

**Y.A.M. Pengiran Muda Abdul Mu'min Ibni DYT M Paduka Seri Pengiran
Perdana Wazir Sahibul Himmah Wal-Waqar Pengiran Muda Mohamed Bolkiah**

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 5 of 2015)**

Dato Seri Paduka Hj Kifrawi, C.J.
4th May, 2015.

Criminal Law and Procedure – Sentencing – Conviction for giving false information to a Police Officer, driving whilst under disqualification, driving whilst not being covered by third - party Insurance – appropriate sentences – first court appearance but in respect of multiple offences – Section 182(a) of the Penal Code (CAP 22) - Section 45(b) of the Road Traffic Act (CAP 68) - Section 3(2) of the Motor Vehicle Insurance (Third Party Risks) (CAP 90).

Mr Balendran Balasingam (M/S Ho & Siong) for the Appellant.
DPP Hjh Anifa Rafiza Bte Hj Abd Ghani for Public Prosecutor.

Cases cited in the Judgment:

Chng Wei Meng v Public Prosecutor (2002) 2 SLR (R) 566
Public Prosecutor v Lee Cheow Loong Charles (2008) 4 SLR (R) 961
Public Prosecutor v Muhamad Baharuddin Bin Amat (MA 20/1999)
Public Prosecutor v Yap Khim Huat (MA 121/1993)
R v Shum Ming and Others 1978 HKLR 41
Sivaprakash s/o Narayansamy v Public Prosecutor (MA 84/2004)

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

1. Charges

The Appellant, Y.A.M. Pengiran Muda Abdul Mu'min Ibni DYT M Paduka Seri Pengiran Perdana Wazir Sahibul Himmah Wal-Waqar Pengiran Muda Mohamed Bolkiah was charged on 10/1/2015 with the following charges:-

1st Charge:

That you, on the 11th day of September 2014 at about 0750 hours in the vicinity of the junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha, Bandar Seri Begawan in Brunei Darussalam, did drive a motor vehicle, a BMW car registration number BY 1 without due care and attention, and that you have thereby committed an offence punishable under section 29(1) of the Road Traffic Act, Chapter 68.

Penalty – Under section 29(1) of the Road Traffic Act Chapter 68

Imprisonment for 12 months and fine of not less than \$600 and not exceeding \$5000

2nd Charge (as amended on 10.11.2014):

That you, on the 11th day of September 2014 at about 0530 hours along Jalan Raja Isteri Pengiran Anak Saleha in the vicinity of Hijau Baiduri, in Brunei Darussalam did drive a motor vehicle, a BMW car bearing the registration number BY 1, when you were disqualified by the Magistrate's Court of Brunei Darussalam from holding a licence to drive any motor vehicle for a period of 12 months with effect from the 21st day of June 2014 and you have thereby committed an offence punishable under section 45(b) of the Road Traffic Act, Chapter 68.

Penalty – Under section 45(b) of the Road Traffic Act Chapter 68

Imprisonment for one year and a fine of \$6000
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3rd Charge:

That you, on the 11th day of September 2014 at about 0750 hours vicinity of the junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha, in Brunei Darussalam, did drive a motor vehicle, a BMW car bearing registration number BY 1 when you were disqualified by the Magistrate's Court of Brunei Darussalam from holding a license to drive any motor vehicle for a period of 12 months with effect from the 21st day of June 2014 and you have thereby committed an offence punishable under section 45(b) of the Road Traffic Act, Chapter 68.

Penalty – Under Section 45(b) of the Road Traffic Act Chapter 68

Imprisonment for one year and a fine of \$6000
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4th Charge (as amended on 10.11.2014):

That you, on the 11th day of September 2014 at about 0800 hours along Jalan Raja Isteri Pengiran Anak Saleha in the vicinity of Hijau Baiduri, in Brunei Darussalam, did drive a motor vehicle, a BMW car bearing the registration number BL 1, when you were disqualified by the Magistrate's Court of Brunei Darussalam from holding a license to drive any motor vehicle for a period of 12 months with effect from the 21st day of June 2014 and you have thereby committed an offence punishable under section 45(b) of the Road Traffic Act, Chapter 68.

Penalty – Under Section 45(b) of the Road Traffic Act Chapter 68

Imprisonment for one year and a fine of \$6000
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5th Charge:

That you, on the 11th day of September 2014, at about 0750 in the vicinity of Jalan Raja Isteri Pengiran Anak Saleha, in Brunei Darussalam, were involved in a road traffic accident whereby damage to property was caused, to wit the rear of a motor vehicle, a Ford Ranger bearing the registration number BAK603 and you did fail to report such accident to a police station or a police officer within 24 hours and you have thereby committed an offence under section 33(1) punishable under section 33(4) of the Road Traffic Act, Chapter 68.

Penalty – Under Section 33(4) of the Road Traffic Act Chapter 68

A fine of \$2000 and in the case of a second or subsequent conviction, imprisonment for 6 months and a fine of \$4000

6th Charge (as amended on 10.11.2014):

That you, on the 11th day of September 2014 at about 0800 hours along Jalan Raja Pengiran Anak Saleha being the driver of a motor vehicle, a BMW car bearing the registration number BL 1, did use said motor vehicle when there was no policy of insurance or security in force in respect of third party risks as required by Section 3(1) Motor Vehicle Insurance (Third Party Risks), Chapter 90 and that you have thereby committed an offence punishable under section 3(2) of the said Act.

Penalty – Under Section 3(2) of the Motor Vehicle Insurance (Third Party Risks) Chapter 90

Imprisonment for 12 months and fine of \$10,000 and mandatory disqualification for minimum of 12 months.
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7th Charge (as amended on 10.11.2014):

That you, on the 17th day of September 2014 at about 1517 hours at Hijau Baiduri in Brunei Darussalam, did give to a public servant, namely DSP Abdul Haji Bin Hj Apong, the District Traffic Officer of Brunei Muara District, Royal Brunei Police Force, false information contained in a police statement recorded pursuant to section 116 of the Criminal Procedure Code, Chapter 7 to the effect that it was one Saifuddin who was driving a motor vehicle, a BMW bearing the registration number BY 1 on the 11th September 2014 at about 0750 hours along Jalan Raja Isteri Pengiran Anak Saleha, Brunei Darussalam, which information you knew to be false, intending thereby for the said DSP Abdul Haji to conduct investigations on the said Hj Saifuddin, which the said public servant would not have done so if the true state of the facts respecting which such information is given were known by him, and you have thereby committed an offence punishable under section 182(a) of the Penal Code, Chapter 22.

Penalty – Under Section 182 of the Penal Code, Chapter 22
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Imprisonment for a term which may extend to 6 months, or with fine which may extend to \$4000 or with both.

8th Charge (as amended on 10.11.2014):

That you, on the 17th day of September 2014 at about 1517 hours at Hijau Baiduri in Brunei Darussalam, with intend to cause one Saifuddin to be instituted criminal proceeding for an alleged offence of driving to be instituted criminal proceeding for an alleged offence of driving without due care and attention contrary to section 29(1) of the Road Traffic Act, Chapter 68, knowing that there is no just or lawful ground for such proceeding against that person, gave false information contained in a police statement recorded pursuant to section 116 of the Criminal Procedure Code, Chapter 7 to the effect that it was the said Saifuddin who was driving a motor vehicle, a BMW bearing the registration number BY 1 on the 11th September 2014 at about 0750 hours along Jalan Raja Isteri Pengiran Anak Saleha, Brunei Darussalam and that you have thereby committed an offence under section 221 of the Penal Code, Chapter 22.

Penalty – Under Section 221 of the Penal Code Chapter 22

Imprisonment for a term which may extend to 2 years, or with fine, or with both

9th Charge (Added on 1.12.2014):

That you, on the 19th day of November 2014 at about 1700 hours along Jalan Raja Isteri Pengiran Anak Saleha and Hassanal Bolkiah Highway to the vicinity of Palm Garden Hotel, Kiulap, Bandar Seri Begawan in Brunei Darussalam did drive motor vehicle, a BMW car bearing the registration number BL 1, when you were disqualified by the Magistrate's Court of Brunei Darussalam from the 21st day of June 2014 and you have

thereby committed an offence punishable under section 45(b) of the Road Traffic, Chapter 68.

