



Public Prosecutor

AND

Noraziah Binti Rosli/Liman

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 31 of 2014)**

**Steven Chong, Ag. C.J.
16 September 2014**

Criminal law – Shoplifting – Involvement of children in the offence justifies custodial sentences.

DPP Dk Didi-Nuraza bte Pg Hj Abd Latiff for the Public Prosecutor/Appellant.
Defendant unrepresented.

Cases cited:

Muhd Kairolizan bin Ahmad v Public Prosecutor [Criminal Appeal No. 25 of 2014].

Public Prosecutor v Md Zulaini bin Hj Sani and Public Prosecutor v Raddyman bin Awg Hj Radin [2005] 2 JCBD 8.

R v Mariconda (1988) 10 Cr. App. R (S.) 356.

Steven Chong, Ag. C.J.:

This is an appeal by the Public Prosecutor against sentence on the ground that it is manifestly inadequate.

On 14 June 2014 in the Magistrate's Court the defendant pleaded guilty to theft contrary to section 380 of the Penal Code.

The Magistrate imposed a fine of \$500 and allowed a period of 8 weeks for payment.



Shortly stated the admitted facts were that on the afternoon of 8 June 2014 the defendant, and 2 of her 3 children aged 12, 15 and 17, went to a supermarket at Times Square where she stole toiletries valued at about \$123. The theft by the defendant was captured on CCTV. The defendant used one of her children to carry one of her bags containing the stolen items out of the supermarket without paying. The defendant was stopped by security guards outside the supermarket and handed over to the police.

Dk Didi-Nuraza relied on the decision of this court in *Public Prosecutor v Md Zulaini bin Hj Sani and Public Prosecutor v Raddyman bin Awg Hj Radin* [2005] 2 JCBD 8 in submitting that the Magistrate ought to have imposed a custodial sentence.

Those two cases involved an element of house-breaking and must be distinguished from the case at hand which concerns shoplifting.

A case of shoplifting is *Muhd Kairolizan bin Ahmad v Public Prosecutor* [Criminal Appeal No. 25 of 2014] where the Chief Justice upheld a sentence of 3 months' imprisonment imposed by the Magistrate on the defendant who was convicted on his own plea to the theft of 13 tubs of "Nutella" valued at \$114. The defendant had a prior theft conviction.

Returning to the facts of the present case the aggravating feature prominent is that the defendant had involved one of her children in the commission of the offence. Had it not been for this factor I would have taken a different view of the offence considering the clear record of the defendant and the stolen items are not of substantial value.

The involvement of children in shoplifting justifies custodial sentences: see *R v Mariconda* (1988) 10 Cr. App. R (S.) 356. Young children are at an impressionable age and likely to be strongly influenced by the behaviour of their parents.

For this reason I agree with the submission of the Deputy Public Prosecutor that the sentence of the court below is unduly lenient. I think a sentence of 3 months' imprisonment would be appropriate upon conviction after a trial. As the defendant pleaded guilty to the offence at the first opportunity and is being re-sentenced on appeal, I think an appropriate sentence is 1 month's imprisonment.



I therefore allow the appeal, quash the sentence of a fine of \$500 imposed by the Magistrate and substitute that with 1 month's imprisonment.

DATO PADUKA STEVEN CHONG
Acting Chief Justice