

Hj Mohd Asnawi bin Awang Hj Abd Halim

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 2 of 2021)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC
19th July 2021

*Criminal Law --- section 29(1) Road Traffic Act, Cap 68 --- plead not guilty --- convicted --- fine --
- appeal against conviction --- dismissed*

Cases referred to:

Sandland vs Neale (1955) 3 ALL ER 571

Pg Mohd Ariffin bin Pg Hj Ismail v PP [HCCA 136 of 2002]

Appellant in person.

DPP Siti Khalillah binti Hj Hussin and assisted by DPP Ahmad Firdaus bin Hj Mohammad for
Respondent/Public Prosecutor.

RULING

Hj Abdullah Soefri, JC:

This is an appeal by the Defendant who was convicted by the Court below on a charge under section 29(1) of the Road Traffic Act Chapter 68 and the charge is as follows:

That you did at about 1140 hours on the 8th December 2018, at the vicinity of Roundabout Prime Minister Office, in Brunei Darussalam, being the driver of motor vehicle registration number BAL 5627 (Volvo V40) did drive the said motor vehicle car without due care and attention and that you thereby committed an offence under section 29(1) of the Road Traffic Act, Cap.68.

The Defendant appeal against the conviction on the ground that it is unsatisfactory and wrong in law.

The Defendant laid two grounds:

1. the hurriedness in issuing the Notice of Prosecution has resulted in the Investigation Officer to ignore taking into consideration the rules and regulations of entering and driving at a roundabout; and

2. that the Defendant had exercised due care and attention when he moved from the inner lane into the entrance into Jalan Menteri Besar and the right of way at the entrance of 12 o'clock belongs to the inner lane's driver.

Section 30 of the Act (Chapter 68) states:

"30(1) Where a person is prosecuted for an offence under section 24, 28 or 29 he shall not, except as hereinafter prescribed, be convicted unless –

(c) within the said 14 days a notice of the intended prosecution specifying the nature of the alleged offence and the time and place where it is alleged to have been committed was served on or sent by registered post to him or to the person registered as the owner of the vehicle at the time of the commission of the offence."

Dato Paduka Steven Chong, J, in ***Pg Mohd Ariffin bin Pg Hj Ismail (Criminal Appeal No.136 of 2002)*** reiterated the legal principle in ***Sandland v Neale (1955) 3 ALL ER 571***:

"The object of a notice of intended prosecution is plain, it is to let the offender know promptly that he may be prosecuted so that he may be able to collect material for his defence while the matter is fresh in his memory and that of potential witnesses".

Every driver using the inner lane who wishes to change lane to the outer lane and to enter into the junction have the responsibility to ensure that the lane (outer lane) is clear before making the change safely.

The driver of the outer lane has the right way unless there is a white straight line on the road to forbid them to move along the outer lane.

From the evidence adduced in the court below that the Defendant is going from the inner lane and onto the outer lane to go into the junction. The fact that there is a collision between the Defendant's car and the complainant's car show that the outer lane is not clear when the Defendant moves from the inner lane to the outer lane and going to the junction and had failed to exercise the care and attention expected of a reasonably prudent driver in the circumstances.

It is settled law that the "appellate court will not disturb the findings of facts unless they are plainly wrong or clearly reached against the weight of evidence, bearing in mind the trial court had the opportunity of observing the witnesses to assess their credibility. (***Pg Mohd Ariffin bin Pg Hj Ismail v Public Prosecutor [HCCA 136 of 2002]***).

Having had said all the above, this court will not disturb the findings of the Magistrate as I do not see any wrong in reaching the conclusion or it is not reached against the weight of evidence.

The appeal is hereby dismissed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner