

Public Prosecutor

AND

Muhammad Yasriazizi Bin Mohd Shahrol Amira

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 8 of 2020)**

Steven Chong, C.J.
20 June 2020

Criminal law – Multiple theft offences – Sentence

PO Hajah Siti Mu'izzah Binti Haji Sabli for the Public Prosecutor.
Respondent unrepresented.

Case cited:

Public Prosecutor v Md Zulani Bni Hj Sani and Public Prosecutor v Raddyman Bin Awg Hj Radin
[2005] 2 JCBD 8

Steven Chong, C.J.:

On 12 March 2020 the respondent pleaded guilty to twelve counts under the Penal Code: eleven counts of theft contrary to section 380 and one count of cheating contrary to section 417.

In relation to the theft offences (1st to 11th Charges) the Magistrate imposed a starting point sentence of imprisonment of 16 months each reducing it to either 12 months or 8 months on account of the guilty plea.

As to the cheating offence (12th Charge) the respondent was sentenced to a starting point sentence of imprisonment of 12 months reduced to 6 months for the guilty plea.

The Magistrate ordered all the sentences of imprisonment to run concurrently resulting in an aggregate sentence of 12 months.

This is an appeal by the Prosecutor against that sentence.

Shortly stated the admitted facts were that sometime in 2019 the respondent began going to his girlfriend's house and staying overnight with her in her bedroom unbeknown to her parents. The respondent would leave the house in the morning only after his girlfriend had gone to school and her parents had left for work.

On five occasions between June 2019 and January 2020 when the respondent was alone in the house in the morning he used the opportunity to steal various things including gold rings and bracelets belonging to his girlfriend's parents and sister and a BIBD debit card belonging to his girlfriend's brother (1st to 5th Charges). The respondent sold the gold rings and bracelets to a jewellery shop for \$1,200 which he spent on himself.

Pretending to be his girlfriend's brother the respondent was able to obtain a PIN password from BIBD (12th Charge) enabling him to use the stolen debit card on eight occasions to make ATM cash withdrawals totaling \$1970 leaving a balance of \$54.18 in the account. The respondent used the money to purchase, among other things, car parts.

I pause here to observe that the respondent was charged with and pleaded guilty to six offences of theft of cash from the BIBD amount amounting to \$1,950 (6th to 11th Charges). No charges were preferred in relation to two cash withdrawals of \$10 each.

In this appeal the Public Prosecutor does not take issue with the individual sentences imposed by the Magistrate. The contention is that the sentence in totality of 12 months' imprisonment is manifestly inadequate.

I will deal with the individual sentences first. The sentences of 12 months' imprisonment in respect of three of the theft offences are in line with the guideline sentence laid down in *Public Prosecutor v Md Zulani Bni Hj Sani and Public Prosecutor v Raddyman Bin Awg Hj Radin* [2005] 2 JCBD 8.

However, the Magistrate did not explain why she imposed 8 months' imprisonment on eight of the theft offences which is a departure from the guideline sentence. These were a series of connected theft offences committed by the respondent over a span of about six months and there is no justification for the deviation.

A reduction of one third of the starting point sentence is normally accorded to an offender for a guilty plea. No explanation was given by the Magistrate and it is difficult to understand why there was a departure from this well-established practice.

The appropriate starting point sentence of imprisonment on each of the theft offences should have been 18 months and not 16 months with a one third reduction to 12 months for pleading guilty.

On the cheating offence a one third discount from the starting point sentence of imprisonment of 12 months would give a sentence of 8 months and not 6 months and is commensurate to the seriousness of the offence.

Turning to the aggregate sentence of 12 months' imprisonment I agree with the Public Prosecutor that this is an unduly lenient sentence notwithstanding the respondent was a young man of 20 at the material time and is a first offender. I think the Magistrate fell into error in not giving sufficient weight to the gravity of the multiple offences committed by the respondent.

This is not an isolated case of theft committed by the respondent on the spur of the moment. The repeated thefts from the house and cash withdrawals from the BIBD account by the respondent were premeditated and occurred over a period of approximately six months with sufficient time for reflection between each offence. Deterrence must be the primary sentencing consideration.

For the foregoing reasons I allow the appeal, quash the sentences of the court below and order as follows (reduction in sentence granted for guilty plea):

1. 1st to 11th Charges: 18 months reduced to 12 months.
2. 12th Charge: 12 months reduced to 8 months.
3. Sentences on 1st, 6th and 12th Charges to run consecutively and the remaining sentences to run concurrently resulting in a sentence of 2 years and 8 months.

DATO SERI PADUKA STEVEN CHONG
Chief Justice