

Public Prosecutor

AND

Abby Dhamara Pratama

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 11 of 2025)**

Haji Abdullah Soefri bin POKPSM DSP Haji Abidin, J.C.

Date of Ruling: 17th November, 2025.

Headnote: Criminal Law – Sentencing - Appeal by Public Prosecutor - Sentencing Principles – Totality - Starting Point - Aggravating Factors - Digital Fraud - Public Interest - Judicial Discretion - Credibility of Magistrate - Legislative Recommendation

DPP Jordan Teah for the Public Prosecutor/Appellant.
Defendant/Respondent In Person.

Cases cited:

Erlina Binti Haji Yaakub v P.P

Mohammad Sambari Bin Haji Abu Bakar v P.P

RULING

Haji Abdullah Soefri, J.C:

1. This is an appeal by the Public Prosecutor against the sentence imposed by the Magistrate on the 17th May 2025 upon the Defendant's guilty pleas on three (3) counts of charges under section 420 of the Penal Code.
2. I will not repeat the charges and the agreed statement of facts.
3. The Defendant was imposed as follows:
 - A] Amended 1st Charge
A starting point of 15 months' imprisonment and reduced to 10 months
 - B] Additional 2nd Charge
A starting point of 18 months' imprisonment and reduced to 12 months
 - C] Additional 3rd Charge
A starting point of 18 months' imprisonment and reduced to 12 months

Final sentence after considering of Totality principle

Only parts of each sentence were ordered to run consecutively

1. 4 months from the Amended 1st Charge;
2. 6 months from the additional 2nd Charge;
3. 5 months from additional 3rd Charge.

Resulting in the total aggregate sentence of 15 months' imprisonment, and for the remaining sentences to run concurrently.

GROUPS OF SENTENCE

1. Depression faced by the Defendant was acknowledge but "*challenges dealing with mental health issues, such circumstances do not excuse or justify dishonest conduct, particularly where the offence was planned, deliberate and affected multiple victims. I find that his justification is an afterthought and not supported by his conduct, which reflected a clear and continuing intention to deceive.*"
2. Cases of ***Erlina Binti Haji Yaakub v P.P*** and ***Mohammad Sambari Bin Haji Abu Bakar v P.P*** were referred to the length of sentences. The Magistrate also considered the seriousness of the offences, deterrence sentence and upholding public confidence in online transactions.
3. Totality principle and overall criminality led the Magistrate to ruled that consecutive sentences to be excessive and crushing to the Defendant.

PROSECUTION GROUNDS OF APPEAL

1. Failure of the Magistrate to adopt a higher starting point where a normal sentencing range for the offence under section 420 of the Penal Code is between 18 to 28 months' imprisonment.
2. Made an arithmetic error in calculating the overall sentence which resulted in an aggregate sentence that was manifestly inadequate; and
3. Failed to properly apply the totality principle which requires the assessment of the overall sentence appropriate to reflect the criminality involved in the offences committed by the Defendant.
4. Prosecution highlighted the aggravating factors:

A] Planning and Premeditation

- B] Number and identity of the victims
- C] Opportunistic and manipulative conduct
- D] Public Interest Considerations

DEFENDANT GROUNDS OF OBJECTION

1. He has accepted the Magistrate sentence and did not want to appeal.
2. He wants to use the time in prison to reflect himself so that he will be a better person and citizen when he is released.
3. He is very remorseful.
4. He has received application of divorce from his wife while he was in prison.
5. By appealing the sentence of the Magistrate, the Prosecution is questioning the credibility of the Magistrate.

COURT CONSIDERATIONS

Sections 271 of the Criminal Procedure Code, Cap 7 provides as follows:

"Dissatisfied person may appeal

271. Except as provided for in section 275, the accused person, the complainant or the Public Prosecutor, if he is dissatisfied with any judgment, sentence or order pronounced by any Magistrate in a criminal case or matter to which he is a party, may appeal to the High Court against such judgment, sentence or order for any error in law or in fact, or on the ground of the excessive severity or of the inadequacy of the sentence. "

I have considered the submissions made by both parties. I am satisfied that the Magistrate assessment on the mitigating and aggravating factors cannot be faulted. I am agreeable with the Magistrates and the Prosecution that there is *"a strong element of public interest in the sentencing of cheating cases particularly where the deception is carried out through modern digital means"*. The concern is not only in Brunei but also in the whole world. I believe that strong message should be sent to the Public at large that the Court looks into this kind of offences especially by using modern digital means seriously so as to dissuade like-minded individuals from engaging in similar fraudulent schemes and also to upholding public confidence in online transactions.

The sentences especially the starting point and the final total sentence that the Magistrate imposed not only on the lower scale but also did not reflect the seriousness of the Court in its effort to dissuade like-minded individuals from engaging in similar fraudulent schemes by using modern digital means.

Having had said all the above, I am satisfied that the starting points and the overall sentence that the Magistrate imposed are manifestly inadequate and replaced them as follows:

A) Amended 1st Charge

A starting point of 18 months' imprisonment and reduced to 12 months

B) Additional 2nd Charge

A starting point of 21 months' imprisonment and reduced to 14 months

C) Additional 3rd Charge

A starting point of 21 months' imprisonment and reduced to 14 months

The offences were committed at different transactions and the actions were premeditated and were planned and using digital means. I am satisfied that criminality involved in the offences committed by the Defendant justified for all the sentences to be served consecutively with each other and thus the Total sentences to be served is 40 months.

The effective date is to remain. The appeal is allowed and the sentences are enhanced from 15 months to 40 months.

Before I take my leave, I would like to suggest that for the relevant authorities to revisit the legislation and to introduce a provision that will specifically deal with offences committed by using digital means as being practiced in other countries where on top of imprisonment sentence, whipping was also to be imposed.

Appeal is allowed and Sentence is enhanced to 40 Months' imprisonment.

HAJI ABDULLAH SOEFRI BIN POKSM DATO SERI PADUKA HAJI ABIDIN
Judicial Commissioner