

Public Prosecutor

AND

Muhammad Firdaus bin Mohamad Salleh

**(High Court of Brunei Darussalam)
(Criminal Trial No. 1 of 2020)**

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

8th February 2021

Criminal law – offences under section 279 and 427 Penal Code – pleaded guilty – seriousness of offence – exposed a child to danger – imprisonment rather than probation - consecutive

PO Hjh Atiyyah Azzahra binti POKLS DSLJ Awang Hj Abas for Public Prosecutor.

Hj Mohamad Rozaiman bin Dato Hj Abdul Rahman of m/s ZICO R.A.R for the Defendant.

Cases referred to:

R v Howells (and other appeals), (1999) 1 ALL ER 50, 54

Chua Tiong vs PP (2001) 3 SLR 425

Ng So Kuen Connie vs PP [2003] 3SLR (R) 178

Goh Lee Yin vs PP [2006] 1 SLR(R) 530 at 293

Goh Lee Yin [2008] [25 supra at 99]

Lim Ghim Peow vs PP [2014] 4 SLR 1287; [2014] SGCA 52

PP vs Lim Chee Yin Jordon [2018] SGHC 46

SENTENCING

Hj Abdullah Soefri, JC:

Mohammad Firdaus bin Mohammad Salleh, hereafter known as the Defendant, was first brought before the High Court on the 11th January 2020. Numerous applications for adjournment were sought and granted mainly due to the Defendant's application in order for submission of various Psychiatric and Medical Reports.

On 31st August 2020, the Defendant has unreservedly pleaded guilty to the first charge under section 279 of the Penal Code, Cap 22, and 2nd additional charge under section 427 of the same before this court.

The Prosecution has applied for the withdrawal of the 6th charge under section 28(1)(a) of the Children and Young Persons Act, Cap 291 pursuant to section 172 of the Criminal Procedure Code, Cap 7. As for the 3rd, 4th, and 5th charges, they were compounded. The

Prosecution has agreed for a charge under section 279 of the Penal Code, Cap 22 to be taken into consideration pursuant to section 13A of the Criminal Procedure Code, Cap 7 and the Defendant admitted to the said offence.

Thus, in summary, the Defendant even though initially was preferred six (6) charges, will be sentenced for two charges only which are the 1st charge under section 279 of the Penal Code and the Additional 2nd charge under section 427 of the same. He has one charge which is to be taken into consideration which is under section 279 of the Penal Code.

The facts of the case which the Defendant has admitted are summarized as follows:-

1. The Defendant is a Bruneian and unemployed.
2. On 2nd November 2019, the Defendant was at a relative's house at address No.14, Simpang 48-36-6, Jalan 99, Perumahan Kg Rimba. At that time, the Defendant was outside the house when his cousin and wife arrived in a Toyota Innova bearing registration number BAH 8672.
3. The Defendant's cousin and wife went into the house leaving their sleeping child in the car with the engine running. Seeing that the car was unattended, the Defendant got into the said car and drove off with the child who was still in the car at the time.
4. At the sound of the car being driven off, the Defendant's cousin immediately got into another car with his father to pursue the Defendant. At this point, the Defendant's cousin's wife had called 993 to lodge a police report regarding the matter.
5. Upon realizing that he was being pursued by his cousin, the Defendant decided to turn into the entrance of the RBAF (Royal Brunei Air Force) in Rimba. He then entered the compound of the RBAF through the front gate which was opened at that time. Personnel of the RBAF tried to stop the Defendant by chasing after the car and closing the front gate.
6. The Defendant then turned the car around and tried to leave the compound of the RBAF through the front gate. The Defendant rammed into the gate a number of times causing it to subsequently fall and damaging two cars which were parked near the gate.
7. The Defendant then drove out of the compound of the RBAF and headed towards Jalan Bebatik, Kilanas where he decided to visit another relative's house.
8. On the way to Jalan Bebatik, Kilanas the Defendant almost hit another vehicle. The driver of the said vehicle immediately recognized the registration number of the Defendant's car due to a recent viral message being circulated over WhatsApp and then followed the Defendant's vehicle to a house located at Simpang 510 where the driver then blocked the entrance of the house and notified the police.

9. Subsequently, the Defendant was arrested and brought to the police station for further investigation.
10. During the investigations, the Defendant admitted to taking his cousin's car without their permission because he wanted to bring his cousin out for a ride. He also admits to ramming the said Toyota Innova into the main gate of the RBAF compound while the child was still in the car.
11. A quotation of the damage caused to the stainless steel gate was obtained amounting to \$8,532.70.
12. Annex A set out the offence to be taken into consideration.
13. The Defendant has no previous convictions.

Mitigation

The Defence Counsel has submitted written submission and also submitted several Psychological and Psychiatrist Reports and also literatures and cases to support his application for the Defendant not to be imposed with the custodial sentence but instead for the Court to use his discretion to impose a non-custodial punishment in accordance to section 5(1) of the offenders (Probation and Community Service) Act, Cap 220.

The Defence Counsel submits as follows:-

"It is our humble submission that leniency should be extended by the Court in exercising their jurisprudential powers, namely to avail their discretion in imposing a non-custodial punishment in accordance to section 5(1) of the Offenders (Probation and Community Service) Act, Cap 220, where no further deliberation is required. In light of this mitigation and the contents herein, we respectfully postulate that the bare minimum of penalty measures must be granted whereby applicable are pathways are commissioned to assist in generating healthier coping apparatuses and management of the Defendant's disability thus, constraining the stake of future offending behaviour whilst simultaneously facilitating his recovery and reintegration into the community."

The Defence submitted that:

"In sentencing an offender with mental and/or intellectual impediments, there is commonly a tension between the sentencing principles of specific and general deterrence on the one hand and the principle of rehabilitation on the other. The approach often adopted is that the element of general deterrence may be given slighter credence if the offender was suffering from the said impediments at the time of the offence, particularly if they were causally related to the offence". This was illuminated in the Singapore case of *Ng So Kuen Connie vs PP* [2003] 3SLR (R) 178 as quoted in *Public Prosecutor vs Lim Chee Yin Jordon* [2018] SGHC 46 where the High Court decreed the following:

“The element of general deterrence can and should be given considerably less weight if the offender was suffering from a mental disorder at the time of the commission of the offence. This is particularly so if there is a causal link between the mental disorder and the commission of the offence. In addition to the need for a causal link, other factors such as the seriousness of the mental condition, the likelihood of the (offender) repeating the offence and the severity of the crime, are factors which have to be taken into account by the sentencing judge. In my view, general deterrence will not be enhanced by meting out an imprisonment term to (an offender) suffering from a serious mental disorder which led to the commission of the offence.”

The Defence submitted the Defendant’s Psychological Report and gave a summary as follows:

“The result of the current assessment was compromised by non-credible test performances and indications that Muhammad Firdaus applied insufficient effort in completing the various tests he was administered. For this reason, his test results cannot be considered either reliable or valid. The critical issue here is whether or not it is a conscious effort to appear cognitively impaired, or the result of ongoing cognitively impaired, or the result of ongoing cognitive impairments detrimentally impacting upon Muhammad Firdaus’ functioning. Unfortunately, no outcome of a single psychological test can resolve this issue, and further assessment is recommended at such time as Muhammad Firdaus is prepared to engage and co-operate with testing to permit a better appreciation of his current level of cognitive functioning”.

The Defence Counsel submitted the Defendant’s Psychiatric Report prepared by Dr Abdul Ghani Khan dated 25th November 2020 who concluded: *“based on my previous assessment of him, the information from his mother and to the previous report prepared by Dr Radiah Mohammad, I do not find any mental disorder. I have no psychiatric recommendation.”*

Prosecution’s Submission on Sentence

The Prosecution submitted that a custodial sentence is appropriate in this case so that it can serve as a *“sufficient deterrent not only to the Defendant himself but as well as to like-minded persons out there”*.

The Prosecution also further submitted that; *“it is also crucial to highlight that even in cases where the Defendant was found to have committed the offence whilst suffering from a mental disorder, the Courts have nevertheless viewed that imposing custodial sentence is an appropriate and justified punishment. In the Singaporean case of Lim Ghim Peow vs Public Prosecutor [2014] 4 SLR 1287; [2014] SGCA 52, the Court of Appeal held:-*

“37. Rehabilitation may take precedence where the sentencing principle of deterrence is rendered less effective by virtue of a serious psychiatric condition or mental disorder on the part of the offender (see Goh Lee Yin vs Public Prosecutor [2006] 1 SLR(R) 530 at 293). Rehabilitation, however, has both a public and an individual dimension (see Goh Lee Yin [2008] [25 supra at 99]). On the one hand, the Courts are concerned about the welfare of the offender and the manner of reform and

treatment which is most suitable, particularly if the offender suffers from a psychiatric illness or other special psychiatric condition. On the other hand, the underlying aim of rehabilitation is to advance the greater public interest by reducing the risk of recidivism.

38. *It is, moreover, erroneous to assume that rehabilitation necessarily dictates that a lighter sentence be imposed on a mentally disordered offender. This again depends very much on the nature of the offence as well as the nature and severity of the offender's mental disorder.*
39. *In cases involving serious offences, there is no reason why the retributive and protective principles of sentencing should not prevail over the principle of rehabilitation, notwithstanding the offender's mental disorder. As Rajah JA stated in Goh Lee Yin (2008) at 107:*

"This is not to say that in all offences committed owing to a psychiatric disease, rehabilitation must be the foremost consideration. Indeed, assuming that an offender suffers from a psychiatric disease which causes him to commit a particular heinous offence, it would surely not be correct to say that such an offender ought to be rehabilitated to the exclusion of other public interests. Rehabilitation may still be a relevant consideration, but such rehabilitation may very well have to take place in an environment where the offender is prevented from recommitting similar offences."

The Prosecution submitted further that to grant the Defendant a mere Probation Order would not only be manifestly lenient and incommensurate to the gravity of the offence to which he has committed but would also send the wrong message to the Public. If any such mental disability suffered post-commission of the offence can be easily considered as a mitigating factor for the Defendant sufficient and persuasive enough to reduce his sentence to a more lenient sentence such as Probation Order, it would, we respectfully submit inevitably lead to more claims of Defendants having suffered mental disability after having been convicted of an offence, notwithstanding psychiatric findings concluding that such Defendant was in fact of sound mind at the time of the commission of the offences that they were duly convicted.

Sentencing Consideration

The court has to look into various factors in determining the appropriate sentence. In the case of *Chua Tiong vs Public Prosecutor* (2001) 3 SLR 425, the High Court stated:

"There are four pillars of sentencing: retribution, deterrence, prevention and rehabilitation. Criminal Courts play their part by ensuring that the sentences of offenders mirror these pillars. The sentence imposed on the appellant not only served to punish him, it sought to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again".

In *R v Howells (and other appeals)*, (1999) 1 ALL ER 50, 54 Bingham L.C.J. commented:

"Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system".

The facts of the case are very disturbing. He took the car, drove the car with a child in the car and realising being pursued by his cousin, the Defendant decided to turn into the entrance of RBAF in Rimba. Defendant turned around and tried to leave the compound and in trying to leave the compound he rammed into the gate several times causing it to subsequently fall and damaging two cars which were parked near the gate.

On the way to Bebatik, Kilanas, the Defendant almost hit another vehicle.

The offences that he had committed are serious offences and had exposed the child to danger and also other people and other road users.

I have read and scrutinized all the submissions by both parties and the question is what punishment is appropriate to be imposed on the Defendant.

The Defendant is a first offender and has pleaded guilty to both charges. Taking into account the seriousness of the offence and also that he had exposed the child and the public at large to danger and also to ensure that he will not pose any danger to the public, a custodial sentence is appropriate.

Even though the Prosecution has highlighted cases under section 279 of the Penal Code which fines are imposed to *"act in a manner so rash as to endanger life"* in this present case is that he not only exposed others to danger but also the child in the car. Thus, I will impose a custodial sentence for the first charge.

1st charge: Imprisonment of 6 months.

Additional 2nd charge: Imprisonment of 2 years and 3 strokes of whipping.

Sentences are to run consecutively with each other and this total sentence is 2 years and 6 months with 3 strokes of whipping with effect from today.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner