

PUBLIC PROSECUTOR

AND

CLYDEELN H. ZACAL (D1)
FRANCIS VIBAN BAYONG (D2)

(High Court of Brunei Darussalam)
(Criminal Trial No 13 of 2015)

Hairol Arni Majid, J.

24th May 2017

Criminal law – Trafficking and Smuggling and Person Order 2004 - Women and Girl Protection Act (Chapter 120) - Road Traffic Act Chapter 68 – people smuggling - let to hire women as prostitutes – knowing permit a house to be used as a brothel - driving without a valid license.

DPP Karen Tan and DPP Siti Nurjauinah Haji Kula for Public Prosecutor
The defendants in persons

Cases cited:

Public Prosecutor vs Rosman Hj Abd Rahman and Razali Hj Abang
(1991)1 JCBD 302

Emediade Bin Bujang v Public Prosecutor (Criminal Appeal No1 of
2015),

Public Prosecutor v in Bujang and Sanawadi Bin Sanadin (Criminal
Appeal No3 of 2015),

Sheridah Mohd Ali and Public Prosecutor (Criminal Appeal No8 of
2011),

Aidah Binti Tengah and Public Prosecutor (Criminal Appeal No18 of
2016)

J U D G M E N T

The 1st Defendant faces a total of 8 counts under the Trafficking and Smuggling of Person Order 2004 and Women and Girl Protection Act (Chapter 120), while the 2nd Defendant faces 1 count under the Trafficking and Smuggling and

Person Order 2004 and 2 counts under the Women and Girl Prosecution Act jointly with the 1st Defendant. He also faces a separate charge for driving a motor vehicle without a license contrary to section 16 of the Road Traffic Act Chapter 68.

The charges are as follow:

1st charge (against D1 only)

*That you, sometime in September 2012, at Kuala Lurah Control Post in Brunei Darussalam, did engage in people smuggling, in that you arranged the unlawful entry of one **Mercy Jane Boiser Cutad (F33, Philippines Passport No: EB4774476)** into Brunei Darussalam, in which the said person is not a citizen or permanent resident of Brunei Darussalam, having reason to suspect that the said person's entry is unlawful, in order obtain a material benefit, and that you have thereby committed an offence under section 7 of the Trafficking and Smuggling of Persons Order 2004 and punishable under the same.*

2nd charge (against D1 only)

*That you, sometime between September 2012 and January 2013, in Brunei Darussalam, did let to hire a woman, one **Mercy Jane Boiser Cutad (F33, Philippines Passport No: EB4774476)**, with intent that she be used for the purpose of prostitution within Brunei and you have thereby committed an offence punishable under section 3(1)(a) of the Women and Girls Protection Act (Chapter 120)*

3rd charge (against both D1 and D2)

That both of you, in furtherance of your common intention, sometime between September 2012 and January 2013 at house no 4B, Spg 627, Kampong Salambigar, Jalan Muara in Brunei Darussalam, being the occupier of the premises at the said address, did knowingly permit such premises or any part thereof to be used as a brothel, and that both of you have thereby committed an offence under section 6(b) of the Women and Girls Protection Act, Chapter 120 read with section 34 of the Penal Code, Chapter 22 and punishable under section 6(b) of the Women and Girls Protection Act, Chapter 120.

4th charge (against D1 and D2 only)

That both of you, in furtherance of your common intention, sometime in January 2013, at Kuala Lurah Control Post in Brunei Darussalam, did

engage in people smuggling, in that you arranged the unlawful entry of one **Mercy Jane Boiser Cutad (F33, Philippines Passport No: EB4774476)** into Malaysia, in which the said person is not a citizen or permanent resident of Malaysia, having reason to suspect that the said person's entry is unlawful, in order obtain a financial benefit, and that both of you have thereby committed an offence under section 7 of the Trafficking and Smuggling of Persons Order 2004 read with section 34 of the Penal Code, Chapter 22 and punishable under section 7 of the Trafficking and Smuggling of Persons Order 2004.

5th charge (against D1 only)

That you, between 21st November 2013 and 23rd November 2013, did engage in people smuggling, in that you arranged the unlawful entry of **Clarita Morales (F36, Philippines Passport No: DD314545)** and **Mercy Jane Boiser Cutad (F33, Philippines Passport No: EB4774476)** into Brunei Darussalam, in which the said persons are not citizens or permanent residents of Brunei Darussalam, having reason to suspect that the said persons entry is unlawful, in order to obtain a financial benefit and that you have thereby committed an offence under section 7 of the Trafficking and Smuggling of Persons Order 2004 and punishable under the same.

6th charge (against D1 only)

That you, sometime between November 2013 and January 2014, in Brunei Darussalam, did let to hire a woman, one **Mercy Jane Boiser Cutad (F33, Philippines Passport No: EB4774476)**, with intent that she be used for the purpose of prostitution within Brunei and you have thereby committed an offence punishable under section 3(1)(a) of the Women and Girls Protection Act (Chapter 120)

7th charge (against D1 only)

That you, sometime between November 2013 and January 2014, in Brunei Darussalam, did let to hire a woman, one **Clarita Morales (F36, Philippines Passport No: DD314545)** with intent that she be used for the purpose of prostitution within Brunei and you have thereby committed an offence punishable under section 3(1)(a) of the Women and Girls Protection Act (Chapter 120).

8th charge (against D1 and D2)

That both of you, in furtherance of your common intention, sometime between November 2013 and January 2014 at a house in Simpang 216, Kg Mentiri, Jalan Muara in Brunei Darussalam, being the occupier of the premises at the said address, did knowingly permit such premises or any part thereof to be used as a brothel, and both of you have thereby committed an offence under section 6(b) of the Women and Girls Protection act, Chapter 120 read with section 34 of the Penal Code, Chapter 22 and punishable under section 6(b) of the Women and Girls Protection Act, Chapter 120.

9th charge (against D2 only)

That you at about 11p.m. on the 9th day of February 2014 from Kg Mentiri along the Jalan Kebangsaan Highway heading in the direction towards Bandar Seri Begawan in Brunei Darussalam, did drive a motor vehicle namely a BMW E 36 with registration no. BW 3563, whilst not being the holder of a driving license issued under Part IV of the Road Traffic Act, Chapter 68 authorizing you to drive a vehicle of that class or description, and you have thereby committed an offence punishable under section 16 of the Road Traffic Act, Chapter 68.

Prosecution's case

The prosecution led evidence by calling 15 witnesses. The main thrust of the prosecution's case centers on the two main witnesses who were the alleged victims in this case. The summary of the prosecution's evidence is as follows:

Mercy Jane Boiser Cutad, (PW1).

Mercy Jane (PW1) is a 34 years old Filipino citizen. Her testimony is that she was brought to Brunei by the 1st defendant who she had known by her nick name "Treexice". She recalled being offered a job in Malaysia as a masseur by the 1st defendant and the latter made arrangement for her to enter Tawau, Sabah Malaysia illegal without any valid documents and passport by boat via Zamboanga. In return 1st defendant demanded RM\$3,500 for this arrangement. Later she said she was asked to pay instead RM\$6,500 by the 1st defendant's step mother. In Tawau at first, she provided massage services but eventually was forced to provide sexual services by her employers.

After 7 months in the job, she contacted the 1st defendant and who advised and helped her to run away to Kota Kinabalu and managed to find her a job at a bar. She said she work in Kota Kinabalu for about a year and within that time she managed to obtained her passport from a Philippine Embassy people. A year

later the 1st defendant offered her to come to Brunei to look after her baby with a promised salary of \$350 per month which she agreed.

In September 2012, the 1st defendant arranged her and another person by the name of Mercedeta (Joyce) to go to Labuan via Menumbok by boat and from Labuan to Limbang using a speedboat. On arrival at Limbang she said she was dropped off at the Limbang market while the 1st defendant and Mercedeta checked in themselves at the Limbang Immigration Control Post. She said she had to stay for one night in Limbang while they proceeded to Brunei because despite having a passport she did not have the proper and official stamp to exit out of the Philippines and Sabah.

She was met the next day in Limbang by the 1st defendant at a restaurant near the Limbang Immigration Control Post. Prior to leaving the restaurant and heading to the control post, she climbed into a grey BMW car boot and was only out of the boot after they passed Limbang and Brunei Immigration Control Post at Kuala Lurah. Inside the car, she recalled seeing the 2nd defendant and the 1st defendant daughter as they proceeded to Salambigar.

Initially, she worked as a babysitter taking care of the defendant's daughter until November 2012 without being paid a salary. She insisted on both the defendants to send her home but was told that she has no valid entry permit and if she was found out, she may be sent to prison. The 2nd defendant offered to send her back for BND\$600. Having no money, she agreed to the suggestion by the 1st and 2nd defendant for her to provide sexual service to clients and that they would find the clients for her. The 1st defendant set the price ranging from B\$60 to B\$100.

In January 2013, she paid the 2nd defendant B\$600 to get her to Kota Kinabalu. She recalled the 1st, 2nd defendant and the 2nd defendant's friend were with her until Kuala Lurah. Initially the 2nd defendant drove the car on the way to Kuala Lurah. They stopped at a restaurant and the 2nd defendant's friend switched places with the 2nd defendant and drove the car to Limbang. She was smuggled at the back inside the car boot and only came out once they reached Limbang. The 2nd defendant did not join them in this trip but only arranged the trip. She and the 1st defendant stayed in Limbang overnight and proceeded to Kota Kinabalu the next day where they stayed at her friend's house.

On the 21st November 2013, the 1st defendant arranged her and Clarita Morales (PW2) to enter Brunei. They met at Labuan where she paid the 1st defendant RM\$150 for ticket to Limbang. She and Clarita stayed in Limbang for a night before Ian, the 1st defendant's friend brought them by car to Temburong. To avoid Brunei Immigration post they used a boat to Brunei to board at Kianggeh jetty.

She said she stayed with the defendants at their home from November 2013 until January 2014. The 1st defendant told her that she wasn't able to help her to get a valid entry stamp on her passport and demanded B\$500 for bringing her to Brunei. Having no money, the 1st defendant asked her to provide sexual services in order to pay her \$500. The 1st defendant was to provide the customers. She stayed with the defendant throughout, by paying B\$200 for rental of B\$30 for food. She confirmed she and PW₂ got arrested in March 2014.

Clarita Morales, (PW₂)

Clarita Morales (Clarita), the second prosecution witness (PW₂) is a Filipino citizen aged 36-year-old who entered Brunei in November 2013. Prior to coming to Brunei, she was working in Labuan from 2006 to 2013. She said she knew PW₁ when the latter stayed with her in Labuan.

In October 2013, she first met PW₁ and the 1st defendant when they live in Labuan and both stayed at her house. PW₁ stayed for a month but the 1st defendant only stay for a night. The PW₁ informed Clarita that the 1st defendant maybe able to help her as regards her expired passport. In November 2013 when the 1st defendant arrived in Labuan to bring PW₁ to Brunei, she offered to help her out by bringing her to Brunei. She demanded RM\$100 for the boat ticket to Limbang. Once in Limbang they were met by a man named Ian who put them up in a hotel for a night while the 1st defendant continued her journey to Brunei. From Limbang they entered Temburong by car and proceed to take the boat to Kianggeh in Brunei. At the Kianggeh jetty PW₁ telephoned a man by name of Mohammad who had been arranged to picked them up. He drove them to 1st defendant home at Simpang 216, Mentiri, Muara.

After having stayed at the 1st defendant house for two weeks, she informed Clarita that Ian demanded from her B\$250 for bringing her to Brunei which she paid. The 1st defendant also demanded a payment of B\$3,000 if she wanted to sort her passport problem. Having no money on her, she reluctantly agreed with the 1st defendant's suggestion to provide sexual services to the 1st and 2nd defendant clients. She said she had to pay B\$150 rent and B\$50 for food while staying at the 1st defendant's house. As regard the sexual services, the 1st defendant set the price from B\$60 to B\$100 for the services.

In January 2014, she inquired with the 1st defendant about her passport but nothing was done. She and the PW₁ asked the 1st defendant to send them back to Malaysia but she refused. Sometimes in March 2014 both she and PW₁ left the house and were seeking to get help but got arrested the same day.

Other prosecution witnesses

Haji Md. Tahir Haji Nordin (PW3) confirmed to the court that the 2nd defendant had rented his house at No 4, Simpang 627, Kg Salambigar, Jalan Muara commencing 15th May 2011 but had defaulted in paying the rental. Pehin Orang Kaya Maharaja Setia Dato Paduka Hj Md. Tariff, PW5 testified that he met the 2nd defendant around August 2013. He said the 2nd defendant had shown an interest in renting his house No 7, Simpang 216, Kg Mentiri, Muara and a tenancy agreement was signed with the 2nd defendant with a rental of \$600 per month. However, he said he terminated the agreement on March 2014 as he saw the 2nd defendant had failed to comply with the conditions of the tenancy and for the most part for allowing the house in disrepair.

Mr. Yeo Choon Hua (PW4) a 43 years old engineer testified that he knew the 1st defendant in 2012 from his friend. He said he was invited by the 1st defendant in December 2012 to her house at Salambigar Muara for a Christmas party. He said she also offered him women for sex for \$80. He recalled seeing the 2nd defendant at the house although he did speak to him.

A few days later the 1st defendant texted him offering him the sexual service. He took her offer and on the same day he went to the 1st defendant's house at Salambigar where he was introduced to a Filipino lady. He confirmed having sexual intercourse at the said house and paid the 1st defendant BND\$80 for it. He said in early 2013 he had another session with the same girl at the house and paid the 1st defendant the same amount. He recalled being informed by the 1st defendant that she and her family had move to Mentiri in 2013 and invited him to her daughter's birthday. He attended the party and recalled seeing two Filipino women at the place, who he had sex before.

Abu Bakar Mohammad (PW6) also testified that he was offered by the 1st defendant a Filipino lady for sex during a Christmas party in December 2012 at the 1st defendant's house at Salambigar. He took her offer and was introduces to a Filipino lady whom he called "Jam" and had sex in a room at the 1st defendant house. He said he paid the 1st defendant BND\$80 for the sexual services.

The recalled that on Thursday in November 2013, he was called by the 1st defendant who need his help to fetch Jam and another person at Kianggeh the next day. He collected PW1 with another Filipino friend and a man by the name of Ian at Kianggeh and took them to 1st defendant's new house at Mentiri and Ian to Tanah Jambu.

He recalled about two weeks later, the 1st defendant invited him to a birthday party at the 1st defendant's house, in Mentiri. At the party the 1st defendant

offered him a few girls for sex but he said he refused. He recalled seeing PW₁ and the 2nd defendant there at the party.

In April 2014, he received a call from the 2nd defendant who informed him that PW₁ has been arrested and told him if the police inquired whether he knew Jam he was to answer the police that he doesn't. A few days later, both the 1st and 2nd defendant met him at his workplace and inquired with him why they were not informed that he had spoken to the police. They urged him not to inform the police that they had asked him to fetch PW₁ and her friend at Kianggeh earlier. He said that was the last time he met both the defendants.

Lai Muk Choon (PW₉) and Agong Pengiran (PW₁₀) testimonies are similar to PW₆ and PW₄ is that they were both offered woman for sex. PW₉ said he had sexed at Salambigar at the 1st defendant house with a woman whom he called "Mahal". He said he paid B\$80 for it and handed the money to Mahal as the 1st defendant was busy with her daughter in the living room.

As for PW₁₀, he testified that was a friend of the 2nd defendant and in 2012 at the 2nd defendant's house at Salambigar he was offered by the 1st defendant women for sex. He took his offer and was arranged with a Filipino woman. He said they had sex at the house that night at one of the rooms and paid the 1st defendant's BND\$80. He confirmed that the 2nd defendant was also at the house that night.

L/CPL Hj. Md. Haruna Md. Tahir (PW₁₅), the investigating officer in the case testified that the police were alerted about this case when the Immigration Enforcement Department informed them of the arrest of PW₁ and PW₂ and the alleged trafficking of these woman. He said he and his team met the arrestees PW₁ and PW₂ at Chuchu Plaza and informed the court that from his initial investigation found them to have entered Brunei illegally. Further investigation confirms this and their association with the 1st and 2nd defendant. Investigation on the 1st and 2nd defendant, PW₁, PW₂ and as well as several of the clients were done which led to the arrest of the defendants.

PW₁₅ tendered to court as evidence the 2nd defendant's bank account, bank statement and driving license records. They confirm that the 2nd defendant driving has expired and that there were not valid records of entry and exit of PW₁ and PW₂ to and from Brunei. He testified that further investigation revealed that they had entered and remained in the country without proper passes and valid permits. Relevant documents were tendered pertaining to the road traffic offence charge and oral evidence was given in support of the offence.

Defense case

Both defendants were unrepresented in this trial. After having been advised by the court of their elections to defend, both chose to give sworn testimony. They applied for their written statements to be tendered as their evidence in chief. The prosecution objected to some of the contents on account of hearsay. Taking note of the objection the contents of the statements was eventually reduced. The summary of their defense are as follows.

Clydeeln Haman Zocal, the 1st defendant is a Philippine citizen, 33 years of age, is married to the 2nd defendant. Both have a 4-year-old daughter. She said she had been living in Brunei for 10 years. She confirmed being brought to Criminal Investigation Department (CID) at Ong Sum Ping building for an interview on the 20th March 2014.

At the CID office, she was questioned whether she knew PW₁ and PW₂ to which she said he did and last met them in Tawau Sabah. She said she met PW₁ at Prince Hotel in Tawau and knew that PW₁ came to Brunei to visit her boyfriend Ian. She denies bringing them to Brunei. She said she travelled to Labuan, Malaysia to visit her ill father but denies ever bringing PW₁. She stated that she routinely exited Brunei in the evening not afternoon contrary to PW₁ testimony in court.

She refuted PW₁ testimony saying she did not pay the latter her salary for looking after her daughter. She reasoned that if she had not paid her salary, PW₁ would not have worked for her for another term.

She said she recalled inviting PW₁ to her party and PW₁ would bring her boyfriend Ian and other friends. She said PW₁ would stay one night after the party to help out with the cleaning.

She denies bring PW₁ in January 2013 to Kuala Lurah as she usually travels there only in the evening to buy alcoholic drinks. In November 2013, she travelled to Sabah, Malaysia to visit her ill father.

As regards PW₂ she said she knew her by the name Vanessa as she is a friend of PW₁. She recalled inviting PW₂ also to party in 2013 but denies even bringing her illegally to Brunei. She denies even meeting PW₂ in Labuan in November 2013 and smuggling them to Brunei.

She said neither she or her husband know Yeo Choon Hua (PW₄) personally. She said he was invited to the party as PW₁'s guest.

As regards Abu Bakar Mohammad's (PW₆) testimony that she asked him to pick PW₁ and PW₂ at Kianggeh, she said PW₆'s testimony is not true, it was PW₁ and PW₂ themselves who had contacted PW₆.

She confirmed she and 2nd defendant invited Agong Pengiran (PW₁₀) to her party although she knows nothing of Lai Muk Choon (PW₉) who was PW₁₀'s friend. She said as far as the party went it was a usual party with their friends and nothing unusual happening.

Vivan Francis Bayong, the 2nd defendant is aged 32 years old and from Cameron. He was a former import profession football player for QAF football club. After quitting QAF football club, he moved to a rental house in Salambigar at Spg. 627, Jalan Muara then to Mentiri at Spg 216, Jalan Muara.

The 2nd defendant's evidence is that PW₁ and PW₂ had entered into the country illegally by themselves. He stated that he and his wife DW₁ has no involvement with PW₁ and PW₂'s illegal activities. He informed the court that in the evening of the 18th September 2012 his wife, the 1st defendant received a call from her mother in Sabah informing her that her father was ill and was admitted to hospital in Kota Kinabalu. He said he and his daughter sent the 1st defendant to Serasa Terminal to see her off to Labuan.

The 2nd defendant denies PW₁ and PW₂'s allegation that they gave \$600 to him to smuggle them to Malaysia. He said they never stay in his house and claimed it was Ian who had smuggled them in and out of Brunei. He said it would be impossible for him and his wife, to go to Kuala Lurah in the afternoon as that would mean no one would be in the house to take care of his daughter and he would usually be on the field training from Monday to Saturday.

He said another reason the 1st defendant went to Labuan on the 21st November 2013 was to purchase a car part for him namely a car alternator for his BMW because he claimed none was available here in Brunei.

He confirmed he had rented the house in Salambigar for \$550 per month and later in Mentiri for \$600 per month. Throughout he said only 1st defendant, their daughter and himself stayed in the houses. He denies that PW₁ and PW₂ ever stayed in their houses paying rental and food as alleged by them.

As for the Christmas party, he said he celebrated Christmas every year and invited friends to celebrate with them. He said his wife invited PW₁ who in turn brought with her PW₄ and PW₆, while he invited PW₁₁ who brought PW₁₀ with him. He said is impossible for the PW₁ and PW₂ to have used his house to provide their sexual services because he claimed that during the period of the alleged dates when they provided sexual services, he claimed PW₁ and PW₂ already left his house and most time, he or his wife would be in the house with their child and they could never have approved of such wrongdoings.

As for the expiry of his driving license, he stated that he tried to renew it at the Land Transport Department but was not allow to do so as his passport unfortunately also expired. He claimed the authority request a valid passport as a means of identification before renewal of the driving license.

He said in the 9th May 2014 he was involved in a self-accident along Jalan Kebangsaan when he crashed into the safety bar protection on the road. He was issued with a cash bail of \$300 pending investigation of the case by the police.

The 2nd defendant called two witnesses namely Micky Anak Gindir (DW₃) and Junaidi bin Akim (DW₄). DW₃ testimony is short in that he denies ever helping the 1st defendant to bring alcoholic drinks at Kuala Lurah and ever used his car to buy drinks there. He said he has only been to the defendant's house at Salambigar once to help him with move into his new house.

DW₄ in his testimony said he knew the 2nd defendant and had played football together before. He is a driver with Benn Food Sdn. Bhd. He said then football training schedule was from Monday to Saturday inclusive of Friday. He said he trained with the 2nd defendant in 2011 and 2012.

The Laws

Section 7 of the Trafficking and Smuggling of Persons Order 2014 provides for an offence of people smuggling regardless whether the smuggled person arrives into the country (receiving country). The prosecution is under a duty to prove the followings.

- i. That the defendant arranged or assisted in the unlawful entry of the person or persons*
- ii. The smuggled person/persons were not a citizen or permanent resident at the commission of the offence.*

Having proved the above, it shall be presumed by the court as is provided by section 7(2) of the Order that the defendant committed the offence with the knowledge that that such person's entry was unlawful and was committed in order to obtain a financial or other material benefit until the same is proven authorized.

As for offences under Women and Girl Protection Act Chapter 120, Section 3(1)(a) requires the prosecution to prove that the defendant;

- i. let or hire a woman*

- ii. with the intent that the woman should be employed or used for the purposed of prostitution.*
- iii. or knowing or having reason to believe that the women or girl will be so employed or used.*

Under section 6(b) of the Women and Girl Protection Act Chapter 120 the prosecution has to prove that

- i. The defendant being the tenant/occupied of the premises.*
- ii. Knowingly permit the premise or any part thereof to be used as a brothel.*

For the offence under section 16 of the Road Traffic Act Chapter 68, the prosecution must prove that the 2nd defendant on the stated day as per the charge was driving without being in possession of a valid driving license. On procedural matter, it is incumbent on the police to have served on the defendant the Notice of Intended Prosecution on the 2nd defendant against the offence charged.

Section 34 of the Penal Code Chapter 22 defines “common intention” as follows:

“When a criminal act is done by several persons, in furtherance of the common intention of all, each such persons are liable for that act in the same manner as if it was done by him alone.”

The element of the offences being that the defendants were acting in concert to commit a criminal act. This connotes an existent of a pre-arranged plan or design which the prosecution has to prove or establish either by the conduct or circumstances or any incriminating act committed in pursue of that common design (see *Public Prosecutor vs Rosman Hj Abd Rahman and Razali Hj Abang [1991] 1 JCBD 302*)

To prove all the elements and ingredients of the charges, it is incumbent on the prosecution to prove them beyond reasonable doubt and this burden never shift.

Findings

The crux of the prosecution’s case centers on the credibility of the testimonies of PW₁ and PW₂. Their evidence has been quite straightforward albeit not quite specific on details as to time and dates. The events had happened for sometimes and it is expected that witnesses would find it difficult to remember or recall events that had happened to them a while back. Overall, I find their evidences believable and I have no hesitation in accepting their testimony as the truth. They had been extremely direct and truthful about their previous

work and experiences in Sabah prior to coming to Brunei. Despite the fact that their evidence is in desperate need of elaboration, however, I believe they had given their evidence as it happened.

I believe that both PW₁ and PW₂ are no stranger to the business of offering sexual services to male clients. I believe that it would be difficult for anyone who had never been involved in prostitution to plunge into the business. Obviously, in this case, their hands are tied and were forced to offer sexual services in their attempt to be released of their predicament.

As regards the rest of the prosecution's witnesses, I find it is not necessary to recite some of the other witnesses' testimony in this judgment as much of their evidence is similar. I have considered all their testimony with great care and I have no difficulty in accepting that they are telling the truth. For most part, their testimonies are short but corroborate each other. On the material issue, the PW₁'s (Mary Jane's) testimony is very much corroborated by PW₂, PW₉, PW₆ and PW₁₀. Their evidence points to the fact that the 1st defendant and the 2nd defendant offered them sexual service with PW₁ and PW₂.

When PW₆ was approached by the 1st and 2nd defendant at his workplace asking him to lie to the police about his involvement with PW₁ and PW₂ should the police inquire about the matter, it clearly shows that the defendants had not been truthful in their testimony about the PW₆ involvement with the case and especially so about their involvement with PW₁ and PW₂. I believe PW₆'s testimony that he was the one who had picked PW₁ and PW₂ at the Kianggeh jetty on their arrival from Limbang by boat.

As far as the two houses occupied by the defendants in Salambigar and later in Muara, it was never disputed that the defendants had rented and lived at both houses. Their only argument on the issue of the houses is that it would impossible for them to use the houses for prostitution without the owners knowing what's going on. Despite the 2nd defendant's insistence that this part of the evidence should be taken in their favor, I believe this argument is baseless in that none of the owners claimed to live near the premises and secondly there was no mention by them that they had any knowledge that the premises had been used as a brothel.

The landlords' complaints were merely that the defendants failed to pay the rent and for the other house, the landlord was furious with the defendants for allowing his house in a state of disrepair. I believe throughout the period of time when the sexual activities were in operation in the premises, none of the landlords suspected anything of sort was going on.

In her statement to the court, the 1st and 2nd defendant always maintain that PW₁ is only a friend and there never was any employee and employer relationship between them and that she never ever stayed in their house. But she did however admit that had she not paid the PW₁ her salary, she would not have come back to work with her for another term. Obviously, the 1st defendant contradict herself here.

I believe that the defendants offered PW₄, PW₆, PW₉ and PW₁₀ sexual service with PW₁ and PW₂ at their home. I believe that all along the 2nd defendant knew of this. I believe PW₁ and PW₂'s testimony that they stayed at the defendants' houses without the knowledge of their landlords PW₃ and P₅ even up to the time the defendant defaulted in the payment on the rental and on another occasion when the tenancy was terminated for their failing to abide by the clauses in the tenancy agreement.

I have no hesitation in believing the prosecution's witnesses version of the story over the defendants as being the truth of the matter. I believe that both the defendants were lying when they said they do not really know PW₁ and PW₂ and the latter never stayed at their houses. I believe the 1st and the 2nd defendants had allowed PW₁ and PW₂ to be let for hire for the purpose of prostitution and that both defendants permitted their houses to be use for this enterprise.

I accept PW₁'s testimony that she entered Brunei unlawfully with the assistance of the 1st defendant sometimes in September 2012 soon after her birthday i.e. 21st September and with the knowledge of the 2nd defendant. As well, I accept her testimony that she was smuggled out of the country into Malaysia illegally by the 1st and the 2nd defendants in January 2013. Also, I accept her evidence and PW₂'s, that they were smuggled illegally into the country from Malaysia in November 2013.

Documentary evidence based on the Immigration Department stamps by both the Brunei and Malaysian sides on 1st defendant's passport as exhibited as P26D recorded the 1st defendant on the 25th September 2012 to have entered Limbang and on the same day reentered Brunei. I believe this is consistent with PW₁'s evidence that she was smuggled into Brunei a few days after her birthday which fell on the 21st September.

As well on the 7th January 2013 she exited Brunei via Kuala Lurah and entered Tedungan, Sarawak on the same day. Again, on the 10th January 2013, she exited Labuan and entered Brunei via Serasas Terminal Muara on the same day. These evidence is consistence with the evidence of PW₁.

As regards the defendant's testimony, I find their defense is purely based on denial and they do not offer much explanation. They are holding on to their version of their story without providing much credible explanation on the matter. I find discrepancies in the 1st defendant's testimony in that, in court she said she first met PW₁ in Tawau, Sabah however, in her statement to the police she stated that she knew PW₁ whom she called "Mia" and consider her as her friend from her time in the Philippines. She also stated in her statement that she came to know PW₂ from PW₁.

I find the defendants' witnesses' testimony of DW₃ and DW₄ offer no assistance to the defendant's case. While I accept that the 2nd defendant was quite tied up with football training, I do not accept that the training schedule was so stringent that it didn't leave any room for the 2nd defendant to do other things. I believe that both defendant's smuggled PW₁ out of the country into Malaysia illegally sometimes in January 2013. I also believe that the 1st defendant smuggled PW₁ in September 2012 and again PW₁ and PW₂ into Brunei in November 2013.

Throughout PW₁ and PW₂'s stay at their house; the defendants had solicited clients for them and facilitated them by using their house for this venture. It is difficult to say who is the real mastermind behind this scheme because both the defendants appear to be quite determined to make this venture a success because both had benefited financially from it. In short, I am satisfied that both defendants acted in concert in pursuit of this venture.

As regards the 9th charge, the 2nd defendant never dispute that he was not carrying an invalid driving license. As this is a strict liability offence, the onus is on the 2nd defendant to actually prove that he had a valid driving license at the commission of the offence but he has failed to do so before me in this trial. The documentary evidence tendered by the prosecution suggests that he has no valid license at the time of the accident.

Having scrutinized the evidence as a whole, I believe the prosecution has proven all the charges beyond reasonable doubt and I hereby convict both the defendants accordingly.

Sentences

The defendants in their mitigation pleaded for lenient sentence and sought for the sentences to be back dated to the date of them first remanded in custody. They informed the court of their anxiety about the future of their daughter who is still young and under the care of the Welfare Department.

In passing sentence, I have taken into consideration of the above matter. On record, both defendants are of previous good character although I must say that can have limited effect in a case such as this save for the fact that it means they had not been involved in illegal smuggling of persons or prostitution activities before.

There is no doubt that trafficking and smuggling of human beings or persons in or out of the country is something which the government views as a serious offence as is reflected by the severe sentence i.e. fine not exceeding \$1,000,000, imprisonment for a term not exceeding 30 years and imposition of whipping and with which the courts have to deal frequently with increasing frequency.

In this case, it was clearly a well disguised operation ran by husband and wife. Obviously, the motivation was money but these were committed without much regard to the welfare of the victims here. It is difficult to separate the culpability between the two defendants because both have acted their roles with much prominence to ensure the success of the enterprise. I believe they would have continued to do this for a long time and saw it as a long-haul project had they not been caught. In the case, of *Emediade Bin Bujang v Public Prosecutor (Criminal Appeal No1 of 2015)* and *Public Prosecutor v in Bujang and Sanawadi Bin Sanadin (Criminal Appeal No3 of 2015)*, the Court of Appeal highlighted the fact that;

“People smuggling can be very lucrative for cruel minded greedy criminals who organized it on a large scale”

I believe there is indeed an aggravating feature in the commission of these offences in that the offences were repeated namely that the smuggling was committed once in 2012 and twice in 2013.

As regards the offence of living on the earning of prostitution, despite there is no evidence in this case that PW1 and PW2 were not physically coerced into prostituting themselves, however, there is ample evidence to suggest that they were mentally coerced to do it in order that they would be released of their predicament. I find this to be an aggravating feature in the case.

I take note of the cases and the sentences practice and observations made by the following cases which has come before this court and the Court of Appeal;

*Emediade Bin Bujang v Public Prosecutor (Criminal Appeal No1 of 2015),
Public Prosecutor v in Bujang and Sanawadi Bin Sanadin (Criminal Appeal No3 of 2015),
Sheridah Mohd Ali and Public Prosecutor (Criminal Appeal No8 of 2010,*

Aidah Binti Tengah and Public Prosecutor (Criminal Appeal No18 of 20160

Also in passing sentence, I have considered that there had been a delay in the disposal of this case although not attributed to anybody. The fact that the defendants were unrepresented and were facing serious charges and had to defend the case by themselves is not only a challenge for them but as well for the court.

Bearing in mind all the these factors, I hereby make the following sentences;

For the 1st defendant

1st charge: custodial sentence of 5 years and a fine of \$5000 in default 1 month custodial sentence

2nd charge: 12 months' custodial sentence

3rd charge: 2 months' custodial sentence

4th charge: 5 years 6 months of custodial sentence and fine of \$5,000 in default 1 month custodial sentence

5th charge: 6 years' custodial sentence and a fine of \$5,000 in default 1 month custodial sentence.

6th charge: 15 months' custodial sentence

7th charge; 18 months' custodial sentence

8th charge: 4 months' custodial sentence

I order the sentences on the 1st, 4th and 5th charges to be served concurrently i.e. 6 years' custodial sentence. As well, I order the sentences on the 2nd, 3rd, 6th, 7th and 8th charges to be served concurrently i.e. 18 months but to run consecutively with the sentences of 6 years and the default custodial sentence of the 3 months.

For the 2nd defendant,

4th charge: 5years custodial sentence and a fine of \$5,000 in default 1 month custodial sentence and 1 stroke of whipping

3rd charge: 2 months' custodial sentence

8th charge: 4 months' custodial sentence

9th charge: a fine \$500 in default 1 month custodial sentence

I order sentences on the 3rd and the 8th charges to be served concurrently but to run consecutively to the 5 years' custodial sentence and 2 months' custodial sentence in default of the fine.

In summary, the ***1st and the 2nd*** defendant is to serve a total of ***7 years 9 months*** and ***5 years 6 months of imprisonment sentence and whipping of one stroke*** respectively. The sentence is to take effect from the date of them first remanded.

Dato Paduka Hairol Arni Majid
Judge, High Court