

Zaini Bin Hj Mirasan
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 2 of 2024)

Steven Chong, C.J., Lunn and Sir Peter Gross, JJA
16th June 2025.

Criminal law – Cheating – Forgery - Sentence

Applicant In Person.
DPP Nurul Fitri Kiprawi for the Public Prosecutor.

Cases cited:

Mir Basharath Ahmed v Public Prosecutor [Criminal Appeal No. 5 of 2022]
Ruhaya Binti Mohd Razali v Public Prosecutor [Criminal Appeal No. 9 of 2018]

Steven Chong, C.J.:

Introduction

1. On 18 July 2020, in the Intermediate Court, the Applicant claimed trial to thirteen charges of cheating, contrary to section 420 of the Penal Code (the 1st to 13th Charges). Initially, he pleaded guilty to a related charge of forgery under section 468 of the Penal Code (the 14th Charge). However, during an adjournment granted to allow the Prosecution time to prepare the Statement of Facts, the Applicant sought to withdraw his guilty plea. Upon resumption of proceedings, Judge Radin Safiee Radin Mas Basiuni allowed the Applicant's application to retract his plea of guilt.
2. Following a full trial, on 7 March 2023, the Applicant was convicted of ten out of the fourteen charges, specifically nine charges of cheating (the 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 12th and 13th Charges) and one charge of forgery (the 14th Charge). He was acquitted of the 1st, 9th, 10th, and 11th Charges.

3. A total sentence of 6 years and 6 months' imprisonment was imposed. The Applicant now seeks leave to appeal out of time against the sentence imposed.

The facts

4. Briefly stated, the circumstances underlying the offences are as follows. The Applicant, a former educator employed by the Ministry of Religious Affairs, retired from service in 2017. The complainant, Mr Menon, is an Indian national who has resided in Brunei Darussalam for approximately 18 years and is engaged in business activities.
5. In 2012, the Applicant became acquainted with Mr Menon and learned of his desire to obtain permanent residency in Brunei Darussalam. Exploiting this knowledge, the Applicant falsely represented to Mr Menon that he was able to assist with the permanent residency application process. Relying on their friendship and the Applicant's representations, Mr Menon readily agreed to the Applicant's offer of assistance.
6. Over a period of approximately four years, the Applicant dishonestly induced Mr Menon to part with various sums of money on multiple occasions, with individual amounts ranging from \$350 to \$7,000. In total, Mr Menon was deceived into handing over approximately \$28,000. As part of his deception, the Applicant made use of forged documents and invoked the names of prominent individuals, including a "*Pehin*", to lend credibility to his claims.
7. By 2016 or 2017, after enduring repeated delays and receiving unsatisfactory explanations from the Applicant, Mr Menon's suspicions were aroused. Upon making enquiries with the Immigration Department, Mr Menon discovered that no application for permanent residency had ever been filed on his behalf. Acting on advice, Mr Menon lodged a report with the Anti-Corruption Bureau, and subsequent investigations led to the Applicant's arrest.

The sentence

8. In assessing the appropriate sentence for the cheating offences, the Judge was guided by the decision of this Court in *Mir Basharith Ahmed v Public Prosecutor* [Criminal Appeal No. 5 of 2022]. In that case, the accused was convicted after trial on six counts of cheating involving a total sum of \$19,500. The High Court imposed a sentence of 2 years and 6 months' imprisonment for each charge. One of the sentences was ordered to run consecutively, resulting in a global sentence of 4 years and 8 months' imprisonment after a reduction of 4 months was granted on account of prosecutorial delay. The sentence, as adjusted, was upheld on appeal.

9. Applying the sentencing benchmark established in *Mir Basharith Ahmed*, the Judge in the present case imposed a sentence of 2 years and 6 months' imprisonment in respect of each charge.
10. In respect of the forgery offence, the Judge referred to the decision of this Court in *Ruhaya Binti Mohd Razali v Public Prosecutor* [Criminal Appeal No. 9 of 2018], where a sentence of 3 years' imprisonment following conviction after trial for forgery was affirmed. Consistent with *Ruhaya*, the Judge imposed a sentence of 3 years' imprisonment for the forgery charge.
11. The Judge directed that the sentences for the 2nd and 5th Charges for cheating, together with one year of the sentence for the 13th Charge, be served consecutively, resulting in a total sentence of 6 years' imprisonment for the cheating offences. The sentence of 3 years' imprisonment for the forgery offence was also ordered to run consecutively, bringing the aggregate sentence to 9 years' imprisonment.
12. Applying the principle from *Mir Basharith Ahmed*, the Judge considered the delay of two years in the prosecution of the offences warranted a reduction of 6 months' imprisonment. Taking a step back and having regard to the principle of totality, the Judge made a further reduction of 2 years, thereby arriving at a final aggregate sentence of 6 years and 6 months' imprisonment.

The appeal

13. The Applicant seeks a reduction in sentence on several grounds. He is 62 years old and in poor health suffering from anxiety, depression, and hypertension. He further submits that he has familial responsibilities, with a wife and five children, who are dependent on him. The Applicant states that his wife, a national of the Philippines, has since returned to the Philippines with their children, as they faced considerable hardship living in this country in his absence. He also informs the Court that his mother passed away recently.
14. The Prosecution submits that the sentence imposed on the Applicant was both appropriate and commensurate with the seriousness of the offences. The Prosecution further contends that the grounds of appeal raised by the Applicant do not disclose sufficient merit to warrant any appellate interference.

Decision

15. In our view, the individual sentences imposed for the offences of cheating and forgery fall within the appropriate sentencing range for offences of this nature. The key issue for determination is whether the overall sentence was manifestly excessive.
16. It is evident that the Judge gave due consideration to both the delay in prosecution and the principle of totality in determining the final sentence. While the Applicant's age and

personal circumstances, including his responsibilities towards his wife and five children, are acknowledged, they are not so exceptional as to merit a reduction in sentence, given the gravity of the offences.

17. Having regard to the repeated nature of the offending over an extended period, the total sum of money dishonestly obtained, and the breach of trust involved in the exploitation of the Applicant' friendship with the complainant, we are satisfied that the overall sentence was not excessive, let alone manifestly so.
18. Although the Judge made clear that the overall sentence to be imposed on the Applicant was 6 years and 6 months' imprisonment, he did not reflect that appropriately in the individual orders of sentence imposed. It is necessary that appropriate orders are made.
19. Accordingly, for that reason only we allow the application for leave to appeal.
20. We quash the order made by the Judge that the sentence of 3 years' imprisonment imposed in respect of the 14th Charge be served consecutively to the sentences of imprisonment imposed in respect of the 2nd Charge and the other charges. In its place, we order that 6 months of the sentence of imprisonment imposed in respect of the 14th Charge be served consecutively to the total sentence of imprisonment imposed in respect of the 2nd, 5th, and 13th Charges. We make no other order.
21. There being no merit in the submissions, the appeal is otherwise dismissed.



STEVEN CHONG, C.J.



LUNN, J.A.



SIR PETER GROSS, J.A.

