

Mohammad Sahlan bin Haji Chuchu

vs

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No.8 of 2016)**

**Pg DP Hjh Rostaina bte Pg Hj Duraman, J.C.
9th March, 2017**

Criminal Law --- Appeal against sentence --- currently facing sentence for a Penal Code offence --- failing to report under Regulation 12(2)(a) of the Misuse of Drugs Act (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 --- consuming of Methylamphetamine --- Class A controlled drug --- contrary to section 6(b) of the Misuse of Drugs Act, Cap.27.

Cases referred to:

Md Zaini bin Hj Ali Hassan vs PP (Criminal Appeal No. 35 of 2003)

Awang Mohammed Sihamuddin bin Abdullah (Criminal Motion No.14 of 2014)

Md Arif bin Md Jawi vs PP (Criminal Appeal No. 10 of 2016)

Appellant in person.

DPP Yvonne Lim for Public Prosecutor/Respondent

JUDGMENT

Pg DP Hjh Rostaina, J.C.

1. Briefly stated on 24th March, 2016, the appellant, a local, who was aged 41 then was convicted on his own admission to six counts under Regulation (12(2)(a) of the Misuse of Drugs Act for failure to report to the supervision officer on six different occasions and to five counts contrary to section 6(b) Misuse of Drugs Act (Cap.27) for the consumption of a Class A controlled drug Methylamphetamine.

2. The charges were:-

1st Charge

That you, on the 16th day of January 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

2nd Charge

That you, on the 30th day of January 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

3rd Charge

That you, on the 6th day of February 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

4th Charge

That you, on the 13th day of February 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

5th Charge

That you, on the 20th day of February 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

6th Charge

That you, on the 27th day of February 2013, in Brunei Darussalam, being a person directed under Regulation, 12(2)(a) of the Misuse of Drugs (Approved Institution and Treatment and Rehabilitation) Regulations, 1987 to report to a supervision officer at the Narcotics Control Bureau (Bandar Seri Begawan) on the said date and at the said place for the purpose of supervision, did fail to report to the supervision officer as directed and you have thereby committed an offence punishable under regulation 12(3)(a) of the said regulations.

7th Charge

That you, on or about the 30th day of June 2012, in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did consume a Class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

8th Charge

That you, on or about the 17th day of July 2012, in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did consume a Class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section

6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

9th Charge

That you, on or about the 13th day of August 2012, in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did consume a Class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

10th Charge

That you, on or about the 4th day of September 2012, in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did consume a Class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

11th Charge

That you, on or about the 6th day of October 2012, in Brunei Darussalam not being a person authorized by the Misuse of Drugs Act, Chapter 27, or the regulations made thereunder, did consume a Class A controlled drug, to wit, METHYLAMPHETAMINE, in contravention of section 6(b) of the Misuse of Drugs Act, Chapter 27 and you have thereby committed an offence punishable under section 29 read with the Second Schedule of the said Act.

3. The admitted facts were that on the 17th August 2010, the appellant was referred to a mandatory supervision program at the Narcotic Control Bureau (NCB) for a period of 24 months upon his released from a rehabilitation program at Pusat Al Islah.
4. Within the 24 months period of joining the program, the Bureau found the appellant's participation was unsatisfactory after contravening several regulations under the order. Due to that, his supervision program was extended further to another 24 months. He still failed to comply with the regulations and had absconded on the days he was ordered to report to the Narcotic Control Bureau as highlighted in charges 1 to 6.
5. Furthermore, for charges 7 to 11, the Magistrate found him to be a second offender under section 6(b) of the Misuse Drugs Act.
6. Section 29(3A) of the Misuse of Drugs Act, Chapter 27, provided for a minimum sentence of 3 years' imprisonment for a second or subsequent conviction under section 6(b).
7. On the six offences under Regulation 12(2)(a) of the Misuse of Drugs Act (Approved Institution and Treatment and Rehabilitation) Regulations, 1987, the appellant was fined totalling \$1,500 and in default 12 weeks' imprisonment which is to be carried out consecutively to the concurrent sentence of 3.5 years' imprisonment for the five offences under section 6(b) of the Misuse of Drugs Act, Chapter 27.
8. At the time of the above sentencing, the appellant was already serving a sentence of 4 years since October 2014 for a housebreaking offence under the Penal Code. The

Magistrate then imposed for the above drug offences sentence to run consecutively to the housebreaking offence sentence.

9. He appealed to serve the sentence for the drug offences concurrently with the present housebreaking sentence stating that a longer incarceration will cause hardship to him and his family. That he has a family and a young son. That he wants to gain employment and look after his family.
10. The DPP submitted the appellant is currently serving sentence for a Penal Code offence which is a distinct and different offence to the offences under the Misuse of Drugs Act and that they should not be served concurrently.
11. I agree. His actions in committing those offences showed a deliberate defiance of the law and that each type of offence should merit separate punishment.
12. It is established by previous cases, that hardship caused to the family due to the appellant's incarceration is not a matter which the court would normally take into account. Refer to *Md Zaini bin Hj Ali Hassan vs PP (CA No. 35 of 2003)* and *Md Arif bin Md Jawi vs PP (CA No. 10 of 2016)*.
13. The appeal against sentence is dismissed.

PG DP HJH ROSTAINA BTE PG HAJI DURAMAN

Judicial Commissioner

9th March, 2017