plea and clear record the primary sentencing consideration in this kind of dangerous driving offence must be deterrence both specific and general. The safety of law enforcement officers performing their duties and that of other road users must be the uppermost concern of the court.

Conclusion

The sentence of a fine is wrong in principle and manifestly inadequate on both charges. I allow the appeal and quash the fines imposed.

A starting point sentence of imprisonment of 6 months reduced to 4 months for the guilty plea is substituted on the 1st Charge.

As to the 2nd Charge a starting point sentence of imprisonment of 6 weeks reduced to 4 weeks for the guilty plea is substituted.

The sentences are to run concurrently and in the result the sentence is 4 months' imprisonment.

DATO SERI PADUKA STEVEN CHONG

Chief Justice