



Public Prosecutor

AND

Haji Harith Bin Haji Bakir

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 41 of 2014)**

Steven Chong, Ag. C.J.

30 June 2015

Criminal law – Misappropriation of property of deceased person – Appropriate sentence.

DPP Aldila Bte Haji Mohd Salleh and DPP Mohd Danial Dato Haji Kifrawi for the Public Prosecutor/Appellant.

Mr. Roy Prabhakaran (M/S Sankaran Halim) for the respondent.

Case cited:

Public Prosecutor v Mohammad Hassanahamizan Bin Mohd Ibrahim
[Criminal Appeal No. 27 of 2014].

Steven Chong, Ag. C.J.:

This is an appeal by the Public Prosecutor against sentence.

On 22 September 2014 in the Magistrate's Court the defendant pleaded guilty to four counts concerning the death of a woman aged 39 named Voon Su Ching (*"the deceased"*):

1st Charge: Failing to report the death of the deceased to the police contrary to section 176 of the Penal Code.

2nd Charge: Leaving the body of the deceased in a private place contrary to section 17 of the Minor Offences Act.

3rd Charge: Dishonest misappropriation of the property of the deceased contrary to section 404 of the Penal Code.



4th Charge: Obstructing a police officer in the discharge of his duty contrary to section 186 of the Penal Code.

The Magistrate sentenced the defendant as follows:

1st Charge: Fine of \$1,000 or 2 months imprisonment in default of payment.

2nd Charge: 4 months imprisonment.

3rd Charge: 4 months imprisonment.

4th Charge: 2 months imprisonment.

The sentences on the 2nd and 3rd Charges were ordered to run concurrently but consecutively to the sentence on the 4th Charge resulting in a total sentence of imprisonment of 6 months.

In summary the admitted facts were that the defendant and the deceased were having an affair. On the morning of 13 February 2013 they met at a house in Kampong Salambigar belonging to a friend of the deceased. After sex the deceased appeared to have difficulty breathing, fell to the floor and died.

The defendant decided to conceal the deceased's body in a ditch near the house before driving away in her car which he then abandoned behind an electrical power station. He returned to the house on foot and left in his car taking along the deceased's handbag containing, amongst other things, over \$7,000 in cash and a gold locket.

On 14 February 2013 the deceased's husband reported to the police that his wife was missing. That evening the police questioned the defendant who admitted the deceased was "*a friend*" but denied knowledge of her whereabouts.

Anxious about the police investigations, on the next day, the defendant bought two truck loads of stones and one of cement to bury the deceased in the ditch.

Upon further questioning by the police three days later, the defendant confessed what he had done with the deceased's body.

After the deceased's body was found a post-mortem was conducted by Dr. Senarath Colombage. The cause of death could not be ascertained because of putrefaction of the body.



DPP Aldila submits that the sentence on the 3rd Charge is inadequate and not commensurate to the gravity of the offence. No complaint is made about the sentences on the other charges.

I agree that the sentence on the 3rd Charge is unduly lenient. Having regard to the nature of the offence, which in simple terms is stealing from the dead, and the value of the property, I also agree with the contention of the Deputy Public Prosecutor that a starting point of 18 months imprisonment reduced to one year on account of the guilty plea would be a proper sentence.

Mr. Prabhakaran, relying on the decision of this court in *Public Prosecutor v Mohammad Hassanahamizan Bin Mohd Ibrahim* [Criminal Appeal No. 27 of 2014], submits that even if the sentence is too lenient it would be unfair to increase it for the following reasons.

First, the defendant has served the sentence of 6 months imprisonment. He was discharged on 22 January 2015. Second, the defendant is in poor health and is receiving medication for tuberculosis. Third, the defendant has lost his employment as a school counsellor and is trying to pick himself up and move on with his life. Finally, the offences occurred over 2 years ago.

I think those arguments are compelling, in particular the point made that the defendant has done his time, and it would not serve the interest of justice to re-sentence the defendant to a further term of imprisonment.

However, since the defendant has admitted using \$1,328 of the deceased's money taken from her handbag to pay for the stones and cement, I think he ought to compensate her estate for this loss.

I therefore order that the defendant pay compensation of \$1,328 to the estate of the deceased within one week or serve imprisonment for one month in default of payment and the appeal is allowed to this extent.

DATO PADUKA STEVEN CHONG
Acting Chief Justice