RUHAYA BINTI MOHD RAZALI

AND

PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 9 of 2018)

Before: Burrell P, Seagroatt and Lunn JJ A.
1 November 2018

Headnote: Sentence-party to the forgery and use of 8 cheques, to a total value of $37,779, over a period of about 3 months, contrary to s.471 of the Penal Code, Cap. 22. Otherwise appropriate sentences of 24 months' imprisonment on each charge, discounted by 3 months' imprisonment to reflect unjustified delay of over 2 ½ years in bringing the appellant before the court.

Appellant in person
DPP Hjh Farhanah binti POKPSRDPSS Hj Awg Suhaili and Hjh Atiyyah Azzahra binti POKLSDSLJ Awg Hj Abas for Respondent

Cases cited in the Judgment:

Public Prosecutor v Amiruddin bin Haji Junaidi [High Court Criminal Trial No. 11 of 2015]
Public Prosecutor v Isahak @Ishaq bin Ahmed [ICCT 23 of 2017]
Suhamzi Binti Su'ud Haseem bin Kasan [2007] BLR 37
Ahmad Bin Haji Mahmud v Public Prosecutor [Criminal Motion No. 8 of 2016]

Lunn, JA.:

1. The appellant appeals against the total sentence of 27 months' imprisonment imposed on her on 4 July 2018 by Judge Radin Safiee Radin Basiuni in the Intermediate Court, following her pleas of guilty to eight charges of dishonestly using as genuine eight cheques drawn on the account of The Authority for Info-Communication and Technology Industry of Brunei Darussalam*("The Authority*") with the Bank Islam Brunei Darussalam to a total value of $ 37,779.49 on and between 23 March 2015 and 10 June 2015, knowing or having reasonable grounds to believe at the time that she used the cheques that they were forged documents, contrary to section 471 and punishable under section 468 of the Penal Code, Cap 22.

Statement of Facts

2. On 21 May 2018, the appellant accepted the Statement of Facts as the basis for the judge accepting her pleas of guilty. At the time of the commission of the offences the appellant was employed as a clerk in the financial unit of the The Authority and had been employed by The Authority since May 2009, albeit that she was dismissed in October 2015. Part of her duties was to manage the payment of bills for The Authority. In March 2015, she agreed with a colleague, whose duties included issuing cheques for The Authority, that the colleague would replace the name of the payee on authorised cheques with the name of the appellant. The name of the genuine payee was to be removed by the use of Sellotape. Pursuant to that agreement, the appellant presented such cheques to the bank on the dates stipulated in the eight charges, knowing that she was not the intended payee, and obtained cash payments in the amounts set out in those cheques, which monies she split with her colleague. For her part, the appellant said that she used the monies that she obtained to repay her debts.

Reasons for sentence

3. In his reasons for sentence, the judge said he accepted as genuine the remorse the appellant had shown for her conduct. Having noted that the applicant was the mother of three children, aged eight, five and one years old, the judge acknowledged that the imposition of a sentence of imprisonment would necessarily separate her from those young children, the youngest of whom she was still breastfeeding. Nevertheless, the judge said that, notwithstanding the appellant's pleas of guilty and her previous good character, it was necessary to impose a custodial sentence on the appellant. In reaching that determination, the judge said that he was guided by the reasons for sentence of the High Court in the *Public Prosecutor v Amiruddin bin Haji Junaidi (High Court Criminal Trial No. 11 of 2015)* in sentencing a defendant convicted on his own pleas of guilty to two charges of offences, contrary to section 471 of the Penal Code to two years' imprisonment on each charge, which sentences were ordered to be served concurrently.

4. Having stipulated a starting point for sentence for each of the charges of 3 years' imprisonment, the judge afforded the appellant a discount of one-third to reflect her pleas of guilty. Having observed that the offences were *"parts of the same series of transactions"* the judge ordered the sentences imposed in respect of the 1st to 7th charge to be served concurrently. However, in respect of the 8th charge, the judge ordered that 6 months of the sentence of 24 months imprisonment be served consecutively to the sentences imposed in respect of the other charges *"to reflect the number of offences that the defendant had committed."*

Delay

5. Noting that the offences had been committed in 2015, but that the appellant had been brought to court only in 2018, the judge said that he allowed the appellant a further

discount in consequence of that delay. In the result, the judge sentenced the appellant to a total of 27 months' imprisonment.

The appellant's submissions

6. In her written submissions, having expressed her remorse for having committed the offences, the appellant sought the sympathy and compassion of the Court to reduce her sentence. In support of that submission, she pointed to the difficulties that had ensued since her incarceration of looking after the children of the marriage. Because her husband was working shifts, it had been necessary for the youngest child to be cared for by her mother who lived in Kuala Belait. In her oral submissions, the appellant repeated those complaints. In addition, she explained how she had come to commit the offences. She said that she got into financial difficulties in repaying two loans of a total of $150,000 taken out from the bank for household renovation. Her salary was $1,900 per month. Having been suspended from employment in October 2015, she had offered to resume employment without payment of salary. However, The Authority had refused that offer. Similarly, The Authority had refused her offer to make payments by instalments when she obtained employment elsewhere some two years later.

The respondent's submission

7. Having referred to the sentence imposed by the judge in the Intermediate Court in the *Public Prosecutor v Isahak* [ICCT 23 of 2017], counsel for the respondent invited the Court to note that the judge had imposed a sentence of 22 months' imprisonment for the use of one invoice, whereas the appellant had used eight cheques. It was submitted that it followed that a sentence of 27 months' imprisonment imposed on the appellant was appropriate.

Delay

8. In their written submissions Counsel for the respondent did not take issue with the discount afforded by the judge to the appellant of 3 months' imprisonment for the delay in bringing proceedings against her to Court. It was conceded *"that there was a delay by the respondent to bring the matter to Court after the matter was reported to the police in the month of October 2015"*. It was acknowledged that there was a delay of 23 months between the date of the report to the police and the file being referred to the Attorney General's Chambers in September 2017, during which time *"investigations were conducted by the Commercial Crime Investigation."* Having been charged with eight charges, contrary to section 471 of the Penal Code, the appellant appeared in court for the first time on 15 May 2018.

9. In their oral submissions, counsel said that the police had explained the delay between the time of the report of the offences to the date on which the file was passed to the DPP, on the basis that delay had ensued in obtaining confirmation from The Authority and the bank as to various documents. Of the delay after the DPP had

received the file before the appellant was charged, Ms Atiyyah accepted that she was unable to offer any explanation to the Court. Although she accepted that the judge was justified in affording the appellant a discount of 3 month's imprisonment in respect of the delay, she did not accept that either the police or the DPP were culpable for the delay.

Discussion

10. The defendant in the *Public Prosecutor v Amiruddin bin Haji Junaidi* pleaded guilty to five charges. By the 1st charge, he admitted that on 25 February 2015 he had entered a building used as a human dwelling and stolen two pre-signed blank cheques, contrary to section 380 of the Penal Code. By the 2nd and 3rd charges, he admitted that on 25 and 26 February 2015 he had forged one of the cheques by inserting his own name as payee and used it as a genuine document intending to obtain $60,000 from the victim's account with the bank upon which it was drawn, contrary to sections 468 and 471 of the Penal Code respectively. That sum of money was transferred to the defendant's own account. By the 4th and 5th charges, he admitted that on and between 25 February and 10 March 2015 he had forged the other cheque by inserting his own name as payee and used it on 10 March 2015 as a genuine document intending to obtain $40,000 from the victim's account with the bank upon which it was drawn, contrary to sections 468 and 471 of the Penal Code respectively. That sum of money was transferred to the defendant's account, but voided subsequently because there were insufficient funds in the account.

11. In sentencing the defendant to 2 years' imprisonment on each of those five charges Findlay JC said *"the offences were a single course of conduct against one victim. I believe the offences are sufficiently connected to dictate that the sentences should run concurrently and I so order."*

12. Although the judge acknowledged the fact that the prosecution had referred the Court to the judgment of Findlay JC and clearly was aware of his approach to the five charges with which he was dealing, in particular his determination that they were a single course of conduct, the judge gave no reason for determining to order that part of the sentence of imprisonment imposed on the appellant in respect of the 8th charge be served consecutively. With respect, it seems to us that there was no good reason to make that order. That offence was committed about two weeks after the offence the subject of the 7th charge was committed and formed part of a series of offences that were committed at regular intervals over a period of less than three months. The amount of money stipulated in the cheque the subject of the 8th charge, namely $5,000 was broadly similar to the other amounts of money stipulated in other cheques. Indeed, it was less than the amount stipulated in three of the other cheques.