Penalty – Under Section 45(b) of the Road Traffic Act Chapter 68
Imprisonment for 12 months and fine of \$6000

10th Charge (Added on 10.1.2015):

That you, on the 11th day of September 2014 at about 0530 hours along Jalan Raja Pengiran Anak Saleha in the vicinity of Istana Hijau Baiduri, in Brunei Darussalam being the driver of a motor vehicle, a BMW car bearing the registration number BY 1, did use the said motor vehicle when there was no policy of insurance or security in force in respect of third party risks as required by Section 3(1) Motor Vehicle Insurance (Third Party Risks), Chapter 90 and that you have thereby committed an offence punishable under section 3(2) of the said Act.

Penalty – Under Section 3(2) of the Motor Vehicle Insurance (Third Party Risks) Chapter 90
Imprisonment for 12 months and fine of \$10,000 and mandatory disqualification for minimum of 12 months

11th Charge (Added on 10.1.2015):

That you, on the 11th day of September 2014 at about 0750 hours in the vicinity of the junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha in Brunei Darussalam being the driver of a motor vehicle, a BMW car bearing the registration number BY 1, did use the said motor vehicle when there was no policy of insurance or security in force in respect of third party risks as required by Section 3(1) Motor Vehicle Insurance (Third Party Risks), Chapter 90 and that you have thereby committed an offence punishable under section 3(2) of the said Act.

Penalty – Under Section 3(2) of the Motor Vehicle Insurance (Third Party Risks) Chapter 90
Imprisonment for 12 months and fine of \$10,000 and mandatory disqualification for minimum of 12 months.

12th Charge (Added on 10.1.2015):

That you, on the 19th day of November 2014 at about 1700 hours along Jalan Raja Isteri Pengiran Anak Saleha and Hassanal Bolkiah Highway to the vicinity of Palm Garden Hotel, Kiulap, in Brunei Darussalam being the driver of a motor vehicle, a BMW car bearing the registration number BL 1, did use the said motor vehicle when there was no policy of insurance or security in force in respect of third party risks as required by

Section 3(1) Motor Vehicle Insurance (Third Party Risks), Chapter 90 and that you have thereby committed an offence punishable under section 3(2) of the said Act.

Penalty – Under Section 3(2) of the Motor Vehicle Insurance (Third Party Risks) Chapter 90
Imprisonment for 12 months and fine of \$10,000 and mandatory disqualification for minimum of 12 months.

On 17/1/2015 the Appellant pleaded guilty to the 1st Charge, 2nd Charge, 3rd Charge, 4th Charge, 5th Charge, 6th Charge, 7th Charge, 8th Charge, 9th Charge, 10th Charge, 11th Charge and 12th Charge.

The DPP tendered the following Statement of Facts.

2. **Facts**

“Statement of Facts

1. The Defendant is a 31 years old Bruneian national and resides at Hijau Baiduri Jalan Raja Isteri Pengiran Anak Saleha in Brunei Darussalam.
2. The Magistrate’s Court of Brunei Darussalam disqualified the Defendant from holding a license to drive any motor vehicle for a period 12 months from 21st June 2014 after being convicted for an offence under section 28(1) Road Traffic Act, Cap.68.

1st to 5th Charges

3. On 11th September 2014 at about 7.50 a.m., one Rita Sahara Binti Anuar was driving her Ford Ranger bearing registration number BAK 603 along the Hassanal Bolkiah Highway towards Kampong Mulaut.
4. On the same day, at about 5.30 a.m., the Defendant drove a BMW bearing registration number BY 1 from Hijau Baiduri using Hassanal Bolkiah Highway. At about 7.50 a.m., the Defendant was in the vicinity of the exit junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha. Rita Sahara was also at the same junction and the Defendant was driving directly behind her car.
5. As she reached the junction, Rita Sahara slowed her car down to check if it was safe for her to exit into Jalan Tutong. When Rita Sahara slowed her car down, the Defendant did not manage to slow his car down in time as there was insufficient space in between the two cars. As a result, the Defendant hit Rita Sahara’s car. In doing so, the Defendant was driving without due care and attention.
6. Immediately, after the collision, Rita Sahara got out of her car and approached the driver’s side of the BMW bearing registration number BY 1. The Defendant wound

down the window and told her to just wait whilst he continued to stay in the car. Rita Sahara then called the police and eventually, 2 police personnel arrived at the scene.

7. At about 8.00 a.m., on the same day, as the police were conducting their investigation, another BMW bearing registration number BL 1 and Mercedes Benz came to the scene. It was later discovered that the driver of the BMW bearing registration number BL 1 was one Orlando Canoza Espiritu, a mechanic supervisor at Hijau Baiduri.
8. Orlando got out the BMW bearing registration number BL 1 and walked immediately towards the Defendant's car. He opened the door of the Defendant's car and the Defendant then walked out of his car towards the BMW bearing registration number BL 1 without waiting for the police personnel to approach him to get his details down.
9. The Defendant then got into the driver's seat of the BMW bearing registration number BL 1 and immediately drove away to Hijau Baiduri along Jalan Raja Isteri Pengiran Anak Saleha. The Mercedes Benz followed him from behind. From then on, only Orlando stayed at the scene to sort out the BMW bearing registration number BY 1.
10. The police personnel conducting investigations on the accident did not have the opportunity to obtain the Defendant's details because the Defendant did not speak to them before leaving the scene. It was only from further investigations that the police manage to identify the Defendant as the driver of the said BMW bearing registration number BY 1.
11. Police investigation revealed that as a result of the accident damages (scratches and dents) were caused to the rear number of the Ford Ranger driven by Rita Sahara and also the front bonnet of the BMW driven by the Defendant.
12. On 11th September 2014, the Defendant was still within the disqualification period imposed by the Magistrate's Court from holding a license to drive any motor vehicle. Therefore, he has committed an offence under section 45(b) of the Road Traffic Act when he drove:
 - a) At about 5.30 a.m. along Jalan Raja Isteri Pengiran Anak Saleha in the vicinity of Hijau Baiduri to go to the Natianl Stadium [**2nd Charge**];
 - b) At about 7.50 a.m. in the vicinity of the junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha on his way back to Hijau Baiduri [**3rd Charge**]; and
 - c) At about 8.00 a.m. along Jalan Raja Isteri Pengiran Anak Saleha on his way back to Hijau Baiduri [**4th Charge**]
13. As there were damages caused from the accident, the Defendant is required by section 33(2) of the Road Traffic Act, Cap 68 to report the accident to a police station or a police officer within 24 hours. However, he failed to do so. The Defendant did not come forward to either a police station or a police officer to report this accident until

he give his statement to the police on 17th September 2014, 6 days after the accident
[5th Charge]

6th, 10th and 11th Charges

14. Police investigations later revealed that the two cars driven by the Defendant on 11th September 2014, the BMW's with registration number BY 1 and BL 1, does have a valid insurance policy under Takaful Brunei AM (TBA) at the time the Defendant was driving those cars. The said insurance policies of both cars are valid from 18/6/2014 to 17/6/2015. However, the said insurance policies do not afford any insurance coverage when driven by a person disqualified by the Court. Therefore when the Defendant was driving both cars respectively:

- a) At about 5.30 a.m. along Jalan Raja Isteri Pengiran Anak Saleha in the vicinity of Hijau Baiduri to go to the National Stadium **[10th Charge]**;
- b) At about 7.50 in the vicinity of the junction of the Hassanal Bolkiah Highway and Jalan Raja Isteri Pengiran Anak Saleha on his way back to Hijau Baiduri **[11th Charge]**
- c) At about 8.00 a.m., along Jalan Raja Isteri Pengiran Anak Saleha on his way back to Hijau Baiduri **[6th Charge]**

He was driving those cars without any insurance coverage as there was not in force a policy of insurance in respect of third party risks as required by section 3(1) Motor Vehicles Insurance (Third Party Risks) Act, Cap 90 and thus the Defendant have committed offences under Section 3(2) of the said Act.

7th Charge

15. For the purpose of investigations, DSP Abdul Haji bin Hj Apong, the District Traffic Officer of Brunei Muara District, Royal Brunei Police Force met with the Defendant on 17th September 2014 at Hijau Baiduri. He was to record a statement from the Defendant pursuant to section 116 of the Criminal Procedure Code, Chapter 7.

16. The Defendant gave a statement on the said day at about 3.17 p.m. in the statement he gave, he told DSP Abdul Haji Bin Hj Apong that on 11th September 2014 at about 7.50 a.m. it was his friend "Saifuddin" who drove the BMW bearing registration number BY 1 along Jalan Raja Isteri Pengiran Anak Saleha and he was merely a passenger. He stated that Saifuddin got into an accident with a car in front of them as they were on their way home to Hijau Baiduri. He further said that Saifuddin was upset that the Defendant shouted at him for not being careful and subsequently got out of the car and walked away.

17. As a result of the Defendant's false statement to the police, DSP Abdul Haji did follow up his investigations on the said Saifuddin who appears to be one Haji Saifuddin bin Haji Ibrahim who happened to be the Defendant's training and running buddy. The said Saifuddin was then subjected to interrogation and investigation and a police

statement was also recorded from him with a view of charging him for careless driving under section 29(1) of the Road Traffic Act, Chapter 68.

18. However, police investigations later revealed that the said Saifuddin was never in the car with the Defendant at the time of the accident on 11th September 2014 and the Defendant indeed knew that the statement he had given to DSP Abdul Haji was false because it was the Defendant himself who was driving the car. He had given the false information knowing it likely that DSP Abdul Haji would then conduct investigations on Saifuddin which he would not have done so had he know the true facts of the driver of the BMW bearing registration number BY 1 during the accident.

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9th and 12th Charges

20. On 19th November 2014 at about 5.00 p.m. the Defendant was seen driving along Jalan Raja Isteri Pengiran Anak Saleha from Hijau Baiduri in a BMW bearing registration number BL 1. The Royal Brunei Police Force surveillance team who received the information immediately followed the car from behind until they reached the vicinity of the Palm Garden Hotel, Kiulap in Brunei Darussalam.
21. The said BMW parked in front of the hotel and the Defendant was seen coming out of the driver's side of the car and walked to Fitness Zone.
22. On the said 19th November 2014, the Defendant was still disqualified from holding a license to drive any motor vehicle imposed by the Magistrate's Court. Therefore he was driving the said BMW bearing registration number BL 1 whilst being disqualified from driving. **[9th Charge]**
23. The said BMW bearing registration number BL 1 also had a valid insurance policy at the time it was driven by the Defendant but such insurance policy does not afford any insurance coverage when driven by a person disqualified by the court such as the Defendant **[12th Charge]**
24. At about 6.30 p.m. on the same day, when the Defendant was seen walking out of Fitness Zone, two police officers approached him in order to serve the Police 24B notifying him of the commission of the offence of driving whilst being disqualified by the Magistrate's Court from holding a license to drive any motor vehicle. The police officer made three attempts to serve the Police 24B on the Defendant but he refused to accept it. The Defendant then called his friend who then came and drove off with the Defendant in the BMW bearing registration number BL 1.
25. On record, the Defendant has previous conviction for road traffic offences."

The Appellant (Defendant) understood and admitted the Statement of Facts but disagreed with the facts relating to the 8th Charge. The Appellant admitted to careless driving by bumping into the car in front of the car (BY 1) he was driving on 11/9/2014 (1st Charge). He was driving the car (BY 1) whilst under disqualification (3rd Charge) and not being covered by third-party insurance (11th Charge). He also admitted driving the same car (BY 1) on 11/9/2014 whilst under disqualification (2nd Charge) and not being covered by third-party insurance (10th Charge) at different time. The Appellant further admitted to failing to report the accident (5th Charge) when he drove off from the scene of the accident using a different car (BL 1) and subsequently he gave a false statement to the police about 6 days after the accident (7th Charge). By driving another car (BL 1) he was also driving whilst under disqualification (4th Charge) and not being covered by third-party insurance (6th Charge). After committing several offences, the Appellant further admitted to driving on 19/11/2014 whilst still under disqualification (9th Charge) and without insurance (12th Charge).

3. The Senior Magistrate's Decision

The Senior Magistrate accepted the pleas and convicted the Appellant on 1st Charge, 2nd Charge, 3rd Charge, 4th Charge, 5th Charge, 7th Charge, 9th Charge but rejected the guilty plea to the 8th Charge.

On 21/1/2015 the Senior Magistrate further accepted the guilty pleas and convicted the Appellant on 6th Charge, 10th Charge, 11th Charge and 12th Charge.

