

Hamzah Bin Hj Yahya

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 37 of 2018)**

Steven Chong, C.J.

13 March 2019

Sentence – Failing to pay domestic helper’s salary.

Appellant unrepresented.

DPP Hjh Farhanah Binti POKPSRDPSS Haji Awang Suhaili for the Public Prosecutor/Respondent.

Case cited:

Farida Begam d/o Mohd Artham v Public Prosecutor [2001] 3 SLR (R) 592

Steven Chong, C.J.:

On 6 December 2018 in the Magistrate’s Court before Magistrate Hajah Noor Amalina Binti Dato Paduka Haji Alaihuddin the appellant was convicted after a trial of 31 counts of failing to pay his domestic helper’s salary in contravention of section 39(1) of the Employment Order, 2009.

The Magistrate imposed a fine of \$600 or 2 weeks’ imprisonment in default of payment on each count. In the result the fine in total is \$18,600 or 62 weeks’ imprisonment in default of payment.

Additionally, the appellant was ordered to pay compensation of \$6,850 to the domestic helper, being the amount of her unpaid salaries and airline ticket expenses, or 16 weeks’ imprisonment in default of payment.

The fine was to be paid within 6 months and the compensation within one month.

This is the appellant’s appeal for the fine to be reduced and an extension of time to pay. He says he earns \$650 working as a gardener; his wife and six children are dependent on him; he can pay \$100 monthly; and a prison sentence would cause hardship to his family.

Shortly stated the facts were that the domestic helper, Sadirah, was employed by the appellant for over 2 years from 2009 to 2012 but was paid only 2 months of her salary. Under the terms of employment the appellant was to pay Sadirah a monthly salary of \$200. When Sadirah asked the appellant for her salary on numerous occasions he assured her of payment but gave no indication when he would do so.

Sadirah went home to Indonesia in June 2012 but returned to Brunei Darussalam a month later at her own expense to claim for her unpaid salary.

The appellant has recompensed Sadirah a measly sum of \$150 only.

There is no merit in the appeal.

In *Farida Begam d/o Mohd Artham v Public Prosecutor* [2001] 3 SLR (R) 592, Yong Pung How, C.J. said at [27]:

“Maid abusers have certain misconceptions which must be corrected. A maid sells her services; she does not sell her person. An employer should not exploit his maid’s dependence on him for food and lodging, for these are basic rights. A maid’s abased social status does not mean she is any less of a human being and any less protected by the law.”

Although the above case concerns the physical abuse of a domestic helper by her employer the observations of the court are equally pertinent to a case of financial exploitation such as this.

Foreign domestic helpers are especially vulnerable to abuse and exploitation by their employers because they work within the confines of their employers’ home, away from their families and friends, and are dependent on their employers for food and lodging. Furthermore, the ill treatment of foreign domestic helpers may have an impact on bilateral relations and the nation’s international reputation.

Therefore, it is in the public interest that the court sends a strong signal that the abuse or exploitation of foreign domestic helpers will be treated seriously and a severe sentence can be expected.

Allowing a reduction in the fine or giving more time to pay would be detrimental to the public interest.

The appeal is dismissed accordingly.

DATO PADUKA STEVEN CHONG
Chief Justice

