

On Chee Wei

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 9 of 2024)

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC

Date of Ruling: 11th December 2024

***Headnote:** Criminal Appeal – Appeal against sentence – plea of guilty on 1st day of trial – full discount of 1/3 not afforded – delay in prosecution – disproportionate total sentence of 7 years – Section 4(1) Computer Misuse Act – Section 379 Penal Code*

Mr Zamri Bin Hj Taha (M/S Zamri Taha & Associates) for Appellant.

PO Nur ZahidahFarhanah Bte Abdul Aziz for Public Prosecutor/Respondent.

Cases cited:

Matnor bin Hj Paweh v. Public Prosecutor, Criminal Appeal No.13 of 2017

Public Prosecutor & Norhayati, Intermediate Court Criminal Trial No.9 of 2017

Zhong Xiao Hui & Public Prosecutor, Criminal Motion No.25 of 2017

Pathmanathan Jegan & Public Prosecutor, Criminal Appeal No.13 of 2013

Statutes:

Section 4(1) of the Computer Misuse Act (CMA)

Section 379 of the Penal Code

RULING

Muhammed Faisal, JC:

1. INTRODUCTION

This is an appeal against the sentence imposed by the Magistrates' Court. The appellant, Mr. On Chee Wei, was convicted on his guilty pleas to six charges under Section 4(1) of the Computer Misuse Act (CMA) and three charges under Section 379 of the Penal Code. The Magistrate sentenced him to a total of seven years' imprisonment.

The appellant contends that the sentence is manifestly excessive, citing:

1. An error in the reduction for his guilty plea.
2. A failure to adequately account for the four-year delay in prosecution.
3. A disproportionate total sentence, considering the financial loss and the principle of totality.

2. BACKGROUND

The Appellant, a 46-year-old IT Officer formerly employed by the Perbadanan Tabung Amanah Islam Brunei (TAIB), abused his professional access to commit a series of fraudulent transactions in April 2019. While conducting user acceptance testing (UAT) for the TAIB mobile app, the Appellant exploited his technical knowledge and access to the live production system, which served as the real banking platform for TAIB customers.

On April 1, 2019, facing outstanding gambling debts, the appellant accessed the live system and randomly selected a customer, Ms. Ang, as his target. He registered Ms. Ang's account for online banking without her consent and added his mother, Ms. Tan, as a payee. He bypassed security protocols by retrieving one-time passwords (OTPs) from the TAIB database server to facilitate unauthorised transfers. That evening, the Appellant transferred B\$5,000 from Ms. Ang's account to Ms. Tan's account after an earlier attempt to transfer B\$6,550 failed.

On April 3, 2019, the Appellant conducted further transactions from Ms. Ang's account, transferring B\$4,500 twice on the same day to Ms. Tan's account using the same fraudulent methods. In total, B\$14,000 was withdrawn from Ms. Ang's account, of which B\$9,000 was later blocked by the bank, leaving an actual loss of B\$5,000. The Appellant instructed his mother to withdraw the stolen funds, which he then used to address personal financial issues.

The Appellant had committed a breach of trust by leveraging his privileged IT access to exploit institutional systems for personal gain. To date, he has not repaid the B\$5,000 owed to TAIB.

The Magistrate imposed as starting point of sentences of four years per CMA charge (reduced to three years) and starting point of 12 months per theft charge (reduced to nine months).

The offences committed on 1st April 2019 (charges 2, 3 & 9) were to run concurrently but consecutively to the charges committed on 3rd April 2019(charges 4,5,6,7&8). The magistrate also ordered that 1 year of the 1st charge is to run consecutively, making the total sentence 7 years.

3. GROUND OF APPEAL

a) **Reduction for Guilty Plea**

It is submitted that the magistrate erred by granting only a **one-fourth reduction** instead of the usual **one-third** for the appellant's guilty plea. It is argued that the guilty plea saved the court's time and resources by avoiding a full trial, even though it was entered on the first day of trial.

The Magistrate did not provide adequate reasoning for deviating from the established norm of one-third reduction. Case law supports the view that a guilty plea, regardless of its timing, should attract the usual reduction if it demonstrates remorse and cooperation.

This is countered by the fact that the guilty plea was entered late, only on the **first day of trial** after months of preparation by the prosecution.

It was argued that late guilty pleas typically warrant a lesser discount. This principle is supported by the fact that delayed pleas do not save as much judicial time as early ones. It is also argued that the magistrate's decision to grant only a one-fourth reduction was consistent with the timing and circumstances of the plea.

This is the Magistrate discretion, whether or not to award the full discount. She has given her reasoning for not doing so, in her sentencing ruling. I shall not interfere in her decision.

b) **Delay in Prosecution**

The appellant highlighted the **four-year delay** between the lodging of the police report (June 2019) and the prosecution's initiation (November 2023). Relying on *Matnor bin Hj Paweh v. PP*, counsel argued that in *Matnor*, a three-year delay resulted in a **six-month reduction**, while *PP AND Norhayati* saw a one-year reduction for a seven-year delay. Applying proportionality, a **six to eight-months reduction** should be granted in this case.

It was also impressed upon the court of the prejudice caused by prolonged delays, which added to the stress on the defendant and undermine the fairness of proceedings.

The respondent acknowledged the delay but minimized its impact, arguing that it was **not excessive** compared to other cases; where in *Norhayati*, the delay was seven years, justifying a one-year reduction. The delay here was **four years**, shorter and not as prejudicial, particularly given the complexity of the case. Any reduction for the delay should be **modest** and secondary to other considerations, such as the seriousness of the offenses.

The prosecution was not, however able to explain to the court the reasons for why the investigation papers were only presented to the Public Prosecutor in 2023, 4 years after the incident. Certainly, there may be a possibility of an explanation of the length of time, which may not constitute as a delay. However, since no reasons were available, it is accepted there is a delay in prosecution.

c) Financial Loss

The actual financial loss of **B\$5,000** was significantly lower than in similar cases:

- *Norhayati* involved a loss of B\$84,928.
- *Zhong Xiao Hui AND PP* involved amounts ranging from B\$10,000 to B\$15,000.

It was argued that the magistrate failed to adequately weigh the relatively modest loss when assessing the sentence. While the total amount transferred was B\$14,000, counsel emphasized that **B\$9,000 was recovered** due to the bank's swift action, reducing the actual harm to B\$5,000. This mitigated financial impact should result in a lower sentence, particularly given that the bank absorbed the loss.

However, whilst the financial loss in this case was less than in *Norhayati* and *Zhong Xiao Hui*, nonetheless, the **breach of trust** and exploitation of IT expertise made the appellant's actions particularly egregious, outweighing the relatively modest financial loss; that is the **potential harm** was significant, exposing the bank to reputational damage and systemic risks.

It is also important to distinguish between what was actually stolen and that was eventually recovered, in this case, that **B\$14,000 was stolen**, even though part of it was recovered. This total amount reflects the appellant's culpability and intent.

d) Totality Principle

Counsel argued that the magistrate's application of the totality principle resulted in a **disproportionate total sentence of seven years**, which was inconsistent with precedent. In *Zhong Xiao Hui*, the total sentences for syndicate-related CMA offenses ranged from **four to seven years**, despite higher financial losses and greater systemic risks. In *Norhayati*, a much higher financial loss resulted in only a two-year sentence for CMA offenses.

It is submitted that, acting alone and causing limited financial loss, the Appellant deserved a lower total sentence of **three to four years**, reflecting his overall criminality.

It is my view that the magistrate correctly grouped the charges into clusters in accordance of the similar transaction rule. However, the resulting total sentence of seven years does not adequately balance the mitigating factors, particularly the guilty plea and prosecution delay. Credit to the respondent in conceding this fact.

4. AGGRAVATING FACTORS

I would also like to list down, these factors which ought to be considered when considering the appropriated sentences offences of this nature, namely;

- Abuse of IT expertise and privileged access.
- Breach of trust in exploiting a customer's account.
- Exploitation of a vulnerable victim reliant on institutional safeguards
- Sophistication and persistence in committing the offenses.
- Broader systemic risks to financial security and public trust.
- Persistence in offending, showing a lack of remorse.
- Financial and reputational harm to the complainant and the TAIB.

If we go down this list and apply to the facts, it would be correct to consider the Appellants actions as quite serious, despite the low amount taken.

5. **ORDER**

Taking into consideration delay and totality on sentence the Defendant's sentence is revised as follows:

For theft related charges, they remain unchanged at 9 months, save for a further reduction of 1 month for delay. That will bring the sentences to 8 months each.

I do not find issue with the starting point of the CMA charges of 4 years as they are in line with cases such as *Pathmanathan Jegan AND PP*. They are reduced to 3 years for his guilty plea and a further 6 months for delay. This will bring a sentence of 2 years and 6 months' imprisonment for the CMA charges.

Taking into consideration, totality of his sentences, I further order that:

1. **1st, 2nd, 3rd, and 9th charges**, to be served concurrently,
2. **4th, 5th, 6th, 7th, and 8th charges**, to be served concurrently, but to run consecutively with the above.

His sentence in total, will be that of 5 years' imprisonment.

MUHAMMED FAISAL BIN PDJLD KOL (B) DSP HJ KEFLI
Judicial Commissioner