

Public Prosecutor

AND

**On Swee Beng (D1)
Muhammad Syahidin bin Badaruddin (D2)
Muhammad Ali Zainal bin Syaidden (D3)
Untung binti Andong (D4)**

**(High Court of Brunei Darussalam)
(Criminal Motion No. 27 of 2022)**

**On Swee Beng (D1)
Muhammad Syahidin bin Badaruddin (D2)
Muhammad Ali Zainal bin Syaidden (D3)
Untung binti Andong (D4)**

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Motion No. 5 of 2021)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.

14th July 2022

Criminal law – Appeal by Prosecution against acquittal – leave to extend the time to file an appeal against the Voir Dire ruling by D1, D2, D3 and D6 – both appeal and motion dismissed

DPP (Dr) Mohammad Hussin Ali bin Idris for Public Prosecutor.

Iman Hanisah binti DP Hj Hisham of M/S Cheek Advocates and Solicitors for Respondent/Applicant.

Cases referred to:

Leow Nghee Lim vs Registrar [1956] MLJ 28

PP vs Lai Ah Bee (1974) 2 MLJ 47

Pg Mohd Ariffin bin Pg Hj Ismail vs PP (HCCA No.136 of 2002)

Jason Toh Han Heng vs PP (HCCA No. 4 of 2012)

JUDGMENT

Hj Abdullah Soefri, JC:

There are two appeals before this court, the first appeal was filed by the Prosecution against the acquittal of On Swee Beng (D1), Mohammad Syahidin bin Badaruddin (D2), Mohammad Ali Zainal bin Syaidden (D3), and Untong binti Andong (D6).

D1, D2, and D3 were acquitted for charges under section 6(1) Common Gaming House Act, Chapter 28 offence, and D6 was acquitted for section 4(b) Common Gaming House Act, Cap 28 offence.

The second is a Criminal Motion for leave to extend the time to file an appeal against the voir dire ruling. This was filed by D1, D2, D3, and D6.

Appeal against Acquittal

The Appellant laid out two grounds of appeal against acquittal namely:-

1. The Senior Magistrate erred in law and in facts not to give proper weight on the Defendant's police statement and other evidence; and
2. The Senior Magistrate erred in law not to address on presumption provided under the Common Gaming House Act, Chapter 28.

As to the first ground, the Appellant expanded that the trial Magistrate failed to give proper weight to the police statements recorded from all the Respondents and did not reflect the findings in the judgment.

The trial Magistrate ruled that all the police statements of the Respondents were admissible after the voir dire hearing.

The trial Magistrate however did not give any weight to the statements:

"Looking at the contents of the statements itself, I am concerned as to the truth and the reliability of these statements. As such I am of the view these statements are not reliable. Accordingly, I would not give any weight to the statements".

To this finding, the Appellant submitted that the trial Magistrate disregarded the statements without cross-checking with other evidence presented by the Prosecution and further submitted that the Magistrate did not explain why and how the statements were deemed untrue and unreliable.

To this submission, I would like to refer to the Magistrate's judgment from paragraphs 14 to 27 whereby the said Magistrate did scrutinize the statements and cross-refer to both the Defendants and the Prosecution witnesses and concluded her findings in paragraph 28.

As to the second ground, the learned Magistrate has reminded herself on presumption and the Defendant's burden on the balance of probabilities in paragraph 6.

The Magistrate has concluded in paragraph 32, the Prosecution has failed to adduce sufficient evidence to establish every ingredient in the charge.

In ***Public Prosecutor vs Lai Ah Bee* (1974) 2 MLJ 47** cited a case (***Leow Nghee Lim vs Registrar*, [1956] MLJ 28**) which states that:

“The onus is on the Prosecution to adduce convincing evidence of the facts necessary to raise a presumption before the onus on any issue is shifted”.

Having said the above, I am satisfied that the learned Senior Magistrate had given proper weight on the evidence before she made her conclusion and that she has not erred in law in any way when she acquitted D1, D2, D3, and D6 and I, therefore, dismiss the Prosecution’s appeal against acquittal.

As to the Criminal Motion for leave to extend the time to file an appeal against the voir dire ruling of D1, D2, D3, and D6 statements, I would like to refer to section 272(1) of the Criminal Procedure Code and section 278 of the same where these two provisions provide amongst others that appeal shall be filed within 14 days from the judgment, sentence or order being passed paying the prescribed appeal fee.

Section 278 permits the appeal can be considered in order that substantial justice may be done in that matter.

In ***Zulkfli bin Puasa and Others vs Public Prosecutor* (1985) 1 MLJ 461**, the Court of Appeal stated that there are two factors that need to be considered for an application of an extension of time:-

1. the length of the delay and whether it can be satisfactorily explained; and
2. whether the out of time application is likely to succeed.

I would like to deal with (b) if the out-of-time application is likely to succeed.

No doubt that the ruling by the learned Senior Magistrate was short but she did state that she had reviewed the evidence forwarded by the Prosecution and submitted by both the Prosecution and Defence and was satisfied beyond reasonable doubt that all the contested statements were recorded voluntarily. This conclusion was made after she had reviewed all the evidence and submissions and this was further reviewed again at the end of the case where she gave no weight to all the statements.

In ***Jason Toh Han Heng vs Public Prosecutor* (High Court Criminal Appeal No. 4 of 2012)**, Court of Appeal application for leave No.4 of 2012, 10th May 2012, it was held as follows:-

“The Application must demonstrate that the delay can be satisfactorily explained and that he has an arguable case likely to succeed on the appeal. Much the most important of these is showing that there is an arguable case and the appeal has at least a reasonable chance of success. Leave will not be granted in the absence of an arguable case even if the delay is excusable or it is so short that it is just to overlook it.”

There is nothing that the learned Senior Magistrate has missed in coming to the ruling and the application if leave is given would not be likely to succeed.

Having said the above, I dismiss the Defendants' criminal motion for leave to extend the time to file an appeal against the voir dire ruling.

In conclusion, the Court rule as follows:-

1. Prosecution appeal against the acquittal of D1, D2, D3, and D6 which was entered on 14th July 2020 is dismissed; and
2. D1, D2, D3, and D6 criminal motion for leave to extend the time to file an appeal against voir dire ruling by the learned Magistrate is dismissed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner