

**IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM**

**CRIMINAL APPEAL NO. 2 OF 1997**

DULATIP BIN MERUSIN

V

PUBLIC PROSECUTOR

Before : FUAD, P.; HUGGINS, J.A. AND CONS, J.A.

Date of Hearing : 14TH APRIL, 1997.

Date of Judgment : 14TH APRIL, 1997.

**J U D G M E N T**

Huggins, J.A.

The Appellant was a motorcar salesman. He did not pay over the moneys he received to his employer but kept them as his own. He did not deny receipt of these moneys but maintained that he was entitled to keep them as loans in respect of the commissions which were payable to him.

The judge found that the employer's rules as to payment of moneys received had been clearly explained to all the salesmen and that no loan such as that alleged by the Appellant had been agreed. The Appellant's contention was that it was a loan to be implied from the fact that the employer's account of transactions with him showed credits of commissions he had earned and debits of the moneys received by him and not paid over. The total of the sums particularised in the six charges was \$107,471.

The Appellant was sentenced to 3 months' imprisonment consecutive on each of these charges and he now appeals against those sentences.

No ground of mitigation was advanced before the trial judge but it is to be noted that the

offences were committed between 12th April 1988 and 16th December 1991. Although the Appellant did not admit the offences he did from the outset admit receipt of the money. However, since the offences came to light the attitude of the Appellant has been that his employer should have kept him in their employment until he had earned enough commissions to pay back the money he had misappropriated.

Before us the Appellant has said that he has a government house on which he is required to make a monthly payment and that his wife is unemployed and that he is the only regular wage-earner. There are four children of the marriage, three of whom are still at school and one is very young. He points out that this is his first offence.

A very large sum of money was involved here and criminal breach of trust is always a serious matter. In our view, the sentences imposed by the judge were certainly not manifestly excessive and the appeal must be dismissed.

SIR ALAN HUGGINS  
Judge, Court of Appeal

KUTLU TEKIN FUAD  
President, Court of Appeal  
Appeal

SIR DEREK CONS  
Judge, Court of

Appellant

in person.

Norhashimah

for Public Prosecutor.