

Public Prosecutor

AND

Rufino Morelos Delos Santos

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 18 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.

30th November 2020

Criminal law --- section 29(1) Road Traffic Act, Chapter 68 --- careless driving resulting in death of the driver of the other car --- fine of \$1,000 --- Prosecution Appeal --- against sentence --- appeal allowed --- sentence enhanced.

Cases referred to:

PP vs Hj Abdul Wafiy bin Hj Abdul Muhaimin (RTA/KB/139/2019)

PP vs Sumeiati binti Sanip (RTA/KB/240/2020)

DPP Muhammad Qamarul Affyian bin Abdul Rahman for Appellant/Public Prosecutor.
Respondent in person.

JUDGMENT

Hj Abdullah Soefri, JC:

On 8th June 2020 in the Magistrate's Court, the Respondent was convicted on his own plea to a charge under section 29(1) Road Traffic Act, Chapter 68. The charge is as follows:

"That you, on 9 September 2015, at around 2235 hrs, at the junction of Jalan RIPAS, Batu Satu near Flat Datin Rosnah, in Brunei Darussalam, being the driver of a motor vehicle bearing registration number BQ 2043 (Ford Festiva), did drive said motor vehicle on a road without due care and attention and you have thereby committed an offence punishable under section 29(1) of the Road Traffic Act, Chapter 68".

The Magistrate sentenced the Respondent to a fine of \$1,000 in default of 1 month's imprisonment.

The offence that the Respondent was convicted of and sentence was committed on 9th September 2015.

Section 29(1) of the Road Traffic Act provides for imprisonment for 12 months and a fine of not less than \$600 and not exceeding \$5,000.

The Magistrate below in the sentencing has taken into account as mitigation for the Respondent's early guilty plea, first offender, and his plea for reduced and most lenient fine. The Magistrate below took into account as an aggravating factor that due to his careless driving, the driver of the other car, Sgt 11497 Omarali bin Md Salleh died due to the accident.

The Appellant filed an appeal against the said sentence on the grounds that it was manifestly inadequate and the sentence imposed has failed to reflect the overall criminality of the offence committed by the Respondent having regard to the two principle parameters in evaluating the seriousness of the crime:

- a) the culpability of the Respondent; and
- b) the harm caused by the offence.

The Appellant also submitted that the Magistrate below has failed to fully appreciate the significance of general deterrence, which is a key of sentencing.

The Appellant cited two Magistrate's Court sentences where the Defendants have pleaded guilty to charges and as result of the accident has resulted in death. The Appellant cited ***Public Prosecutor vs Hj Abdul Wafiy bin Hj Abdul Muhaimin (RTA/KB/139/2019)***. In this case where the defendant pleaded guilty to careless driving for exiting a junction before ensuring that it was safe to do so. As a result of his misjudgement, he had caused the loss of a life. He was imposed with a fine of \$3,000 in default of 3 months and the Magistrate below also took into account that there was an inordinate delay of 9 years.

The Appellant had cited the case of ***Public Prosecutor vs Sumeiati binti Sanip (RTA/KB/240/2020)***, a Magistrate Court case where the defendant pleaded guilty to careless driving for entering a roundabout without keeping a proper lookout. She then collided with a cyclist who had died due to severe injuries to his head following the accident. She was sentenced to a fine of \$4,000 in default of 4 months imprisonment. The offence was committed in 2017 and the case was brought to court in 2020.

Going back to the present case, the fine that was imposed was \$1,000 in default of 1 month. The Defendant pleaded guilty at first instance and there was a delay of 5 years.

The question before this court is whether the sentence imposed by the Magistrate below is manifestly inadequate.

The Appellant is correct to say that sentences must reflect the gravity of the offence, the harm the offence has caused and also it must serve as a deterrent sentence.

Taking the two cases as benchmark as this was submitted by the Appellant, and looking into the circumstances of those cases and the present case, I am satisfied that the sentence imposed by the Magistrate below is manifestly inadequate and allow the Appellant appeal.

This court enhanced the sentence of the court below and substitute it with a fine of \$3,500 in default 3 months.

In view that the Respondent has paid the fine imposed by the court below, the Respondent will pay the balance of \$2,500 within 2 months from today's date.

Failure to pay the balance of \$2,500 the Respondent is to serve in default sentence of 2 months imprisonment.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner