

Labang Anak Kedumol

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No.32 of 2014)

Dato Seri Paduka Hj Kifrawi, C.J.
24th October, 2014.

Appellant In Person.
DPP Ratno Eddy Sophian Bin Hj Zaidi for Public Prosecutor.

Cases cited in the Judgment:

Amran Bin Hj Sapar v Public Prosecutor (High Court Criminal Appeal No. 15 of 2012)
Bidin Bin Kahar v Public Prosecutor (High Court Criminal Appeal No.29 of 2008)
Edi Sumono Kadimin v Public Prosecutor (High Court Criminal Appeal No.30 of 2008)
Margaret Usop v Public Prosecutor (High Court Criminal Appeal No.21 of 2008)
Wong Ha Hwa v Public Prosecutor (High Court Criminal Appeal No.38 of 2010)
Wong Yung Lee (High Court Criminal Appeal No. 32 of 2008)

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

1. The Defendant was charged on 9/7/2014 as follows:

That you on the 6th day of June 2012, at about 0615 hours, inside a vehicle bearing registration number BK5002 (Mitsubishi Pajero) at the outward section of Kuala Lurah Control Post in Brunei Darussalam, were knowingly concerned in an attempt at fraudulent evasion of a prohibition of export applicable to Diesoline under the Customs [Prohibition and Restriction on Imports and Export][Amendment] Order 1978, to wit, 98 litres of diesoline and you have thereby committed an offence under section 140(1)(g) of the Customs Order 2006 punishable under section 140(1)(iv) of the same.

Penalty Section 140(1)(iv) of the Customs Order, 2006

[A] In the case of prohibited goods, for the first offence, to a fine or not less than \$10,000 and not exceeding \$500,000, imprisonment for a term not exceeding 3 years, or both; and

[B] For a second or subsequent offence, to a fine of not less than \$20,000 and not exceeding \$500,000 imprisonment for a term of not less than 6 months and not exceeding 5 years or both

2. He pleaded guilty to the Charge and admitted to the following statement of facts:

1. The defendant is a male Brunei permanent Resident who resides at No.4, Kg Kenua, Temburong in Brunei Darussalam. He is unemployed and is married with 4 children.
2. On the 6th June 2012, at about 0615 hours, the Customs Preventive Officers, at the outward section of Kuala Lurah Control Post in Brunei Darussalam had stopped a vehicle bearing registration number BK 5002, Mitsubishi Pajero. The vehicle was driven by the Defendant himself on that day.
3. Investigation was carried out on the said vehicle where the fuel was pumped out 98 litres of Diesel, more than the maximum capacity of the fuel tank i.e. 92 litres. The Defendant witnessed the pumping out of the fuel.
4. The Defendant and the said vehicle were then brought to the ICD [Depot Container of the Port Department] in Jalan Kuala Lurah for further investigation. Notice of seizure was duly issued to the Defendant for all the seized items which was then signed by the Defendant.
5. Upon investigation the Defendant admitted that he had bought Diesel at Beribi Fuel Station, for \$26.00 before.
6. It was confirmed the day by 2 experts [Mr Tatsuo Hamano-Metal Tech Limited and Mr Tatsuya Yokoi-Mitsubishi Motor from Japan] that upon examination of the fuel tank, they discovered that the said fuel tank was inflated. [as report no: 01 attach]
7. The Defendant had attempted to export without a license by the Controller of Customs, 98 litres of Diesoline.
8. The Prosecution is applying for all items listed in the Notice of Seizure to be forfeited to the State.
9. On record the Defendant has no previous convictions.

The Senior Magistrate took into consideration as a mitigating factor that the Defendant was a first offender. He was fined \$10,000 in default of payment of fine 6 months imprisonment. The Senior Magistrate also ordered for the seized items to be forfeited. He ordered for \$6,000 to be paid forthwith and the balance to be paid by instalment of \$250 per month with effect from end of August 2014.

3. The Defendant appealed to this Court. He was not happy with the Order of forfeiture by the Court, in particular, he wanted his car to be released. He bought the car for \$3,000 and he wanted to use it to tow his boat. The DPP submitted that the Court, in several cases, namely –

1. *Bidin Bin Kahar v Public Prosecutor* (High Court Criminal Appeal No.29 of 2008)
2. *Edi Sumono Kadimin v Public Prosecutor* (High Court Criminal Appeal No.30 of 2008) and *Wong Yung Lee* (High Court Criminal Appeal No. 32 of 2008)
3. *Margaret Usop v Public Prosecutor* (High Court Criminal Appeal No.21 of 2008)
4. *Wong Ha Hwa v Public Prosecutor* (High Court Criminal Appeal No.38 of 2010)
5. *Amran Bin Hj Sapar v Public Prosecutor* (High Court Criminal Appeal No. 15 of 2012)

have decided that the applications for the return of the vehicles were dismissed. The sentences were meant to deter smuggling of subsidized diesel and also to stop the dangerous use of modified fuel tanks on motor vehicles to carry large quantities of diesoline.

4. I agree with the DPP that the Courts have taken a serious view of this type of offence. It is, in the public interest that the sentences imposed are of sufficient severity in order to have a deterrent effect.

For the above reasons, I dismiss the appeal.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice