

Hj Md Yussop bin Hj Md Daud

vs

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 6 of 2020)

Pg DP Rostaina binti Pg Hj Duraman, J
14th July 2020

Criminal Law --- Appeal against conviction and sentence --- whether conviction and sentence should be quashed and set aside --- Appellant is acquitted under section 285 of the Criminal Procedure Code, Cap 7.

Case cited:-

Periasamy & Anor vs PP (1993) 2MLJ 551

Mr Hj Ahmad Basuni bin Hj Abas of m/s Abrahams Davidson & Co for Appellant.
DPP Nor Hafizah binti Ahmad for Respondent /Public Prosecutor.

Pg DP Hjh Rostaina, J

JUDGMENT

1. This is an appeal by the Appellant against conviction and sentence. He was convicted after a trial. On 2nd March 2020, the Magistrate imposed a fine of B\$150 or 1 week imprisonment in default of payment. The charge:-

Charge

That you did at about 1749 hours on the 11th September 2017, at the vicinity of Jalan Estate Gadong in Brunei Darussalam, being the driver of a motor vehicle registration number KK555 (Toyota Camry), when the ground of each identification plate on any motor vehicle shall be black, and the distinctive letter or letters and number thereon shall be white or of aluminium and that you have committed an offence under Regulation 55 of the Road Traffic Regulations, Cap 68 and punishable under Regulation 60 of the same.

Penalty – Regulation 60 of the Road Traffic Regulation Chapter 68

A fine of \$100 for the first offence and a fine of \$200 for a second.
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Imprisonment for 3 months for second and any subsequent offence.

2. Mr Hj Ahmad Basuni bin Hj Abas, Counsel for the Appellant informed that the Appellant appeared before the Magistrates' Court on 7th November 2019 to answer a charge for an alleged offence under **Regulation 53 of the Road Traffic Regulations (RTR) Cap 68, and punishable under Regulation 60 of the same**. The penalty provided was a fine of B\$100 for the first offence and B\$200 for a second offence, and imprisonment for 3 months.

3. On 20th January 2020, the above charge was withdrawn and replaced with a new charge under **Regulation 55 of the RTR, Cap 68**. This charge bearing the same date and time of commission alleged that the Appellant being the driver of the same car, '..... when the ground of each identification plate on any motor vehicle shall be black, and the distinctive letter or letters and number thereon shall be white or of aluminum.....'. The same penalty was stated under Regulation 60. During a 4-day trial, he represented himself. He was convicted on 26th February 2020. He paid the fine on 31st March 2020.
4. Mr Hj Ahmad Basuni bin Hj Abas advanced several grounds of appeal against conviction and sentence. He stated firstly, that the Magistrate erred in law and on the facts in his findings of guilt as the evidence presented by the Prosecution in court did not support the charge against the Appellant. He submitted the replacement charge under **Regulation 55 of the RTR, Cap 68** preferred against the Appellant on 20th January 2020 had been repealed by the **Road Traffic (Identification Marks) Regulations, 2008**.
5. Secondly, that the sentence passed by the Magistrate was excessive and wrong in law. He submitted that the sentence was void and wrong in law as the Appellant was convicted on a non-existence law in early 2020. He also said a defective charge cannot be cured by substituting the offence after considering the totality of the evidence and unsatisfactory nature of the complainant's evidence. See: **Periasamy and Anor vs PP (1993) 2 MLJ 551**.
6. For further clarity, Mr Hj Ahmad Basuni bin Hj Abas' submissions are found in the Appellant's Bundle of Submissions on Appeal.
7. I am grateful to DPP Nor Hafizah binti Ahmad, Counsel for the Respondent. She conceded to the Appellant's appeal. In her memorandum dated 11th July 2020 she acknowledged that the conviction against the Appellant was invalid as the charge brought against the Appellant under **Regulation 55 of the RTR, Cap 68** was repealed by the **Road Traffic (Identification Marks) Regulations, 2008**.
8. Pursuant to **section 285 of the Criminal Procedure Code, Cap 7**, I, therefore, order:-
 - (i) the conviction and sentence against the Appellant to be quashed and set aside. The Appellant is acquitted and discharged from the above charge accordingly;
 - (ii) That the record of his conviction under any of the above alleged offence to be cleared; and
 - (iii) That the fine of B\$150 to be refunded accordingly to the Appellant.

Appeal allowed.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judge, High Court
14th July 2020