

SAHRUM BIN HAJI DAYMAN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

17th June 2021

Headnote: Sentence – Possession of arms and ammunition Rule 17(1) Arms and Explosives Rules – Sentence of 7 years and 3 strokes appropriate before consideration of “delay” – inexcusable and inordinate delay – discount of 18 months.

Appellant in person

DPP Pg Norsuzanawati binti Pg Hj Abas and DPP Ratno Eddy Sophian bin Hj Zaidi of Public Prosecutor for Respondent

Case cited in the judgment

Sulaisah bin Haji Masri vs Public Prosecutor (Criminal Appeal No 1 of 2006)

Burrell, P.:

This appellant was D3 on a charge sheet containing 5 charges. Charges 1, 2 and 3 concerned the first two defendants. The appellant faced charges 4 and 5 on his own.

The 4th charge was an offence of possession of explosives, namely 12 bullets, without a licence, on 28th January 2013 contrary to Rule 17(1) of the Arms and Explosives Rules. The 5th charge was also contrary to Rule 17(1) together with s.109 of the Penal Code Chapter 22 that he had abetted D1 to possess a homemade rifle without a licence sometime in 2012 and 2013.

He appeared before Judge Radin Safiee in the Intermediate Court and was convicted after trial of both of the above offences on 20th July 2020. D1 had pleaded guilty on an earlier occasion and D2 had been acquitted in an earlier trial. The appellant was sentenced, for both charges to a total of 7 years imprisonment and 3 strokes. He now appeals against that sentence.

Facts

The material facts, as found by the judge, were that 12 bullets found in a small bag in a car belonging to the appellant belonged to him. The discovery had been made in the

course of investigations being made by the police following a drugs raid carried out on 19th January 2013 involving a car owned by D1. The 12 bullets found in the appellant's car formed the subject matter of the 4th charge.

The judge found that on an earlier occasion, the appellant and D1 had met for a drugs transaction. It was not the first time they had met. Similar transactions had taken place 4 or 5 times beforehand. D1 was selling a quantity of drugs to the appellant. The appellant did not pay at the time but instead D1 accepted, as security for payment, a homemade rifle from the appellant, the subject matter of the 5th charge.

Sentence

The judge commenced his sentencing remarks with these words, *"looking at the body of cases for these two kinds of offences, the starting points have ranged from 8 years and above."*

He then selected a starting point for both offences of 6 years and 6 months and 3 strokes for each offence deciding in his words *"to follow the lower tariff that the High Court had approved."* We agree with the judge's starting point.

In order to achieve a final sentence that properly reflected the appellant's overall criminality he said that he had decided that one year on charge 5 shall be served consecutively to the 6 years and 6 months making a total of 7 years 6 months.

However, he then reduced it by a further 6 months to 7 years after considering the principle of totality. Having been convicted after trial no further discounts were appropriate.

It seems to us that by this approach the judge adjusted the sentence twice for totality. When making a sentence partly consecutive a judge has totality in mind. If the judge in the present case had formed the view that the final overall sentence was to be 7 years it would have sufficed to make 6 months of the 5th charge consecutive.

In any event we now turn to the Respondent's submission before deciding whether the judge's final sentence was manifestly excessive or not.

Respondent submission

In the case of **Sulaisah bin Haji Masri vs Public Prosecutor (Criminal Appeal No 1 of 2006)**, a similar case to the present appeal, a sentence of 6 years and 6 months with 6 strokes was upheld except that the strokes were reduced to 3. The Respondent submits that as the present case involved 2 separate charges the final sentence of 7 years cannot be said to be manifestly excessive.

Subject to the issue of delay, to which we now turn, we agree. These are serious offences. Their seriousness is marked by the fact that a single offence carries a minimum sentence of 5 years imprisonment and 3 strokes; a fact noted by the judge when sentencing.

Delay

Surprisingly, the judge made no comments about delay in this case when sentencing. The appellant had been first charged on 30th January 2013. The matter was first listed for trial on 3rd January 2017. The matter had to be adjourned again because the judge who was due to hear it became unavailable. It eventually started on 27th September 2018 and concluded nearly 20 months later on 13th July 2020. At the outset it was estimated to be an 8 day trial. That turned out to be a somewhat optimistic estimate.

The trial was conducted on 26 days over the 20 month period, of which the appellant's evidence took less than half a day. The sole issue was whether or not the appellant had been in possession of the ammunition and homemade rifle at the material time.

In the original Respondent's written submission "*no information*" was stated to be available for the period between 2013 and 2017. Further enquiries were made and on 16 June 2021 (the day before the appeal hearing) the court was provided with a detailed and comprehensive chronology of the whole period between 2013 and 2020.

We note the following:

- (i). There were a total of 79 days on which the case was listed for a variety of different reasons over a total period of 7 years and 6 months.
- (ii). There were many applications for adjournments from the lawyers representing D1 and D2 between 2013 and 2018. All were granted. This appellant (D3) was unrepresented.
- (iii). Prior to trial the case was listed "*for mention*" 34 times.
- (iv). None of the delay can be attributed to any fault on the part of the appellant.

DPP Norsuzanawati has very properly acknowledged that a discount on sentence is appropriate in this case and that the judge was in error in failing to refer to it. It is acknowledged that this court has been provided with more information and detail about the delay than was available at the time of sentencing.

Unexplained lengthy delays and unnecessarily protracted litigation will in almost all cases, cause this court to make a reduction in sentence. Inordinate and inexcusable delays cause inevitable anxiety.

We discount the sentence by 18 months because of the delay.

Order

Appeal allowed to the extent that the 7 years sentence is reduced to 5 years 6 months. The 3 strokes will remain part of the sentence

Seagroatt, J.A.

Burrell, P.

Lunn, J.A