

**Fifi Azirah binti Mohd Arifin**

AND

**Public Prosecutor**

---

**(High Court of Brunei Darussalam)  
(Criminal Appeal No. 15 of 2020)**

---

Hj Abdullah Soefri bin POKSM DSP Hj Abidin

**2<sup>nd</sup> August 2021**

*Criminal Law – 14 charges against offences under section 420, 465 and 471 of Penal Code – pleaded not guilty – convicted and sentenced to a total of 60 months imprisonment – Compensation order under section 382(b) Criminal Procedure Code – in default 18 months to be served on top of 60 months imprisonment – appeal against sentence – allowed – reduced to 54 months – other orders to remain.*

**Cases referred to:**

*Mohd Aza Izuan bin Ibrahim vs PP* (HCCA No.27 of 2011)

*Mohamed Shoufee bin Adam vs PP* (2014) 2 SLR 998

*PP vs Lakim bin Hj Md Noor* (HCCA No.21 of 2012)

*PP vs Amiruddin bin Hj Junaidi* (HCCT No.11 of 2015)

*Viviyanti binti Hj Mohd Ali vs PP* (HCCA No.14 of 2016)

*PP vs Rohaya binti Mohd Razali* (ICCT No.31 of 2018) (COACM No.9 of 2018)

*PP vs Abdullah Muhammad Sham Khairunnas* (ICCT No.85 of 2018); (COACM No.18 of 2018 and COACM 2 of 2019)

*Saiful Irwan bin Haji Simpol vs PP* (Criminal Appeal No.10 of 2019)

*Md Faizal bin Rosli vs PP* (Criminal Motion No.36 of 2019)

Hj Ahmad Zakaria bin Hj Mohammad of M/S Ahmad Zakaria & Associates for Appellant.

DPP Siti Aisyah binti Hj Lakim for Respondent/Public Prosecutor.

**JUDGMENT**

**Hj Abdullah Soefri, JC:**

This is an appeal by the Defendant on sentence only. Petition of Appeal against conviction and sentence was filed on 30<sup>th</sup> May 2020. On 23<sup>rd</sup> December 2020, this appeal was fixed for hearing. However, the Appellant's counsel applied for it to be adjourned and the reason afforded that he was just being appointed to represent the client and a new hearing date was fixed for 27<sup>th</sup> February 2021. The Appellant abandoned the appeal against conviction and continues with appeal against sentence.

On 27<sup>th</sup> February 2021, the Appellant through his counsel applied for the hearing to be adjourned (letter dated 24<sup>th</sup> February 2021) and the reason being that the counsel was still in

the process of drafting the appeal submissions and there are so many documents that need to be went through and the appeal was adjourned to 10<sup>th</sup> April 2021.

On the 3<sup>rd</sup> April 2021, the Court informed all parties that the case that was fixed 10<sup>th</sup> April 2021 to be adjourned to 3<sup>rd</sup> May 2021.

The appeal was heard on 3<sup>rd</sup> May 2021 and fixed on 23<sup>rd</sup> June 2021 for the Ruling and Judgment.

On 23<sup>rd</sup> June 2021, I was taken ill and adjourned Ruling/Judgment today (2<sup>nd</sup> August 2021).

The Appellant (Defendant) was convicted after a full trial of all the 14 charges that were preferred against her on 20<sup>th</sup> May 2020 and on 23<sup>rd</sup> May 2020 she was sentenced to a total of 60 months' imprisonment with effect from 20<sup>th</sup> May 2020 and a Compensation Order under section 382(b) of Criminal Procedure Code in addition to the above sentence. The compensation was ordered to be paid by 30<sup>th</sup> June 2020 and failure to pay the amount, she is to serve the in default sentence of 8 weeks on top of her imprisonment sentence of 5 years. This order has stayed.

The 14 charges consist of 4 different types of offences which are as follows:

1. section 420 of the Penal Code;
2. section 420 of the Penal Code read with section 34 of the same;
3. section 465 of the Penal Code; and
4. section 471 of the Penal Code read with sections 34 and 465 of the same.

1<sup>st</sup> charge under section 420 and read with section 34 she was imposed with imprisonment sentence of 21 months.

2<sup>nd</sup> to 5<sup>th</sup> charges under section 420 she was imposed with imprisonment sentence of 18 months for each charge.

6<sup>th</sup> to 9<sup>th</sup> charges under section 420 and read with section 34, she was imposed with imprisonment sentence of 18 months for each charge.

10<sup>th</sup> to 11<sup>th</sup> charges under section 465 she was imposed with 24 months' imprisonment for each charge.

12<sup>th</sup> to 14<sup>th</sup> charges under section 471 and read with sections 34 and 465 she was imposed with 24 months' imprisonment for each charge.

The Magistrate below ordered for the 1<sup>st</sup>, 10<sup>th</sup>, and 11<sup>th</sup> charges to run concurrently as it was committed in the same transaction and against the same victim and making it a total of 24 months' imprisonment.

The Magistrate further ordered 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> charges run concurrently as it was committed at the same time and therefore making it a total of 18 months' imprisonment.

For the 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 14<sup>th</sup> charges to run concurrently as it was committed in the same transaction and against the same group making it a total of 24 months' imprisonment.

For these three groups of sentences to run consecutively to each other thereby making it a total of 66 months' imprisonment and these sentences were further reduced to 60 months' imprisonment after taking into account (a) the time spent by the Appellant in remand, and; (b) the delay in the case.

The first question that this Court needs to address is whether the individual sentences imposed by the Magistrate below are appropriate.

I take note that the Magistrate has carefully considered a number of previous cases for guidance, they were:

1. ***Viviyanti binti Hj Mohd Ali vs Public Prosecutor*** (HCCA No.14 of 2016)
2. ***Public Prosecutor vs Abdullah Muhammad Sham Khairunnas*** (ICCT No.85 of 2018) (COACM No.18 of 2018 and COACM 2 of 2019)
3. ***Mohd Aza Izuan bin Ibrahim vs Public Prosecutor*** (HCCA No.27 of 2011)
4. ***Public Prosecutor vs Rohaya binti Mohd Razali*** (ICCT No.31 of 2018) (COACM No.9 of 2018)
5. ***Public Prosecutor vs Amiruddin bin Hj Junaidi*** (HCCT No.11 of 2015); and
6. ***Public Prosecutor vs Lakim bin Hj Md Noor*** (HCCA No.21 of 2012)

In addition, the Magistrate had considered all the mitigation factors carefully for the benefit of the Defendant which includes the delay and time spent in remand.

In short, I have no criticism that any of the individual sentences were excessive.

Now, this Court shall look into the order of concurrent and consecutive sentences. The sentences that were consecutive and concurrent were highlighted earlier in my Judgement.

In order to determine whether it is concurrent or consecutive sentences, I would like to quote the case of ***Mohamed Shoufee bin Adam vs Public Prosecutor*** (2014) 2 SLR 998.

*"The first rule that the sentencing judge should consider is what has been referred to as the one-transaction rule. This is not an inflexible or rigid rule but it serves as a filter to sieve out those sentences that ought not as a general rule to be ordered to be run consecutively."*

In ***Saiful Irwan bin Haji Simpol vs Public Prosecutor*** (Criminal Appeal No.10 of 2019) and ***Md Faizal bin Rosli vs Public Prosecutor*** (Criminal Motion No.36 of 2019) to Court of Appeal stated:

*"Whenever possible in a case such as this, the consecutive sentences should come from separate incidents".*

Not only the one transaction rule needs to be considered but also the totality principle.

With these in mind, I am satisfied that the consecutive sentences need to be disturbed to reflect the totality principle.

This Court ruled as follows:

- A. Charges 1, 10, 11, 12, 13, 14 to be ordered to run concurrently and this will be 24 months;
- B. Charges 6, 7, 8, and 9 to be ordered to run concurrently and this will be 18 months; and
- C. Charges 2, 3, 4, and 5 are to be ordered to run concurrently and this will be 18 months.

A, B, and C above are to run consecutively with each other and this brings to a total of 60 months.

The Court will not disturb the deduction given by the Court below for the delay and the time spent in remand which was 6 months and this will be used to deduct from the main sentence of 60 months which will give 54 months.

The appeal is allowed. The imprisonment sentence is reduced to 54 months.

As to the application for stay of compensation to be lifted, the application is granted.

The Compensation Order made by the Magistrate below is to be paid by 6<sup>th</sup> September 2021 and to be paid as the Magistrate ordered and failure to pay Defendant will serve an additional default sentence of 8 weeks on top of her 54 months' imprisonment.

**HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN**  
Judicial Commissioner