

Mohammad Azwan Bin Zawawi

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 28 of 2020)**

Steven Chong, CJ
11 November 2020

Criminal law – Wearing uniform of a police officer with fraudulent intent – Abetment of criminal breach of trust – Sentence – s.s.171 and 406 of the Penal Code.

Pg Khairul Nizam Bin Pg Hj Mohd Yassin (M/S Yusof Halim & Partners) for the Appellant.
DPP Raihan Nabilah Binti Hj Ahmad Ghazali for the Public Prosecutor/Respondent.

Cases cited:

Public Prosecutor v Mohd Rosdy Bin Abdullah [2000] 2 JCBD 331
Mohd Rosdy Bin Abdullah v Public Prosecutor [2001] 1 JCBD 186
Hj Abdullah Bin Hj Md Salleh v Public Prosecutor [2003] 1 JCBD 3
Public Prosecutor v Lim Ai Hui [2004] 2 JCBD 189

Steven Chong, CJ (ex tempore):

On 23 June 2020 in the Magistrate’s Court the appellant pleaded guilty to two charges under the Penal Code: (1) wearing a uniform resembling one used by a Police Inspector with fraudulent intent contrary to section 171; and (2) abetment of criminal breach of trust contrary to section 406 read with section 109.

Chief Magistrate Pg Masni Binti Pg Hj Bahar sentenced the appellant to imprisonment of 2 months on the section 171 offence and 10 months on the section 406 offence to run consecutively resulting in an aggregate sentence of one year.

The appellant now appeals against that sentence on the ground that it is excessive.

Briefly stated the facts were that sometime in July 2017 the appellant was “*inspired*” to dress up as a police officer after watching several Malaysian police television dramas. This inspiration drove him to persuade his friend Lance Corporal Arman Bin Degat (“*L/Cpl Arman*”), who was a storekeeper in the Temburong Police District Headquarters, to procure various pieces of a police uniform such as the epaulettes for his use.

The appellant then had a police uniform tailored for himself with a badge bearing the name “*Inspector Azwan*” together with the emblem of the Royal Brunei Police Force (“*RBPF*”). The appellant also bought a pair of “*shiny black shoes*” to wear in order to complete the look of a Police Inspector.

In October 2017 the appellant befriended a woman (“*S*”) via Instagram. To impress *S*, the appellant introduced himself as Inspector Azwan of the RBPF Commercial Crime Unit and he sent her five photographs of himself dressed in his police uniform.

The appellant’s fraudulent portrayal of Inspector Azwan was exposed when *S* discovered she had been deceived by him after a relative who worked in the RBPF told her that he was an impostor. *S* made a police report and the appellant was arrested.

Counsel for the appellant submits that this is an appropriate case for a probation order primarily on the following two grounds: (1) this is simply a case of a man who dressed up as a police officer to “*flirt*” with a woman and no harm was caused to anyone but himself and *L/Cpl Arman*; and (2) the appellant is a “*useful member of society*” as he and his wife operate an advertising agency employing five local persons.

The Chief Magistrate did not consider it proper to order probation having regard to the gravity of the offences and the need for a deterrent sentence.

I entirely agree.

The court should only exercise its discretion to order probation in exceptional cases having regard to the circumstances of the case including the nature of the offence and the character of the offender: see the decision of this court in *Public Prosecutor v Mohd Rosdy Bin Abdullah* [2000] 2 JCB 331, upheld by the Court of Appeal in *Mohd Rosdy Bin Abdullah v Public Prosecutor* [2001] 1 JCB 186.

Applying this principle, there is nothing exceptional in the circumstances of the case to justify a probation order. On the contrary, the circumstances of the case militate against a probation order.

With respect to Counsel for the appellant, I do not consider the deception on *S* by the appellant as mere flirtation with no harm to her. *S* was deceived by the appellant to enter into a

relationship with him and it is evident that when she found out he was an impostor she felt it was a sufficiently serious matter to make a police report.

The impersonation of a police officer has the potential to tarnish the image of the RBPF and warrants a deterrent sentence in the public interest: see *Hj Abdullah Bin Hj Md Salleh v Public Prosecutor* [2003] 1 JCBD 3.

A custodial sentence is the norm in criminal breach of trust cases: see the decision of the Court of Appeal in *Public Prosecutor v Lim Ai Hui* [2004] 2 JCBD 189.

The appellant's abetment of criminal breach of trust by L/Cpl Arman by instigating him to steal police property which he was responsible for keeping in safe custody warrants a severe sentence. A probation order given the gravity of the offence would be wholly inappropriate.

Notwithstanding the appellant's guilty plea and clear record the overall sentence of imprisonment of one year is not excessive.

For these reasons the appeal is dismissed.

DATO SERI PADUKA STEVEN CHONG
Chief Justice