13. In the *Public Prosecutor v Isahak @Ishaq bin Ahmed* the defendant, a car salesman, pleaded guilty in the Intermediate Court to three charges, namely in respect of the forgery on 16 August 2011 of a hire purchase credit proposal form and an invoice, intending the former to be used and using the latter to obtain monies from a finance

company, contrary to sections 468, 471 and 420 of the Penal Code, and was sentenced by Judge Radin Safiee Radin Basiuni to a total of 22 months' imprisonment.

14. First, the defendant forged an invoice issued in the name of his employer QAF Eurokars in the sum of $165,000, in respect of the sale by the defendant of a Porsche Cayenne Turbo motorcar to a customer, by deleting the name QAF Eurokars and replacing it with the name KDR Auto Sdn Bhd. The customer had paid a down payment of $40,000 and was assisted by the defendant to apply for hire purchase facilities in respect of the balance of the monies due. At the same time, the defendant forged the hire purchase credit proposal form making the same deletions and replacements, which documents he used in making the credit application to the finance company. As a result, the latter drew a cheque in the net sum of the balance of monies in favour of KDR Auto Sdn Bhd, which the defendant deposited into a bank account in that company's name which the defendant withdrew and used for travelling and holiday expenses and to repay debts.

15. Having noted that the criminal enterprise was *"well thought out with exacting details required by the financing company"* and that there had been no restitution of any of the *"by no means insignificant"* amount of money obtained by the defendant, the judge stipulated a starting point for sentence for each of the 1st and 2nd charges, namely of forgery of the hire purchase credit proposal form, by the deletion of the name QAF Eurokars its replacement with the name KDR Auto Sdn Bhd, and the use of the forged invoice in support of the hire purchase credit proposal form, of 45 months imprisonment. The judge stipulated a starting point of 20 months' imprisonment for the 3rd charge, namely of thereby inducing the bank to make payment of the monies by cheque in favour of KDR Auto Sdn Bhd. Then, the judge reduced by one-third the various starting points taken for sentence, to reflect the defendant's pleas of guilty, and by a further 8 months' imprisonment to reflect the delay of 6 years in bringing the defendant to Court.

16. In the result, he sentenced the defendant to two terms of 22 month's imprisonment and to 12 months' imprisonment which, noting that the charges *"relate to offences which form a single course of conduct against the one and same victim"* and had the *"singular objective of getting the finance company to deliver the money which was eventually delivered to the defendants benefit"*, he ordered to be served concurrently.

17. Clearly, that criminal scheme was at an entirely different level of complexity and ambition than that in which this appellant was involved and the approach to sentencing for those offences, including an offence contrary to section 471 of the Penal Code, of that judge was of no assistance to the judge or to this Court in determining the appropriate sentence to be imposed on the appellant for the eight offences she committed contrary to section 471 of the Penal Code. On the other hand, the judge's determination to afford the defendant in that case a discount to reflect the element of delay in bringing the prosecution is relevant to the appellant's case.

Delay

18. As noted earlier, the matter having been reported to the police in October 2015 it was not until 15 May 2018 that, having been charged, the appellant appeared for the first time in the Intermediate Court, when she pleaded guilty to the eight charges for which she was sentenced on 4 July 2018. No Summary of Facts having been prepared, the case was adjourned. On 21 May 2018, the appellant accepted the Summary of Facts.

19. Obviously, the delay from the report of the matter to the police in October 2015, at which time the appellant was suspended from her employment and after which she received no further salary, to the charging of the appellant on 18 May 2018 was the cause of unnecessary, additional anxiety and stress to the appellant. No acceptable explanation has been advanced for the delay of 23 months, following the report of the matter to the police and the investigation file being passed on to the DPP. It is to be remembered that the nub of the prosecution case was simplicity itself: the appellant was the payee of eight unauthorised cheques paid into her account drawn on her employer's bank account, namely Bank Islam Brunei Darussalam. Both the bank and The Authority are based in Brunei. Obtaining evidence of the unauthorised flow of the monies was a straightforward task. Similarly, the delay of 9 months after the investigation file been received by the DPP was unacceptable. Realistically, Ms Atiyyah offered no explanation or justification. Regrettably, both the police and the DPP were culpable in the unnecessary delay in bringing on the proceedings against the appellant.

20. In affording the defendant a discount for delay in the *Public Prosecutor v Isahak @Ishaq bin Ahmed*, the judge referred to the reasons for sentence of the then Chief Justice Dato Seri Paduka Mohammed Saied in *Suhamzi Binti Su'ud Haseem bin Kasan* [2007] BLR 37, in which case the Chief Justice had reduced sentences of 8 months' imprisonment imposed on the 1st appellant for three charges to sentences of 5 months' imprisonment, with the result that the overall sentence imposed on the 1st appellant was reduced from 39 months to 30 months' imprisonment. Similarly, the total sentence of imprisonment imposed on the 2nd appellant was reduced from 30 months to 18 months' imprisonment. Of the unexplained delay, the Chief Justice noted that the delay was from the appellants' first appearance in Court on 21 August 2002, the commencement of trial on 12 August 2003, the completion of trial on 30 November 2004 and judgment on 15 June 2005. (page 46.)

21. In *Ahmad Bin Haji Mahmud v Public Prosecutor* [Criminal Motion No. 8 of 2016] this Court allowed the application for leave to appeal out of time a sentence of 17 years' imprisonment imposed for possession of 34.44 grammes of methamphetamine for the purpose of trafficking, contrary to section 6 (b) of the Misuse of Drugs Act, Cap. 27 and substituted a sentence of 15 years' imprisonment. The Court did so only on the basis of affording the appellant a discount of sentence to reflect the delay between his arrest on 11 November 2012, and 14 January 2016, the date on which he was sentenced after standing trial. The Court noted that the progress of the case had been

delayed for a variety of different reasons *"including the analyst's certificate not being ready, the defendant failing to appear in court, the defence counsel not being ready, the prosecutor being required in a different court and the trial dates being insufficient."* Further, the Court went on to note that *"lengthy delays were due to court time not being available; the worst example of this being a delay of 14 months from the 2nd day of the trial on 5 July 2014 to the next day on 7 September 2015."*

22. Of the consequences of delay to the applicant, the Court said: [page 2]

> *"It places great strain on an individual who has been charged with a very serious criminal offence to have to wait over 3 years before knowing his fate."*

In the result, the Court reduced the sentence of 17 years' imprisonment by 2 years' imprisonment to reflect that delay.

23. We are satisfied that the judge was entitled to discount the sentence of imprisonment to be imposed on the appellant to reflect the delay in bringing proceedings against her by 3 months.

Conclusion

24. In the result, for the reasons set out earlier, we quash the judge's order that 6 months of the sentence of imprisonment imposed in respect of the 8th charge be served consecutively to the sentences of imprisonment imposed in respect of the other charges.

25. The Warrant of Commitment on a Sentence of Imprisonment, issued pursuant to section 181 (2) of the Criminal Procedure Ordinance, Cap 7, reflected in Form XXVIII, stipulated that the sentences imposed in respect of the 1st to 8th charges were each of 24 months' imprisonment and that, by virtue of the order that 6 months of the sentence of imprisonment imposed in respect of the 8th charge be served consecutively to the sentences imposed in respect of the other charges, the total sentence imposed on the appellant was 30 months' imprisonment. Next, it stated that the total sentence was reduced to 27 months' imprisonment. However, it did not state how that was achieved. Perhaps, it is to be inferred that it was by way of reduction by 3 months of the sentences of 24 months' imprisonment imposed in respect of the 1st to 8th charges. However, it is not certain how that was achieved. In those circumstances, for the avoidance of any doubt, we quash the sentences of 24 months' imprisonment imposed in respect of all those charges and in their place impose sentences of 21 months' imprisonment, which sentences are to be served concurrently. We make no other orders. Accordingly, the total sentence imposed on the appellant is 21 months' imprisonment.

26. With respect, we would remind those imposing sentences of imprisonment on a defendant that it is important that in doing so they identify specifically and with particularity the sentence of imprisonment imposed in respect of each charge and

related consequential orders, before finally identifying, for the benefit of the defendant, the resulting overall total sentence.

Burrell, P.

Seagroatt, J.A. **Lunn, J.A**