



Viviyanti Binti Hj Mohd Ali

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No 14 of 2016)**

**Steven Chong, J.
5th January 2017**

Sentence – Cheating and using forged documents.

Hj Mohd Rozaiman Bin Dato Haji Abd Rahman (M/S Rozaiman Abdul Rahman) for the Appellant.

DPP Emily Goh for the Public Prosecutor/Respondent.

Cases cited:

Ahmad Bin Haji Mahmud v Public Prosecutor [Criminal Motion No. 8 of 2016]

Lai Oei Mui Jenny v Public Prosecutor [1993] 2 SLR CR) 406 at 409

Maimun Binti Haji Omar v Public Prosecutor [2013] BLR 154

R v Ingham (3 October 1974) (Court of Appeal (Crim Div), UK)

Steven Chong, J.:

This is an appeal against sentence.

On 17 December 2014 in the Magistrate's Court the appellant claimed trial to 20 counts of cheating and using forged documents. The trial commenced on 23 June 2015 but was interrupted by a number of adjournments for various reasons. On 12 April 2016, after 12 witnesses had given evidence and the prosecution case was drawing to a close, the



appellant pleaded guilty to 13 counts of cheating and 5 counts of using forged documents.

Senior Magistrate Hj Nabil Daraina Bin PUKDPSS Ustaz Hj Awg Badaruddin sentenced the appellant to a total of 30 months' imprisonment.

Briefly stated the facts were that between May 2011 to October 2014 the appellant, who was a clerk in the Tutong Public Works Department, under false pretences and using forged documents cheated 6 persons by deceiving them into believing they would secure contracts for the provision of services to various government departments and companies if they made cash payments to her. Altogether the victims were cheated out of \$29,380.

The appellant appeals against the sentence on two grounds. First, counsel for the appellant argues that the Senior Magistrate should have given a discount for the delay in the trial.

Reference was made to *Maimun Binti Haji Omar v Public Prosecutor* [2013] BLR 154 and *Ahmad Bin Haji Mahmud v Public Prosecutor* [Criminal Motion No. 8 of 2016] where the Court of Appeal considered significant delay in the trial not contributed to by the accused person as justification to order a discount in sentence.

I think those two cases are readily distinguishable. In *Maimun's* case the delay was 10 years while in *Ahmad's* case the delay was over 3 years. In this case there was no ordinate delay in starting the trial after the appellant was charged and she pleaded not guilty. The trial itself took about 9 months because of the number of adjournments. But the appellant contributed to part of the delay by her own application for an adjournment of about 4 months due to her advanced pregnancy.

Although it would have been desirable if the trial had been heard without any adjournments until conclusion I do not think the appellant was prejudiced by the delay that occurred as to entitle her to a reduction in sentence.

Second, counsel for the appellant contends that the Senior Magistrate failed to give adequate weight to the extenuating circumstances": the appellant's incarceration has caused hardship to her elderly parents who though in poor health to take care of her two young daughters aged 11 and one. The appellant is the sole breadwinner of her family.



Counsel for the appellant submits that the Senior Magistrate should have considered the use of section 263 of the Criminal Procedure Code to make a probation order. He finds support for this proposition in the decision of the Hong Kong High Court in *The Queen v Lun Ching Yee* [1997] HKEC 467 in which the appellant's sentence of detention in a training centre upon conviction on 4 counts of obtaining property by deception was substituted with a community service order having regard to the "change of attitude" whilst in detention: she had "learned to have better insight and discipline" and her open rehabilitation was considered optimistic.

The Hong Kong High Court decision does not assist the appellant's case. There, the appellant was a young woman of 18 at the time of the offences and her age was a strong mitigating factor. Here, the appellant was a mature woman in her 30s when she committed the offences. I do not think there is any justification to order probation.

Of course the court has sympathy for the appellant's parents and children. They will suffer hardship without her support. A prison sentence on the breadwinner of the family inevitably causes hardship to the family. In *R v Ingham* (3 October 1974) (Court of Appeal (Crim Div), UK) the following passage in the judgment of Lord Widgery CJ was cited with approval by *Yong Pung How CJ* in *Lai Oei Mui Jenny v Public Prosecutor* [1993] 2 SLR CR) 406 at 409:

".....it is not altogether an easy case, but of course this always happens, time and time again, that imprisonment of the father inevitably causes hardship to the rest of the family. If we were to listen to this kind of argument regularly and normally in the cases that come before us, we should be considering not the necessary punishment for the offender but the extent to which his wife and family might be prejudiced by it. The crux of the matter is that part of the price to pay when committing a crime is that imprisonment does involve hardship on the wife and family, and it cannot be one of the factors which can affect what would otherwise be the right sentence."

Applying the principles in *R v Ingham* I do not find the circumstances in the appellant's case so exceptional as to justify interfering in the sentence.

Considering the number of offences perpetrated by the appellant over a long period of several years and substantial loss caused to the victims I think the Senior Magistrate was right to pass a deterrent sentence.



The sentence is not a day too long and the appeal is dismissed accordingly.

DATO PADUKA STEVEN CHONG
Judge, High Court