PUBLIC PROSECUTOR

AND

RODZIA GADOR BIN RAMBLI

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 20. of 2016)

Before: Mortimer P, Leonard and Burrell JJ A.
16th November 2016

Headnote: *Sentence – possession of 47.3004 grammes of Methylamphetamine section 5 Misuse of Drugs Act – appeal by PP - whether sentence of 20 years imprisonment by Intermediate Court manifestly inadequate – inordinate delay in trial - whether judge should have remitted respondent to High Court for sentence -– appeal dismissed.*

DPP Hjh Farhanah POKPSRDPSS Hj Awg Suhaili for Appellant
Mr. Mohd Shazale bin Haji Mat Salleh (Messrs. Mohd. Shazale Salleh, Advocates and Solicitors) for Respondent

Case cited in the judgment:

Maimun bte Hj Omar v Public Prosecutor Criminal Appeal No. 1 of 2013
Ahmad bin Haji Mahmud v Public Prosecutor, Criminal Motion No. 8 of 2016

Leonard, JA.:

This is an appeal by the Public Prosecutor against a sentence of twenty years imprisonment on the ground that it was manifestly inadequate. There was also a sentence of 15 strokes which was mandatory and is not a subject of the appeal.

The offence of which the respondent was convicted after a trial was the importation of Methylamphetamine contrary to section 5 of the Misuse of Drugs Act, Chapter 27. The second schedule to that Act provides that where the quantity of Methylamphetamine is not less than 20 grammes and not more than 50 grammes the penalty shall be in the range between a maximum of 30 years imprisonment and 15 strokes and a minimum of 20 years' imprisonment and 15 strokes. In the present case the quantity was 47.3004 grammes.

The Appellant submits that the sentence of imprisonment should have been 28 to 30 years plus 15 strokes and points out that the quantity of drugs is only a little short of the 50 grammes which would entail a sentence of death.

The Intermediate Court's jurisdiction to impose a sentence of imprisonment is restricted to 20 years imprisonment by section 13 (3) of the Intermediate Courts Act Chapter 162 but the judge

has power, under subsection (4) of that section, where it appears after the conviction of the accused that a period of imprisonment longer than 20 years should be imposed, to commit him to the High Court for sentence.

The judge was well aware of the limit of his jurisdiction and of his power to commit the respondent to the High Court for sentence. He was also well aware of guidelines, not applicable in this case given by this court for sentence where the quantity is up to 20 grammes. There were no guidelines for sentence in relation to higher quantities.

In approaching the question whether the respondent should be committed to the High Court for sentence, the judge took into account two matters. The first was the fact that the respondent had no previous convictions. The second was the delay of four years and seven months between the arrest of the respondent on the 15th of December 2011 and his sentence, which was imposed on 3 August 2016. The appellant acknowledges that this delay was inordinate. We consider it to be not only inordinate but also shocking. We reject the suggestion made by the appellant that by exercising his right to put the prosecution to the proof of its case he brought the delay upon himself. He was entitled to expect to be tried without avoidable delay. There is nothing new in this principle, which was enunciated in Magna Carta as long ago as 1215 as follows

> "*(40) To no one will we sell, to no one deny or delay right or justice.*"

Time and again we have stressed the importance of avoiding delay. See for *example Maimun bte Hj Omar v Public Prosecutor Criminal Appeal No. 1 of 2013*, at p 6 of the judgment and *Ahmad bin Haji Mahmud v Public Prosecutor*, Criminal Motion No. 8 of 2016 at p 2 of the judgment.

It is not surprising that conscious as he was of the inordinate delay that had occurred, the judge was not prepared to send the respondent to the High Court for sentence and impose yet further delay. This especially so because the case had been remitted to the High Court on 6 March 2012, it had been sent back to the Intermediate Court seven months later on 12 October 2013 and the trial had been fixed to commence on 21 July 2014. It is clear that he thought that in the interest of justice and in order to avoid a further prolongation of the proceedings he should complete the case himself. He did so and imposed the highest sentence that his jurisdiction allowed, which happened to be the minimum permitted by the relevant legislation. We find that there is nothing to indicate that he did not exercise his discretion judicially and we are not in the circumstances disposed to interfere.

The appeal is accordingly dismissed.

For the avoidance of doubt, we agree with the respondent's submission that the 82 days spent on remand from 15 December 2011 to 7 March 2012 should be taken into account when the release date is calculated.

Mortimer, P.

Leonard, J.A. **Burrell, J.A**