

Public Prosecutor

AND

Muhammad Izzat Bin Haji Said

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 9 of 2020)**

Steven Chong, C.J.
30 April 2020

Assault by throwing a punch – Mischief by causing damage to car – Appropriate sentence.

DPP Raihan Nabilah Binti Hj Ahmad Ghazali for the Public Prosecutor/Appellant.
Respondent unrepresented.

Steven Chong, C.J.:

This is an appeal against sentence by the Public Prosecutor.

Charges

In the Magistrate's Court the Respondent faced eight charges under the Penal Code: assault contrary to section 352 (1st Charge) and mischief contrary to section 426 (2nd to 8th Charges). He was convicted after a trial on the 1st Charge. Guilty pleas were entered on the 2nd to 8th Charges.

Magistrate's sentence

The following sentences of imprisonment were imposed: 1st Charge: one month; 2nd Charge: 3 months; 3rd Charge: one month; 4th Charge: 3 months; 5th Charge: 3 months; 6th Charge: 3 months; 7th Charge: 3 months; and 8th Charge: one month.

Having regard to the principle of totality the Magistrate ordered both concurrent and consecutive sentences resulting in an aggregate sentence of 8 months.

Submissions

DPP Raihan Nabilah Binti Hj Ahmad Ghazali submits that: (a) the sentences individually on the mischief charges relating to causing damages to five cars, i.e., the 2nd, 4th, 5th, 6th and 7th Charges were unduly lenient; and (b) the total sentence of 8 months was manifestly inadequate.

I agree on both counts.

Background facts

Shortly stated the facts were that on the morning of 22 November 2019 the Respondent went to the café at the Al-Afiah Hotel where he had a buffet breakfast. When the Respondent was asked to pay for his meal he falsely claimed that it would be paid by a group of customers who were in the café at the time. The Respondent became angry when the manager of the café pressed him for payment. He threw a punch at the manager who was able to avoid being hit. After other customers intervened the Respondent stopped the assault.

Regrettably, that was not the end of the episode. The Respondent stormed off to the lobby of the hotel where he smashed a glass ornament by throwing a vase at it before exiting the premises and going on a rampage smashing the windows of five cars parked nearby using a metal pole, a brick and a rock.

The Respondent is aged 34 and he is unemployed. This is not his first brush with the law. He was previously convicted of a theft offence in 2006.

The individual sentences

Section 426 of the Penal Code provides that whoever commits mischief shall be punished with imprisonment for a term not exceeding 2 years, fine or both.

A car, as the DPP rightly pointed out, is essential for transport in Brunei Darussalam. The section 426 mischief offences in relation to causing damages to the five cars resulted not only in financial loss but great inconvenience to their owners having to carry out repairs before the vehicles could be used.

In my judgment, unless there are exceptional circumstances, the gravity of this kind of offence warrants a starting point prison sentence of 6 months. A sentence of 4 months would be appropriate on a guilty plea.

Turning to the section 352 assault offence, I think the sentence of the court below of one month is also unduly lenient. The Respondent contested the charge and was convicted after a

trial. It was fortuitous that the manager of the café avoided the Respondent's punch. While the assault itself is not one of the most grave assaults the seriousness of the offence lies in the fact that it was directed towards an employee in the service industry doing his job. Violence of any kind towards such persons must be met by sentences that will deter.

Aggregate sentence

The Respondent appears to be an aggressive man who has no qualms resorting to violence to intimidate others. Specifically, a substantial prison sentence is necessary to provide him with the opportunity to reflect on his unacceptable behaviour and to reform.

Generally, if lawless conduct in public places of this kind is to be adequately discouraged and public confidence maintained a prison sentence of sufficient severity must be imposed.

I see no reason why consecutive sentences should not be imposed in the present case since the offences involved different victims and there was sufficient time for reflection between each offence.

Conclusion

For the foregoing reasons I allow the appeal and order as follows:

- (i) Sentence of one month on the 1st Charge is quashed and substituted with a sentence of 2 months.
- (ii) Sentences of 3 months on the 2nd, 4th, 5th, 6th and 7th Charges are quashed and substituted with sentences of 4 months.
- (iii) Sentences on all 8 Charges are to run consecutively.
- (iv) Aggregate sentence of 8 months is quashed and substituted with a sentence of 2 years.

DATO SERI PADUKA STEVEN CHONG
Chief Justice

