

Hjh Roziah Binti Haji Talip

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 18 of 2019)**

Before: Steven Chong, C.J., Burrell, P., and Seagroatt, J.A.
8th June, 2021.

Criminal law – Criminal breach of trust – Money laundering – Sentence – Discount for delay to be applied after and not before one third discount for guilty plea.

Appellant In Person.

DPP Muhammad Qamarul Affyian Bin Abd Rahman for Public Prosecutor.

Cases cited in the Judgment:

R v Barrick (1985) 7 Cr.App.R (S.) 142

Public Prosecutor v Purwanti Jong [Criminal Appeal No. 22 of 2016]

Mohammad Zuraiman Bin Haji Jaman v Public Prosecutor [Criminal Appeal No. 20 of 2018]

Steven Chong, C.J.:

Introduction

On 7 November 2019 in the Intermediate Court the appellant pleaded guilty to 15 charges: one charge of criminal breach of trust contrary to section 408 of the Penal Code and 14 charges of money laundering contrary to section 3(1)(b) of the Criminal Asset Recovery Order (“CARO”).

The Judge imposed an aggregate sentence of 4 years 8 months’ imprisonment.

This is the appellant’s appeal against that sentence.

The facts

The facts taken from the prosecution’s Statement of Facts and admitted by the appellant without qualification were as follows. In 2015 the appellant was the Station Manager of the

Stesen Minyak Tabung Amanah Islam Brunei (*“the filling station”*) and had been employed in that position for 10 years. She was entrusted with the calculation and the handing over of the sales money to G4S to be deposited in the bank account of the filling station with Bank Islam Brunei Darussalam (*“the BIBD account”*).

Sometime in October 2015 the accountant of the filling station discovered a discrepancy between the amount of sales and the amount of money deposited into the BIBD account for the month of September 2015. There was a shortfall of \$10,000 in the bank deposit. A police report was made.

After arrest the appellant admitted to the police that from January to September 2015 on 12 separate occasions she misappropriated between \$200 and \$36,434.61 from the sales of the filling station. In total the appellant stole \$163,800.11.

The appellant further admitted that on 14 separate occasions from April to June 2015 she used the stolen money to remit sums of between \$2,150 and \$10,000 to several foreign recipients purportedly for *“tax payment”* for the delivery of *“parcels”* to Brunei from an *“unknown person”*. The total amount remitted was \$105,023.72.

No restitution was made by the appellant.

The Judge’s approach to sentencing

In relation to the criminal breach of trust offence the Judge decided on a starting point sentence of 4 years 6 months’ imprisonment. This was then reduced by 6 months because of the delay of 4 years in the prosecution. A further discount of one third was given for the guilty plea resulting in a sentence of 2 years 8 months’ imprisonment.

Turning to the money laundering offences the Judge imposed a starting point sentence of 3 years’ imprisonment reduced to 2 years’ imprisonment on account of the guilty plea on each charge to run concurrently.

The Judge ordered the concurrent sentences on the money laundering charges to run consecutively to the sentence on the criminal breach of trust offence resulting in an aggregate sentence of 4 years 8 months’ imprisonment.

The appeal

The appellant is 51 years old and single.

She appeals for the sentence to be reduced on that ground that she is anxious about the welfare of her mother who is 75 years old.

Our decision

Unless there are exceptional circumstances where a person in a position of trust has used that privilege to steal from his/her employer a term of imprisonment is inevitable. The proper level of sentence would depend on factors such as (i) the sum involved; (ii) the degree of trust reposed in the offender; (iii) the rank of the offender; (iv) the period over which the thefts have been perpetrated; and (v) the use to which the money dishonestly taken was put: *R v Barrick* (1985) 7 Cr.App.R (S.) 142.

The sentence that can be expected where the offender has pleaded guilty to the offence of criminal breach of trust and the amount misappropriated is small is 2 years' imprisonment: *Public Prosecutor v Purwanti Jong* [Criminal Appeal No. 22 of 2016], in which this court considered a starting point sentence of 3 years' imprisonment to be proper for misappropriation of \$30,727.66 by an accounts clerk from the employer.

In the present case the Judge rightly allowed a discount of 6 months for the long delay in the prosecution. But this discount should have been applied to the sentence after and not before the one third discount given for the appellant's guilty plea: *Mohammad Zuraiman Bin Haji Jaman v Public Prosecutor* [Criminal Appeal No. 20 of 2018].

We agree with the Judge's starting point sentences on both the criminal breach of trust offence and the money laundering offences and his order for the sentences of the two different offences to run consecutively having regard to the overall criminality of the offences.

In the result after giving the appellant a reduction of one third for the appellant's guilty plea the aggregate sentence is 5 years' imprisonment.

Allowing a further reduction of 6 months for the delay in the prosecution results in a sentence of 4 years 6 months' imprisonment which in our view cannot be described as excessive in anyway considering (i) the substantial sum misappropriated; (ii) the appellant held a managerial position entrusted with the safekeeping of her employer's earnings; (iii) the misappropriation occurred over a period of 9 months; and (iv) the money dishonestly taken was for her own use and no restitution was made.

Conclusion

For the foregoing reasons as the mode in which the Judge applied the discount for the delay factor was wrong in principle we allow the appeal to the extent that the sentence of 4 years 8 months' imprisonment is quashed and substituted with a sentence of 4 years 6 months' imprisonment.

STEVEN CHONG, C.J.

BURRELL, P.

SEAGROATT, J.A.