PUBLIC PROSECUTOR

Vs

SHAHIRANSHERIFFUDDIN BIN SHAHRANI MUHAMMAD

(BYIC No: 00-278239)

In the Magistrate's Court of Brunei Darussalam

Criminal Trial No. 843 of 2017

DPP Muhammad Qamarul Affyian bin Abdul Rahman for Public Prosecutor.

Defendant in absentia represented by Pg Md Khairul Nizam bin Pg Hj Mohd Yassin.

SENTENCING

The Defendant was convicted in absentia of a single charge under s.4(1)(c) of the Sedition Act. The punishment provided for the offence is a fine of $5000 imprisonment for 2 years and for a subsequent offence, a fine and imprisonment for 3 years. Defence Counsel, on behalf of the Defendant submits that the Defendant is a first offender and did not intend for the comments to be seditious.

As mentioned in my Judgment, this is only the 2nd prosecution of a sedition charge in Brunei and is therefore a rarely encountered area of the law.

The fact that there have been only two prosecutions under the Sedition Act, is, in my view, evidence of the fact that national harmony has, for the most part, been achieved by His Majesty's Government guided by the National Philosophy of Malay Islamic Monarchy, the MIB Concept. The MIB Concept has been assimilated in the country's administration, management, laws and development as well as in education and also in the daily lives of citizens and residents of Brunei Darussalam.

Sedition laws in neighbouring jurisdictions are comprehensive laws in curbing seditious actions with a view to preserving peace and harmony. There are significantly more prosecutions in those

jurisdictions compared to Brunei and despite much debate about retention of the laws of sedition in both Malaysia and Singapore, the Sedition Act in both jurisdictions remains.

These observations lead me to conclude that the national concept of Malay Islamic Monarchy and our Sedition laws, both seek the same objective, and that is, to maintain peace and stability in Brunei Darussalam.

It is important to note that even in Malaysia where a constitutional right to freedom of expression exists, Raja Azlan Shah J in **PP vs Ooi Kee Saik & Ors [1971] 2 MLJ 108** said:

'We must resist the tendency to regard right to freedom of speech as self subsistent or absolute. The right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases as long as he does not commit a breach of the law. If he says or publishes anything expressive of a seditious tendency, he is guilty of sedition. The Government has a right to preserve public peace and order, and therefore, has a good right to prohibit the propagations of opinions which have a seditious tendency.'

For the purposes of this sentencing, I rely on his observations in the same judgment where he said:

'Our sedition law would not necessarily be apt for other people, but we ought to always remember that it is a law which suits our temperament.'

The Defendant in this case had posted a seditious publication on his personal Facebook page with the following content:

a) We must dissent #brunei
b) Fuck you MORA, Fuck you
c) Go back to your stupid useless ministry and start investigating why all the sexual offenders are Ugama teachers instead of trying to destroy people's livelihoods like this
d) Dear Bruneians, why are we letting these fuckers destroy our lives and the future of our kids.

I turn to the case of **Public Prosecutor v Koh Song Huat Benjamin and another case [2005] SGDC 272**.

Whilst this case dealt with seditious acts which promoted racial disharmony and the defendants in that case posted anonymously (unlike the present case), para 8 of DJ Magnus' Judgment is particularly poignant.

He said:

'The virtual reality of cyberspace is generally unrefereed. But one cannot hide behind the anonymity of cyberspace, as each the accused has done, to pen diatribes against another race or religion. The right to propagate an opinion on the Internet is not, and cannot be, be an unfettered right. The right of one person's freedom of expression must always be balanced by the right of another's freedom from offence, and tampered by wider public interest

considerations. It is only appropriate social behaviour, independent of any legal duty, of every Singapore citizen and resident to respect the other races in view of our multi-racial society. Each individual living here, irrespective of his racial origin owes it to himself and to the country to see that nothing is said or done which might incite the people and plunge the country into racial strife and violence. These are basic ground rules. A fortiori, the Sedition Act statutorily delineates this redline on the ground in the subject at hand. Otherwise, the resultant harm is not only to one racial group but to the very fabric of our society.

The two accused persons have crossed the redline by wantonly breaching these ground rules.'

Applying these observations to the case at hand, the Defendant's social behavior in posting injective and pejorative remarks which were highly inflammatory on a social media platform, openly directing it to the Ministry of Religious Affairs, a Ministry of His Majesty's Government, and hashtagged with #brunei to reach a wider audience, can similarly be said to have crossed the redline and breached the ground rules.

I also reiterate my reliance on what Stratchey J in **Queen Express v Balangagadhar Tilak ILR [1897] 22 Bom 112** said:

'But if he goes on beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of its readers – as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people – then he is guilty under the section, and the explanation will not save him.'

I also rely on the case of **Isa bin Hj Jaya and 2 Ors v PP [Criminal Appeal No 10 of 2006]**, where Judge Dato Paduka Steven Chong (as he then was), found that case to be a serious case of sedition where the aggravating feature was that the seditious acts concerned the status and position of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

I would take the same view in this case where the seditious acts concerned the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and where the seditious acts have been found to lower or adversely affect the standing or prominence of the National Philosophy of Melayu Islam Beraja (known in English as Malay Islamic Monarchy).

The Defendant was given an opportunity to remove the offending posting immediately by his superior. He chose to take his time in taking down the posting resulting in a significant number of increased shares. This lack of remorse and contrition can only be an aggravating factor in the circumstances.

There is nothing much to be said in the Defendant's favour. His obstinacy in defending his position led him to abscond, fleeing Brunei to seek asylum in Canada before judgment was due to be delivered on the 14th November 2018.

On this issue, I am satisfied that the Defendant's absconding is a serious aggravating factor. I am guided by the Singapore case of **Cheang Geok Lin [2018] SGHC 05** where Sundaresh Menon CJ at para 30 of the judgment found that:

'a disregard of authority and a lack of remorse would call for the imposition of a higher sentence. This was consistent with the approach taken by Chao Hick Tin JA in Lin Lifen v Public Prosecutor [2016] 1 SLR 287 at para 50.The appellant in that case was initially charged in 2001 and 2002 for using a forged degree certificate and having made false statements in her applications for PR status. She was released on bail and permitted to travel out of the jurisdiction. She did not return to answer the charges. Chao JA considered the fact that the appellant had absconded while out on bail to be an aggravating factor because, among other things, it revealed her manifest intention to frustrate the proper operation of the law."

The observations of Yong Pung How CJ in **Lewis Christine v PP [2001] 2 SLR (R) 131** at para 39 is also useful:

'Thirdly, the appellant's thwarted escape showed her complete contempt for authority. The message must be brought home to offenders that it does not pay to abscond – and accordingly, those who attempt to do so must be dealt with more harshly when proven guilty and convicted.'

The rationale behind such an approach is explained in Kow Keng Siong, Sentencing Principles in Singapore (Academy Publishing, 2009) at para 20.045 as follows:

'… Apart from general deterrence and expressing reprehension over the offender's contempt of authority… other reasons why the fact of absconding is an aggravating factor are (a) police resources have to be expended in trying to locate the fugitive…; and (b) in the case where the offender has been charged in court, the court's time would have been wasted and the inconvenience of setting in train the process of arresting him would have been caused…'

In a community where values under the National Philosophy of Malay Islamic Monarchy is ingrained in everyday life and where supreme authority over the state is vested in the Sultan, the public interest lies in safeguarding the National Philosophy which has the ultimate aim of preserving both religious and ethnic culture for generations to come.

It is important, therefore, that any sentence passed must be of general deterrence. The Courts must send a message to the public at large that the Defendant's actions are not one to be followed.

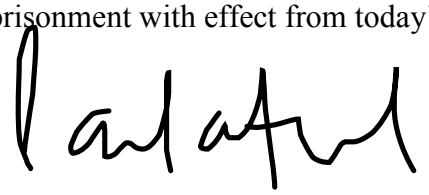
A custodial sentence in the present case would not be inappropriate given firstly, the extent of the use of profanity in an already seditious comment against His Majesty's Government and secondly, given the blatant disregard of the underlying values and principles of the MIB Concept, which have formed the civic virtues of Bruneians in facilitating a healthy society.

I rely on the case of **Lim Eng Guan v Public Prosecutor [2002] 2 MLJ 577** where the Federal Court of Malaysia upheld a sentence of 18 months passed by the Court of Appeal on the offender

for sedition on appeal from the High Court. The appellant was convicted after a trial and the penalty for the offence was 3 years' imprisonment or a fine of $5000.

The present case serves as a timely reminder that one cannot and should not utilize cyberspace, (whether anonymously or not) to pen or publish seditious articles as such acts will not be tolerated. Technological advances have made the propagation of anti-Government sentiments all over the world even more pernicious today. Where previously a voice of intolerance would only be heard by those few individuals who come into direct contact of the person conveying his message, today, a single post can be disseminated to hundreds of thousands of people in the blink of an eye. On that note, this case must also be seen as a reminder to all that because the reach of an internet audience is so wide, one must be mindful of being socially responsible in putting up posts on social media platforms.

Although the Prosecution have submitted that they seek a low custodial sentence or the imposition of a high fine in sentence, after careful consideration of the facts of the present case including the factors highlighted above, giving due consideration to the authorities mentioned, and in particular the aggravating factors, I see no reason to depart from a Brunei case precedent which has already set the tariff for a 12 month custodial sentence following a guilty plea. In this present case, the Defendant was convicted after trial, the charge in this case involved two separate limbs of seditious intention and the Defendant absconded whilst on court bail. That being so, I sentence the Defendant to 18 months imprisonment with effect from today's date.



LAILATUL ZUBAIDAH BINTI HAJI MOHD HUSSAIN
Senior Magistrate
12th December 2019