

IN THE SUPREME COURT OF SEYCHELLES

BRADLEY JEANNEVOL

APELLANT

VS

THE REPUBLIC

RESPONDENT

Criminal Appeal no CA9/08

Mr. Elizabeth for the Appellant

Ms. Confait for the Republic

JUDGMENT

This is an appeal preferred against sentence.

The Appellant in this case was charged in the Magistrates Court as follows.

Count 1

Causing an unlicensed motor vehicle to be used on the public road Contrary to Regulation 34 (1) and (80) (f) of the Road Transport Regulations and punishable under section 24(2) of the Road Transport Cap 206.

The particulars of the offence are that Bradley Jeannevol residing at Anse Boileau, Mahe drove motor vehicle registration No S155 on the public road without a valid road fund licence.

Count 2

Driving a motor vehicle on the public road without a policy of insurance contrary to section 4(1)

and punishable under section 4 (2) of the Motor Vehicle Insurance Third Party Risks cap 135.

The particulars of the offence are that Bradley Jeannevol residing at Anse Boileau, Mahe on the 10th of July 2007, at Laurier Avenue, Mahe drove motor vehicle registration No. S155 without a policy of insurance or such a security in relation to the use of the said motor vehicle by the said Bradley Jeannevol in respect to third party risks as complies with the requirement of this Act.

When the constitutional right of legal representation was explained to the Appellant the Appellant elected to defend himself. The Appellant pleaded guilty to the said charges preferred against him and thereafter having entered a plea of guilty and convicting the Appellant on his plea the learned Senior Magistrate proceeded to pass sentence as follows.

“The court after considering the facts of the case as admitted by the convict, his previous conviction to a related offence (road traffic) and mitigation, hereby sentence him as follows.

On count one to pay a fine of SR 4000/= to be paid by monthly installments of SR 500/= in default he shall be liable to imprisonment for 4 months.

On count two to a fine of SR 4000/= to be repaid by monthly installments of SR 500/= in default to 4 months imprisonment. Further due to the nature of the offence convicted of convict is disqualified to hold a licence for a period of 12 months. Both payments shall start effective end of June 2008. Convict informed of his right of Appeal”.

The Appellant seeks to appeal against the aforementioned sentence on the grounds that the sentence is harsh and excessive and out of proportion to the offences considering all the circumstances of the case.

Section 24 (2) of the Road Transport Act reads as;

“Any person guilty of an offence under this Act shall be liable on conviction to imprisonment for a period not exceeding 2 years or to a fine not exceeding R10,000 or to both such imprisonment and fine”.

In respect of Count 1 an offence punishable under section 24 (2) of the Road Transport Act, it is apparent that by fining the Appellant a sum of Rs 4000/=, the said fine is well within the

precincts prescribed by law. Considering the fact that the Appellant has admitted a previous conviction for negligent driving under the said Act for which he had been fined a sum of Rs 2000/=, the fine of Rs 4000/= imposed by the learned Senior Magistrate is in no way excessive as the Appellant is not a first offender in respect of an offence under the said Act.

Section 4 (2) of the Motor Vehicle Insurance Third Party Risks Cap 135 reads as;

“If one person acts in contravention of this section he shall be liable to a fine of two thousand rupees or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment for a term not exceeding six months, and a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified from holding or obtaining a certificate of competency for a period of twelve months from the date of conviction”.

In respect of Count 2 an offence punishable under section 4(2) of the Motor Vehicle Insurance Third Party Risks, the learned Senior Magistrate proceeded to fine the Appellant a sum of Rs 4000/= and disqualified the Appellant from holding a licence for a period of 12 months. It is clear that the fine of Rs 4000/= is in excess of the sum prescribed by law. This court will therefore proceed to set aside the fine imposed in a sum of Rs 4000/= and in lieu of such fine impose a fine of Rs 2000/=.

The Appellant has not averred any special reasons in his Memorandum of Appeal other than to state that the sentence is harsh and excessive and out of proportion to the offence committed. Therefore the order disqualifying the Appellant's licence for a period of twelve months cannot be faulted and is upheld, as in the absence of special reasons such disqualification is mandatory by law.

Subject to this variation the sentence passed by the learned Senior Magistrate is upheld.

M. BURHAN

JUDGE

Dated this 1st day of July 2009