

Mohammad Shahran Bin Haji Johari

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 32 of 2018)**

Steven Chong, C.J.
17 December 2018

Theft by employee – Whether charge defective – Whether defect material – Whether error occasioned a failure of justice – Whether sentence excessive – s.381 of Penal Code – ss. 153, 156 and 371 of Criminal Procedure Code.

Hj Mohammad Daud Bin Hj Ismail (M/S Daud Ismail and Company) for the Appellant.
PO Nur Eleana Bte Dato Paduka Hj Hairol Arni for the Public Prosecutor/Respondent.

Case cited:

Public Prosecutor v Mohammad Fakillah Ali Bin Hj Narawi [Criminal Appeal No. 24 of 2017]

Steven Chong, C.J. (ex tempore):

On 24 October 2018 in the Magistrate’s Court the appellant and a co-accused were charged as follows:

“That both of you and another person still at large, sometime between early August and late September 2018, at Residence Room 1-09, Aman Hills Residence, Sg.Tilong, in Brunei Darussalam, in furtherance of your common intention, being servants employed in the capacity of security guards at Aman Hills Residence, did commit theft of property, to wit four (4) Naruton 40” flat-screen televisions, belonging to Aman Hills Property Management, and you have thereby committed an offence under section 381 of the Penal Code, Chapter 22, read with section 34 of the same.”

The appellant pleaded guilty to the charge.

Magistrate Hajah Ervy Sufitriana Binti Haji Abdul Rahman sentenced the appellant to 10 months’ imprisonment.

This is an appeal against conviction and sentence.

The sole ground of appeal is that the conviction cannot stand because the appellant pleaded guilty to a defective charge.

Mr. Daud submits that (a) the appellant was not employed as a security guard at Aman Hills Residence in August 2018 and he was employed only on 1 September 2018; (b) the charge is defective as it implies the appellant was employed as a security guard in August 2018; and (c) the appellant's guilty plea to the defective charge is invalid and the conviction and sentence must be set aside.

As the prosecution concedes the appellant was employed as a security guard only on 1 September 2018 I agree with the submission of Mr. Daud that the charge is defective because it erroneously suggests the appellant was employed as a security guard in August 2018 when that was not the case. But I am unable to agree with the submission that the guilty plea was rendered invalid due to that error in the charge.

Section 153(1) of the Criminal Procedure Code provides:

"The charge shall contain such particulars as to the time and place of the alleged offence and the person, if any, against whom or the thing, if any, in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged."

The charge in the instant case contained the essential ingredients of the offence. The particulars of the time, place and property of the offence set out in the charge were reasonably sufficient to give the appellant notice of the matter with which he was charged.

Section 156 of the Criminal Procedure Code provides:

"No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars shall be regarded at any stage of the case as material unless the accused was in fact misled by such error or omission."

The appellant's case is that he was not employed as a security guard in August 2018 but in September 2018. The appellant's case is not that he was never employed as a security guard. The charge includes the month of September 2018 when the appellant was employed as a security guard. The appellant could not have been misled by the error in the charge accordingly.

Moreover, it is plain from the Statement of Facts, to which the appellant admitted, that he was employed a security guard when he committed the offence. It is stated, amongst other things, that he and his two accomplices "were working as security guards on shift at Aman Hills Residence" on the night of the theft. Since the appellant was employed as a security guard in

September 2018 it follows that the offence was committed in that month and not in August 2018.

The error in the charge is therefore not material and no prejudice was caused to the appellant.

Section 371(1) of the Criminal Procedure Code provides:

“Subject to the provisions of sections 369 and 370, no finding, sentence or order passed or made by a Court of competent jurisdiction shall be reversed or altered on account of –

(a) any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial, or in any inquiry or other proceedings under this Code;

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unless such error, omission, improper admission or rejection of evidence, irregularity, want or misdirection has occasioned a failure of justice.”

In my judgment the error in the charge was not so defective as to vitiate the conviction. The record of the court below shows that the appellant understood the charge and penalty read to him before he pleaded guilty.

The appellant’s guilty plea to the charge was unequivocal and his admission to the supporting Statement of Facts unreserved. There was no miscarriage of justice.

A deterrent sentence was warranted as the offence involved a serious breach of trust. The appellant stole from the very premises he was entrusted to protect. In *Public Prosecutor v Mohammad Fakillah Ali Bin Hj Narawi* [Criminal Appeal No. 24 of 2017], Hairol Arni Majid, J. suggested a starting point sentence of one to two years for an offence of this nature. The sentence of 10 months’ imprisonment in the present case is not excessive.

For the foregoing reasons the appeal against conviction and sentence is dismissed.

DATO PADUKA STEVEN CHONG
Chief Justice