

Mohamad Sambari Bin Hj Abu Bakar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 14 of 2022)**

Criminal law – Dishonest misappropriation and cheating offences – Sentence – ss.403 and 420 of the Penal Code.

Steven Chong, C.J.

3 September 2022

Appellant In Person.

DPP Muhammad Qamarul Affyian Abd Rahman for the Public Prosecutor.

Cases cited:

Leaw Siat Chang v Public Prosecutor [2001] 3 SLR (R) 646 at [13]

Amiruddin Bin Haji Junaidi v Public Prosecutor [Criminal Motion No. 2 of 2017]

Steven Chong, C.J.:

Introduction

On 8 June 2021 in the Magistrate’s Court the appellant was charged with three offences under the Penal Code: one of dishonest misappropriation of property contrary to section 423; and two of cheating and dishonestly inducing the delivery of property contrary to section 420.

At first the appellant pleaded guilty to the 1st Charge but contested the 2nd and 3rd Charges. However, before the commencement of the trial on the two disputed charges the appellant changed his plea to guilty to both these charges.

Senior Magistrate Pg Hazirah Binti Pg Mohd Yusof sentenced the appellant to imprisonment for 8 months on the 1st Charge and 16 months each on the 2nd and 3rd Charges to run consecutively resulting in a total of 3 years 4 months.

In addition the appellant was ordered: (1) to pay compensation to the victims in relation to the 2nd and 3rd Charges of \$150 and \$200 respectively or in default of payment 2 months' imprisonment on each charge; and (2) to be placed under police supervision for 3 years after serving his prison sentence.

The appellant appeals against sentence.

The facts

Briefly, the facts were that on 18 May 2021 the appellant rented a Suzuki Celerio from a car rental company for three days. A police report was made by the company when the appellant failed to return the car at the end of the rental period. The car was subsequently found in the car park of a mosque. The appellant had sold the car for \$150 to one Pg Hj Rambli Bin Pg Hj Bunut whom he had met at the mosque (1st and 2nd Charges).

In the same month the appellant, impersonating a customs officer, went to a car workshop where he persuaded Pong Kim Ho, who was a mechanic, to hand over \$200 as a deposit for the purchase of a Toyota Vios purportedly seized by the Royal Customs and Excise Department and to be sold for \$500. The appellant told Pong the car would be brought to him within two or three weeks. Pong made a police report when the appellant did not return.

The sentence

The Senior Magistrate decided on the following starting point sentences of imprisonment: one year on the 1st Charge and 2 years each on the 2nd and 3rd Charges.

A discount of one third was given to the appellant for pleading guilty to the charges and the sentences were ordered to be served consecutively resulting in an aggregate sentence of 3 years 4 months.

The appeal

The appellant is aged 46 and says he suffers from tuberculosis and heart disease.

His poor health, so the appellant argues, justifies ordering the sentences on the three charges to run concurrently and not consecutively as was ordered by the Senior Magistrate.

DPP's submissions

The DPP submits the sentence is not excessive for the following reasons.

Firstly, the individual sentences are within the sentencing range for such offences.

Secondly, the sentences were rightly ordered to run consecutively as the offences were committed on separate occasions and involved different victims.

Thirdly, the sentence in totality reflected the overall criminality of the offences.

Decision

At the outset I reiterate the principle that ill-health is not a mitigating factor except in the most exceptional cases when judicial mercy may be exercised: *Leaw Siat Chang v Public Prosecutor* [2001] 3 SLR (R) 646 at [13]; and *Amiruddin Bin Haji Junaidi v Public Prosecutor* [Criminal Motion No. 2 of 2017].

Even on the assumption the appellant suffers from the ailments he complains of, there is nothing exceptional about his medical condition to justify treating it as a mitigating factor. The appellant acknowledges he is presently receiving medical treatment in prison.

I entirely agree with the submissions of the DPP. The sentences considered individually and in totality are neither excessive nor wrong in principle.

The appellant is a habitual offender with 25 previous convictions for cheating. His life of crime began in 2004 when he was convicted of one offence of cheating and sentenced to one year 6 months' imprisonment. Yet, within two years, in 2006, the appellant was convicted of six cheating offences and one offence of personating a public officer and was sentenced to 4 years 6 months' imprisonment. The most recent conviction was in 2017 when the appellant was sentenced to 5 years 8 months' imprisonment for 12 cheating offences. The appellant also has a drug consumption offence in 2015.

These prior convictions for similar offences demonstrate the appellant's propensity to cheat and is an aggravating factor. Deterrence being the primary sentencing consideration of the court the Senior Magistrate's sentence is unimpeachable.

The Senior Magistrate was also right to order the appellant to be placed under police supervision at the expiry of his prison sentence having regard to his recidivism and the need to protect the public from a high risk offender.

Conclusion

For the foregoing reasons the appeal is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice

