

Hasrin Bin Jingga (D1)
Mohd Hafiz Bin Mohammad Azman @ Azni Bin Balanda (D2)
Mohammad Salihin Bin Haji Kamarudin (D3)

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 4 of 2017)

Steven Chong, Ag. C.J.
4 January 2018

Conviction – Dealing with cigarettes with intent to evade excise duty – Magistrate’s findings of fact challenged – Approach of appellate court.

Sentence – Whether minimum fine to be imposed.

Appeal out of time – No arguable case to grant extension of time to appeal.

Lt. Col (R) Hj Harif bin Hj Ibrahim (Messrs. Lt Col (Rtd) Harif Eric Advocates and Solicitors) for the Appellant.

DPP Kamaliah Binti Awang Mohamad for the Public Prosecutor.

Cases cited:

Zulkifli bin Puasa & Others v Public Prosecutor [1985] 1 MLJ 461.

Jasrin bin Juri v Public Prosecutor [2012] 1JCBD 252.

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

On 6th March 2017 in the Magistrate’s Court D1, D2 and D3 were convicted after a trial before Senior Magistrate Azrimah Binti Hj Abdul Rahman of dealing with 282 cartons of cigarettes with intent to evade excise duty contrary to section 146(1)€ of the Excise Order.

The Senior Magistrate imposed a fine of \$90,000 or 18 months imprisonment in default of payment on each defendant on 11th March 2017.

Notice of Appeal against conviction and sentence was filed on 11th April 2017.

Appeal out of time

The appeal is out of time. It should have been filed within 14 days from the sentence pursuant to section 272 of the Criminal Procedure Code. I will therefore treat this an application for extension of time to appeal.

Counsel for the defendants was unable to explain the delay in appealing. But even if a satisfactory explanation for the delay could be given there must be an arguable case: *Zulkifli bin Puasa & Others v Public Prosecutor* [1985] 1 MLJ 461.

Decision of the Senior Magistrate

On the evidence from the Statement of Agreed Facts and the witnesses for the prosecution accepted by the Senior Magistrate she concluded that (1) on the afternoon of 13th December 2010 the defendants loaded six bags containing the 282 cartons of cigarettes (“the cigarettes”) into a Toyota Kijang car at the Sungai Tujoh Police Post (“the Police Post”) intending to go home; (2) D1 and D3 were policemen who had been on duty at the Police Post that day; (3) the Toyota Kijang with the defendants inside the vehicle proceeded to the exit gate where D3 alighted in order to open it when customs officers approached; (4) the defendants returned to the Police Post in the Toyota Kijang and left the cigarettes in the jungle nearby; (5) the cigarettes were later found by customs officers who had being pursuing the defendants; (6) the place where the cigarettes were recovered was within Brunei Darussalam; and (7) D3 after arrest made two statements admitting to loading the cigarettes into the Toyota Kijang and disposing of them in the jungle.

The Senior Magistrate disbelieved the evidence of the defendants denying knowledge of the existence of the cigarettes. She also rejected the submission that the cigarettes were found on “no man’s land” and no offence was thus committed. She was satisfied the charge was proved beyond reasonable doubt.

Appeal against conviction

The appeal against conviction essentially sought to challenge the findings of fact of the court below. The approach an appellate court should adopt in evaluating a trial judge’s findings of fact is well-settled. An appellate court will not readily reverse findings of fact unless the findings are plainly wrong or against the weight of the evidence bearing in mind the trial judge had the benefit of seeing and hearing the witnesses give evidence: *Jasrin bin Juri v Public Prosecutor* [2012] 1JCBD 252.

I have not been persuaded the findings of the Senior Magistrate are plainly wrong or reached against the weight of the evidence. She was entitled on the evidence she accepted that the defendants were jointly dealing with the cigarettes by conveying

them in the Toyota Kijang in the vicinity of the Police Post in Brunei Darussalam with intent to evade excise duty and therefore the offence was proven to the requisite standard of proof.

Appeal against sentence

The penalty for the offence is a fine of not less than 6 times the amount of the excise duty or \$40,000, whichever is the lesser amount, and of not more than 20 times the amount of the excise duty or \$40,000 whichever is the greater amount.

Counsel for the defendants submits that the sentence is excessive and the minimum fine should have been imposed.

The excise duty evaded is \$12,340. The fine of \$90,000 is over 6 times but less than 8 times the amount of the excise duty. Considering the defendants were convicted after a trial the amount of the fine imposed is appropriate.

Conclusion

For the foregoing reasons I hold that there is no arguable case against either conviction or sentence and the application is accordingly dismissed.

DATO PADUKA STEVEN CHONG
Acting Chief Justice