

Dennis Anak Ketok

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 14 of 2019)**

Steven Chong, C.J.
25 November 2019

Validity of guilty plea – Whether accused understood the nature and consequences of his plea – Whether guilty plea qualified by statement of accused in mitigation – section 175 of Criminal Procedure Code.

Making incorrect declaration – Absolute offence – Absence of knowledge of accused of falsity or incorrectness of untrue or incorrect declaration made no defence – sections 138(1)(b) and 138(2)(a) of Customs Order 2006.

Hj Mohammad Daud Bin Hj Ismail (M/s Daud Ismail & Co.) for the Appellant.
DPP Nor'Adliatul Hidayah Binti Hj Mohd Zaidi for the Public Prosecutor/Respondent.

Cases cited:

Balasubramanian Palaniappa Vaiyapuri v Public Prosecutor [2002] 1 SLR(R) 138
Shan Kai Weng v Public Prosecutor [2004] 1 SLR (R) 57
Peterus Shak v Public Prosecutor [1997] 1 JCBD 174
Franceise B. Saimbat and Another v Public Prosecutor [1995] 2 JCBD 49
Rajeevan Edakalavan and Toh Lam Seng v Public Prosecutor [2003] 2 SLR (R) 346
Wong Ngian Thin v Public Prosecutor [1941] 1 MLJ 199

Steven Chong, C.J.:

The charge

This is an appeal against conviction.

On 13 August 2019 in the Magistrate's Court the Appellant pleaded guilty to making an incorrect declaration contrary to section 138(1)(b) of the Customs Order 2006.

Chief Magistrate Pg Masni Binti Pg Hj Bahar imposed a fine of \$170,147 or 2 years' imprisonment in default of payment.

The facts

In brief the facts admitted unreservedly by the Appellant were that on the morning of 11 August 2019 he arrived at the Sungai Tujoh Control Post driving a trailer truck from Miri. The Appellant was travelling onwards to Keningau in Sabah. He handed over a Customs Transit Declaration to customs control stating that the trailer truck was transporting "*Baja Abok*".

A scan of the trailer truck revealed "suspicious images" and an inspection was carried out. Customs officers found 3,432 cartons of beer which the Appellant had failed to declare in the Customs Transit Declaration.

Grounds of appeal

The contention is that the Appellant's guilty plea is invalid on two grounds: firstly, he did not "*fully understand*" the language used in the court proceedings; and secondly, it was not an unqualified plea.

Validity of guilty plea

Section 175 of the Criminal Procedure Code provides that before a plea of guilty is recorded the court shall ascertain that the accused (1) understands the nature and consequences of his plea; and (2) intends to admit, without qualification, the offence alleged against him.

Understanding the nature and consequences of his plea

The requirement of understanding the nature of the plea means that the accused must know exactly what he is being charged with: *Balasubramanian Palaniappa Vaiyapuri v Public Prosecutor* [2002] 1 SLR(R) 138.

As to understanding the consequences of the plea the accused must be aware of the punishment prescribed for the offence: *Shan Kai Weng v Public Prosecutor* [2004] 1 SLR (R) 57.

The complaint is that the Appellant, who is Iban, did not "*fully understand*" the court proceedings conducted in Malay. The court below ought to have offered the Appellant an interpreter in the Iban language. There is "serious doubt" whether the Appellant understood the nature and consequences of his plea.

The Appellant is, of course, entitled to have an interpreter in the language of his choice: *Peterus Shak v Public Prosecutor* [1997] 1 JCB 174, per Roberts, CJ.

Both in *Peterus Shak v Public Prosecutor and Franceise B. Saimbat and Another v Public Prosecutor* [1995] 2 JCBD 49, the High Court on appeal quashed the convictions of the appellants in view of “*doubts*” over their understanding of the proceedings conducted in a language alien to them.

The answer to the question whether or not the Appellant “*fully understood*” the proceedings and the nature and consequences of the plea when he pleaded guilty to the offence is fact sensitive.

In the Chief Magistrate’s notes of proceedings it is recorded that (1) the charge was read to the Appellant in Malay; (2) the Appellant pleaded guilty and understood the nature and consequences of the plea; (3) the Statement of Facts was read; (4) the Appellant disputed that he “*put a box containing JKDM Duty Paid Stickers inside the trailer*” stated in paragraph 8 of the Statement of Facts (the court deleted this impugned sentence); and the Appellant in mitigation said he did not know the truck trailer was carrying beer and thought he was transporting “*Abok*”, it was his “*fault for not checking the trailer properly*” and he pleaded for a lenient sentence.

Plainly, on perusal of the notes of proceedings, the Appellant fully understood the proceedings and the nature and consequences of the plea when he pleaded guilty to the offence.

The Appellant challenged paragraph 8 of the Statement of Facts and made a mitigation plea in Malay.

Admitting the offence without qualification

The court must establish that the accused intends to admit without qualification the offence alleged against him, i.e., he must admit to all the ingredients of the offence contained in the Statement of Facts without qualification: *Rajeevan Edakalavan and Toh Lam Seng v Public Prosecutor* [2003] 2 SLR (R) 346.

A plea of guilt is only qualified by statements in the mitigation plea where such statements indicate a lack of *mens rea* or *actus reus*: Balasubramanian (*supra*).

The Appellant contends that his guilty plea is qualified by his statement in mitigation that he mistakenly thought he was transporting “*Abok*” and was unaware of the presence of the beer in the truck trailer, which constitutes a defence to the charge.

This contention is misconceived.

Insofar as it is material section 138(1)(b) of the Customs Order 2006 provides:

“Any person who makes, orally or in writing, or signs any declaration . . . which is untrue or incorrect in any particular . . . shall be guilty of an offence . . . ”

Next, section 138(2)(a) of the Customs Order 2006 provides:

“When any such declaration . . . has been proved to be untrue, incorrect, . . . it shall be no defence to allege that such declaration . . . was made or used inadvertently or without criminal or fraudulent intent . . . ”

The offence is *“an absolute one and is committed when an untrue or incorrect declaration is made irrespective of any knowledge of such falsity or incorrectness”*: *Wong Ngian Thin v Public Prosecutor* [1941] 1 MLJ 199, per Cussen, J.

Thus, the Appellant’s statement in mitigation that he did not know the truck trailer was carrying beer and thought he was transporting “Abok” is no defence to the charge and does not qualify his guilty plea.

The absence of knowledge of an accused of the falsity or incorrectness of an untrue or incorrect declaration made by him may, however, be considered a mitigating factor in sentencing.

Conclusion

For the foregoing reasons I find no merit in the appeal and it is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice