

NORHAYATI BINTI SUKRI

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No.5 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

7th June 2021

Headnote: Smuggling and trafficking of persons contrary to sections 13(1) and 7(1) of the relevant order (2004); Respective roles of conspirators involved for sentencing purposes; decision of Court of Appeal in Maiyadi bin Marzuki distinguished in respect of previous good character; appeal allowed and sentence reduced.

Mr. Hj Mohd Daud bin Hj Ismail of Messrs. Daud Ismail and Company for the Appellant.
DPP Pg Hjh Nor'Azmeena binti Pg Hj Mohiddin of Public Prosecutor for Respondent

Cases cited in the judgment

*Criminal Appeal No.24 and 25 of 2018, and No.1 of 2019 (Adizan bin Azri and others v. Public Prosecutor, Aminuddin bin Zainal Abidin v. Public Prosecutor).
Maiyadi bin Marzuki (Judgments of the Court of Appeal CA No 12 of 2012 – Vol. II 2012)*

Seagroatt, JA.:

On the 30 January 2020 this 25 year old appellant pleaded guilty in the Intermediate Court before Judge Norismayanti to one count of attempted smuggling and trafficking of persons contrary to sections 13(1) and 7(1) of the relevant Order (2004). It concerned an attempt to arrange the unlawful entry of five Vietnamese nationals on the 22 September 2018. She was sentenced to 4 years and 8 months imprisonment, the judge having taken a starting point of 7 years after trial. She had been arrested on 18 January 2020. The judge equated her role with that of the self-confessed ringleaders.

She was involved with others including three members of her family in a conspiracy to achieve that outcome. Five of these co-conspirators have already appealed against their sentences, imposed by Judge Masni on 22nd December 2018, when they pleaded guilty to offences alleged against them arising out of the same conspiracy to smuggle in Vietnamese nationals.

Their appeals came before this Court on 23rd April 2019 when their appeals against sentence were allowed. The judge sentencing them had taken a starting point of 9 years imprisonment before discounting their sentence for their pleas of guilty. We then took the view that that starting point was too high and we substituted a starting point of 7 years imprisonment. This was then adjusted to reflect the degrees of complicity.

It is not necessary to repeat in detail the facts of the conspiracy which are set out in this Court's decision in ***Criminal Appeal No.24 and 25 of 2018, and No.1 of 2019 (Adizan bin Azri and others v. Public Prosecutor, Aminuddin bin Zainal Abidin v. Public Prosecutor)***.

Suffice it to say that this appellant and the five concerned in the case before this Court in April 2019, were instrumental, to varying degrees in the preparation and execution of a scheme to smuggle into Brunei a number of Vietnamese from Malaysia to enable them to find and sell gaharu wood.

There was a Vietnamese organiser who arranged to pay the appellant and two accomplices for them to provide accommodation, food and transport. Two batches of Vietnamese were smuggled into Temburong from Limbang, Malaysia and then provided with mobile phones and SIM Cards to enable them to have effective contact with the group of conspirators. It was a well-planned smuggling scheme for significant financial gain. One conspirator was to be paid a salary of RM2,000 monthly and another RM5,000 monthly with further commission for every group of Vietnamese successfully smuggled into Brunei.

This appellant was involved in scouting the roads for any roadblocks using her car in guiding their colleagues, who had collected some of the Vietnamese, to a location in Temburong, and in providing accommodation, transportation and food. When some of the active conspirators were arrested, she managed to return to Malaysia. She was subsequently arrested when she came back into Brunei on 18 January 2020. She admitted receiving RM40 for each Vietnamese smuggled in and USD400 for the services she provided.

What had happened in respect of her first contact with the police in respect of this matter is of some interest and relevance. She was first mentioned in connection with her co-conspirators on 8 October 2018 when she came to a Police Station to see her father who had been arrested on the 28 September 2018. We are told that the police were unaware of this appellant's involvement until her father made a statement on the 10 October 2018 to the effect that she had been in the or a car with him at the time of the offence.

The admitted ringleaders were arrested on the 14 October 2018. The proceedings against them, and the other two conspirators, the father, her brother and her brother in law were concluded on the 22 December 2018 when they were sentenced to their respective terms of imprisonment.

In the meantime, and until the 8 January 2020, the police had taken no steps against this appellant when they finally put her on the stoplist on that date. During that time she appears

to have made approximately seven visits to Brunei including at least one to see her father in Maraburong Prison to obtain his agreement to her proposed marriage which took place on the 26 November 2019. This hiatus has not been satisfactorily explained by the prosecution.

We apply the same starting point for the earlier appellants of 7 years imprisonment. Her degree of involvement was probably less than that of her father and on a par with that of her brother and her brother-in-law who were the first three appellants in the earlier appeal. Applying the discount for the plea of guilty they had received sentences of 4 years (father) and 3 years 4 months (brother and brother-in-law). We consider that in her case she was involved in most aspects of the smuggling scheme, but we consider that, in the light of her involvement, her plea of guilty, her clean record, and the lapse of time since the other conspirators were sentenced, a sentence of 3 years and 4 months imprisonment is appropriate.

The Public Prosecutor in her supplemental submission cites **Maiyadi bin Marzuki (Judgments of the Court of Appeal CA No 12 of 2012 – Vol. II 2012)** where the judgment of the court stated:

“...it was said that the appellant was a first offender...it was said that he was previously of good character. The only evidence of this was....that he had no previous convictions in Brunei Darussalam. However, as he was a citizen of Malaysia, this is irrelevant and fails to support these submissions.”

Therefore says, the Public Prosecutor in her written submission, this Malaysian appellant cannot pray in aid a good character other than that she has no convictions in Brunei.

However, in this case, as a result of an inquiry made to Miss Azmeena representing the Public Prosecutor, we have been informed that it is possible for the Bruneian police to receive information from the Malaysian Police concerning a defendant’s criminal record in Malaysia. It is therefore possible to confirm whether or not a defendant has a clear record in both Brunei and Malaysia.

This has now been done in this case and should be done in every case. A clear record or good character is always a relevant consideration when sentencing.

The sentence in this appellant’s case should be in line with those imposed by this Court on the other conspirators. We do not consider that she had a major role in the scheme.

In all the circumstances – a plea of guilty, good character hitherto, and the lapse of time before she was arrested which was through no fault of the appellant – we reduce her sentence to one of 3 years and 4 months.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A