DPP later applied to stay the 8th Charge under section 172 of the Criminal Procedure Code. The Senior Magistrate stayed the determination of the 8th Charge. After hearing the submission from the Defence Counsel, the Senior Magistrate proceeded to sentence the Appellant as follows:-

1st Charge – A fine of \$600 in default 2 weeks' imprisonment.

2nd Charge – A fine of \$800 in default 3 weeks' imprisonment.

3rd Charge – A fine of \$800 in default 3 weeks' imprisonment.

4th Charge – A fine of \$800 in default 3 weeks' imprisonment.

5th Charge – A fine of \$400 in default 1 week imprisonment.

6th Charge – (i) A fine of \$1,000 in default 4 weeks' imprisonment.

(ii) Disqualified from holding or obtaining any class of driving license for a period of 12 months from 17/1/2015.

10th Charge - (i) A fine of \$1,000 in default 4 weeks' imprisonment.

(ii) Disqualified from holding or obtaining any class of driving license for a period of 12 months from 17/1/2015.

11th Charge - (i) A fine of \$1,000 in default 4 weeks' imprisonment.

(ii) Disqualified from holding or obtaining any class of driving license for a period of 12 months, from 17/1/2015.

7th Charge – 4 weeks' imprisonment.

9th Charge – 4 weeks' imprisonment.

12th Charge – (i) 2 weeks' imprisonment.

(ii) Disqualified from holding or obtaining any class of driving license for a period of 12 months.

Total fine = \$6,400 in default 24 weeks' imprisonment to pay within 1 month.

Having regards to the totality of sentences of imprisonment, the Senior Magistrate ordered only a total term of 8 weeks' imprisonment. The Senior Magistrate ordered the sentences imposed for the 9th and 12th Charges to run concurrently but consecutive to the sentence imposed for the 7th Charge.

4. Appeal

The Appellant is appealing against the sentences in respect of the 7th (Giving false information to the police on 17/9/2014), 9th (Driving on 19/11/2014 whilst under disqualification) and 12th (Driving on 19/11/2014 not being covered by third-party insurance) Charges on the grounds that the sentences are excessive in the circumstances of the case.

Before passing the sentences, the Senior Magistrate, in general, rightly noted that the Appellant's guilty plea is a strong mitigating factor. He stated in paragraph 3 of pg.7 of his judgment; 'It is a well-established sentencing principle that a guilty plea is a strong mitigating factor which entitles an offender to a reduction of one-third from the starting point or more where an offender demonstrates genuine remorse. A timely guilty plea saves the time and expense of the Court, parties and of witnesses from the labours of a trial.' The Senior Magistrate also noted that the Appellant is a first offender in so far as the 11 convictions are concerned.

As regards the 7th Charge, the Senior Magistrate rightly stated that making a false statement to a police officer is not a trivial matter. The aggravating features in this offence were that the Defendant when he committed the offence, had obviously intended to evade the prosecution against him for being caught driving whilst under an earlier disqualification order. By falsely informing the police another person was the driver, the Defendant had also caused unnecessary interrogation of an innocent person and this also wasted the police time and resources.

The Senior Magistrate also noted in the first paragraph of pg.9 of his Judgment; '....The Courts must send the right message to the general public and, in my opinion, public interest calls for a sentence of sufficient deterrence to warn those who deliberately choose to offer false information to the authority in attempting to conceal the truth. I will have to weigh the facts and circumstances in this case against the mitigating factors to determine whether an imposition of a fine or imprisonment is justified in the public interest. In previous cases before the Courts, both custodial and non-custodial sentences have been passed depending on the facts of each case...'

As regards the 9th Charge and 12th Charge, the Senior Magistrate noted that the offences were committed on 19/11/2014 after the Appellant was already being charged for the same offences referred in the 2nd Charge, 3rd Charge, 4th Charge and 6th Charge arising from the accident which occurred on 11/9/2014 referred in the 1st Charge and when the trial for those charges were still pending. The Appellant drove to the gym on 19/11/2014 whilst under disqualification and without insurance, which the Senior Magistrate noted was not an emergency/life or death situation. The Senior Magistrate noted that he committed the same offences 9 days after the Appellant entered his appearance. The Senior Magistrate also noted that the Appellant refused to accept service of Police 24B (Notice of Offences Committed) by police officers on 19/11/2014.

The Senior Magistrate rightly noted that the Appellant's actions show a blatant disregard of the earlier court-imposed disqualification, the court proceeding and the law. These are the aggravating factors for the 9th Charge, and the 12th Charge which the Court has to consider against the mitigating factors already referred.

Mr Balendran for the Appellant submitted that the Appellant by pleading guilty has demonstrated genuine remorse despite committing the same offences again on the 19th November 2014 and that being also a first offender, the Court should impose non-custodial sentence such as fine or probation order.

I agree with the Senior Magistrate that the Appellant did not show genuine remorse. He was already charged for the same offences committed on 11/9/2014 and yet he drove again on 19/11/2014 9 days after he first appeared in Court when the trial of the charges were still pending. In any case, the Senior Magistrate has given the Appellant a discount for pleading guilty for any remorse indicated by such a plea, by reducing 1/3 from the starting point.

I also agree with the DPP's submission that the Appellant was not really a first offender because he was convicted with a multiplicity of offences committed on different occasions. I agree that the offences he committed on the 19th November 2014 were not first offences but repeat offences following the offences he committed on the 11th September 2014. In *R v Shum Ming and Others* 1978 HKLR 41 the Hong Kong Court of Appeal observed that it was 'difficult to regard as first offenders persons who, it is true, appear before the court for the first time but appear charged with eight, three and seven offences respectively'. The Headnote of the case states:

"Huggins, Pickering, J.J.A. & McMullin, J.
6th January 1978.

Criminal law and procedure – sentencing – conviction for robbery – appropriate sentences for domestic premises type as opposed to lift or staircase – first court appearance but in respect of multiple offences – relevance of young age of offender as opposed to deterrent sentence in the public interest.

This was an appeal against sentence. The appellants together with other persons, had taken part in a series of robberies from beauty parlours using knives to terrorize the staff and customers. Upon conviction for several of the robberies, each was sentenced to 5 ½ years' imprisonment on each of the offences, the sentences to run concurrently.

It was contended that as this was the appellants' first appearance in court, they ought to be regarded as first offenders. Further, it was contended that this type of robbery was more akin to the lift and staircase type of robbery rather than the domestic premises situation, in respect of which the Court of Appeal had recently stated that it was unlikely in the average case, to interfere with sentences of 6 years' imprisonment. One of the appellants was 16 and prior to sentencing the trial judge had considered the question of a period in a detention centre. However, as the maximum period for such would only be 6 months, he did not consider this an adequate deterrent in the public interest. The alternative of a training centre did not appear to have been considered.

Held:

1. **Persons who appear before the court for the first time, but who appear charged with multiple offences, particularly of the same type, cannot be regarded as first offenders.**
2. **The beauty salon type of robbery where a group rush in with knives, terrorize the staff and customers and then relieve them of their money and valuable approaches more closely the domestic premises robbery rather than that of the lift or staircase category.**
3. **A sentence of 5 ½ years for an accused aged 16 years is excessive purely by reason of such a young age, and detention in a training centre is more appropriate.**

Appeal of third appellant allowed. Appeals of first and second appellants dismissed."

In Singapore, where false information is given by an accused person to evade prosecution, the Court usually impose a custodial sentence on a first time offender. In *Public Prosecutor v Yap Khim Huat* (MA 121/1993), the Appellant pleaded guilty to one charge under section 182 of the Penal Code for giving a false statement to the police claiming he was not the driver of the vehicle but the rear seat passenger. He had driven whilst under the influence of alcohol, beating a red light at a traffic junction and collided with a motor van and a motorcycle. On appeal, his sentence for the charge under section 182 was enhanced to 4 weeks imprisonment and a fine of \$1,000.

In *Public Prosecutor v Muhamad Baharuddin Bin Amat* (MA 20/1999) the Appellant pleaded guilty to a charge under section 182 of the Penal Code for giving false information to the police, reporting that his motorcycle had been stolen by an unknown person. He had, in fact, allowed his friend to borrow it for a ride. His friend met with a minor accident. He told the Appellant about the accident and informed him, he did not have a license. Fearing that he would get into trouble for lending the motorcycle to his friend, the appellant lodged a false report of theft of his motorcycle by an unknown person. The trial court imposed a fine of \$1,000. On appeal, the sentence was enhanced to four weeks' imprisonment and a fine of \$1,000.

In *Sivaprakash s/o Narayansamy v Public Prosecutor* (MA 84/2004) the Appellant was convicted after trial on two charges of giving false information to the police. The Appellant had reported to the police that he was the driver of the car involved in an accident when it was his wife who had driven the car. He had allowed his wife to drive the car when she did not have a valid license. The two police reports were made within a short time of each other. The trial court imposed five weeks' imprisonment and fine of \$1,000 for each charge. The trial court ordered the imprisonment term to run consecutively. The Appeal Court dismissed the appeal against conviction. The appeal against sentence was allowed in that the sentences were ordered to run concurrently.

The High Court in *Chng Wei Meng v Public Prosecutor* (2002) 2 SLR (R) 566 stated that, prima facie, motorists who drive while disqualified, must expect a term of imprisonment and not merely a fine? The irresponsible driver who has knowingly of an order of disqualification but who continues to driver in blatant disregard of the law and authority of the courts can expect to receive an enhanced sentence. This position was affirmed by Chan Sek Keong C.J. in *Public Prosecutor v Lee Cheow Loong Charles* (2008) 4 SLR (R) 961. He also stated; '31. It is clear that driving whilst under disqualification is a serious offence which is to be punished strictly because of the danger posed to the public and the offender's complete disregard for the earlier disqualification order imposed by the court. 32. General and, especially, specific deterrence are important considerations in offences such as the present one, which are very difficult to detect.'

In *Public Prosecutor v Lee Cheow Loong Charles* (2008) 4 SLR(R) 961, the Defendant was charged from driving whilst under 18 months' disqualification for drunk driving. He collided into a 79 year old woman at a signalized junction. She was later pronounced dead at the hospital. He, therefore, faced other charges. He pleaded guilty to the charge of driving whilst under disqualification. The Court allowed the Prosecution's appeal. The Court enhanced the imposed sentenced to 24 months imprisonment...'

As usual, the Singapore cases I have just referred are persuasive authorities cited in the text book **Sentencing Practice in the Subordinate Courts Third Edition Volume I (Practitioners' Library)** which our Courts should consider.

I agree that giving false information to the police so as to evade prosecution is a serious offence and the Court should, in general, impose a custodial sentence even to a first time offender. I also agree that driving while under disqualification and without insurance are serious offences. Not only does the offender drive in a blatant disregard of a court order, the offender also compromises the safety of our roads and if he caused injury to someone, that person will be unable to recover any compensation if the offender cannot pay as no insurance company will be liable.

It is clear from the authorities before the Court after considering the mitigating and aggravating factors, and having regards of the facts and circumstances of the case, it is in the public interest that custodial sentence should be ordered against the Appellant in respect of the 7th Charge, 9th Charge and 12th Charge. The Senior Magistrate was,

therefore, right in deciding to pass a custodial sentence for the 7th Charge, 9th Charge and 12th Charge. I agree with the Senior Magistrate that public interest calls for sentences of sufficient deterrence to deter the Appellant and others from committing the offences.

As regards the 7th Charge, the Senior Magistrate decided a starting point of 6 weeks imprisonment and then reduced it to 4 weeks imprisonment after taking into account the Appellant's mitigation.

As regards the 9th Charge, the Senior Magistrate decided a starting point of 6 weeks imprisonment and then reduced it to 4 weeks imprisonment.

As regards the 12th Charge, the Senior Magistrate decided the starting point of 3 weeks imprisonment and then reduced to 2 weeks imprisonment. The Senior Magistrate, having regard to the totality of sentences of imprisonment ordered only a total term of 8 weeks imprisonment by ordering the sentences imprisonment for the 9th and 12th Charges to run concurrently but consecutive to the sentence imprisonment for 7th Charge.

For the reasons I have given in my judgment, the sentences passed against the Appellant relating to the 7th Charge, 9th Charge and 12th Charge were neither manifestly excessive in the circumstances nor wrong in principle.

The Appellant's appeal against the sentences for the 7th Charge, 9th Charge and 12th Charge is, therefore, dismissed.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice