

Public Prosecutor

AND

Aliuddin Bin Hj Ali Mustapha

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 27 of 2014)**

Dk Hjh Norismayanti Pg Hj Ismail, Judge

24th October 2018

Criminal Law – Sentence – Forgery – overstaying (abetment) – dishonest misappropriation – section 473 of the Penal Code – section 15(1) of the Immigration Act – section 403 of the Penal Code – section 109 of the Penal Code.

DPP Hjh Atiyyah Azzahra Binti POKLSDSLJ Awang Hj Abas for the Public Prosecutor.

Hj Mohammad Daud Bin Ismail (M/S Daud Ismail & Co.) for Defendant.

Cases cited:

PP v Ravindran & Ors [1993] 1 MLJ 45

Chua Tiong Tiong v Public Prosecutor [2001] 3 SLR 425

Maimun Bte Hj Omar v Public Prosecutor (Criminal Appeal No. 1 of 2013, JCBD)

S E N T E N C E

Dk Hjh Norismayanti, Judge:

The defendant claimed trial to 5 amended charges made against him. The court convicted the defendant on all 5 charges on the 15th October 2018. The charges are as follows:

- 1st amended Charge under section 473 of the Penal Code (PC)
- 2nd and 3rd amended Charges under section 15(1) of the Immigration Act, Cap 17
- 5th and 6th amended Charges under section 403 of the PC

Upon conviction the court proceeded to hear the defence's plea in mitigation.

Mitigation

The defendant is a 64 years old man, married and has 7 adult children. He makes a plea for a lenient sentence. He was previously employed in the Royal Brunei Police Force from February

1972 and worked under the Special Branch Department in 1974 until 1978. He then worked for the Security Intelligence Unit for 8 years from 1980. Presently he is self-employed. It is further submitted that the defendant comes from a good background and the offences committed is out of character for the defendant. On record the defendant has no previous convictions. The defendant has also cooperated with the enforcement agency throughout the investigation.

Delay

The defence also urges the court to take into account the delay in completing this trial. The delay is not due to the defendant. It took 4 years for the trial to be concluded. The case of *Maimun Bte Hj Omar v PP* (Criminal Appeal No. 1 of 2013, JCBD) was referred to the court to reflect the court's discretion on passing a non-custodial sentence in cases that involved inordinate delay.

Consideration on Sentencing

The court is referred to the case of *PP v Ravindran & Ors* [1003] 1 MLJ 45 where the learned judge stated the guidelines to take into consideration in sentencing. It is stated that the court should take into account:

- [i] Discount or credit for guilty plea;
- [ii] Comparison of sentences in other cases for the similar offence;
- [iii] Disparity of sentence amongst the accused persons; and
- [iv] Mitigating factor relevant to the present case.

I am also guided by the case of *Chua Tiong Tiong v Public Prosecutor* [2001] 3 SLR 425 where 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".

All five charges in the present case carry a penalty of imprisonment. The court will only depart from the prescribed penalties in very exceptional cases.

On the issue of delay, I acknowledge the fact that a 4 years delay to conclude this trial is to no fault of either the prosecution or defence. The delay is a result of a retrial due to circumstances that cannot be avoided and thereafter depended on the availability of all parties for trial dates to be fixed before a new presiding judge. Nevertheless, the court finds that a 4 year delay does not tantamount to inordinate delay. Given due consideration, I am satisfied that there is no exceptional circumstances in the present case to depart from a custodial sentence.

The charges before the court varies in nature. The first charge being an offence of being in possession of an Immigration “DEPARTURE” stamp for the purposes of forgery. The 2nd and 3rd charges are for offences in abetting foreign nationals to remain in Brunei unlawfully and for the final two charges for dishonest misappropriation of company stamps. It is important for the court to impose a sentence that reflects the gravity of the offences so as to deter potential offenders and ensure that the public interest is well protected.

In considering the appropriate sentences, the court also takes into account the mitigating and aggravating factors in this case and they are as follows:

Mitigating factors

1. The defendant’s age of 64 years old
2. The defendant has a clear record
3. The defendant had cooperated fully with the enforcement officers from the start to the end of the investigation made against him

Aggravating factors

1. Defendant found in possession of a government immigration stamp
2. Impact of forgery with the use of a government immigration stamp
3. The defendant was a police officer who served in the Special Branch Department as well as the Security Intelligence Department prior to his retirement.

I also consider the fact that the defendant was convicted after trial and therefore will not be receiving a one third discount from his sentence.

Sentencing

Amended 1st Charge

An offence under section 473 of the Penal Code is punishable for a term which may extend to 10 years, and shall also be liable to a fine. In considering the appropriate sentence, it must be emphasized that the defendant was in possession of an immigration “Departure” stamp. The impact and repercussions of using such an item for the purpose of forgery is very significant to the country’s national security if it were to remain undetected. Undocumented individuals will be free to cross our borders without knowing their country of origin and purposes of entering/leaving the country. It is also not farfetched to say that the defendant could have benefited financially from such forgery. To aggravate the matters further, the defendant was a police officer who worked in the Special Branch and Intelligence Branch of the police force. With a background in enforcement especially in the two areas specified, there is no doubt that the defendant is fully aware of the laws against committing such offences. A deterrent sentence should therefore be imposed.

If this were a case where the defendant had a history of prior convictions under similar offences and claimed trial, I would consider a starting point of 5 years imprisonment. In the present case, despite claiming trial to the offence, the defendant has a clear record. Taking into account the case as a whole and the guidelines on the appropriate sentence to impose, I begin with a starting point of 4 years imprisonment. Considering the defendant's clear record, I reduce the sentence by one quarter discount which is a discount of 12 months giving a final sentence of 3 years imprisonment.

Amended 2nd Charge and Amended 3rd Charge

For the amended 2nd and amended 3rd Charge, the defendant is convicted of abetting the offences of remaining in Brunei Darussalam unlawfully. The offences are punishable under section 15(2)(b) of the Immigration Act which provides that in cases where a person remains unlawfully for a period exceeding 90 days, the defendant is punishable on conviction by imprisonment for a term of not less than 3 months and not more than 2 years and whipping with not less than 3 strokes cumulatively. These charges are to be read together with section 109 of the PC which states "Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment and no express provision is made by this Code for punishment of such abetment, be punished with the punishment provided for the offence."

Based on the considerations mentioned earlier, I sentence the defendant to 5 months imprisonment on each of the amended 2nd and amended 3rd charge. In view of the defendant's age, the court will not make any order for whipping.

Amended 5th Charge and Amended 6th Charge

Under these charges, the defendant is punishable to imprisonment for a term which may extend to 2 years, or with fine, or with both. I sentence the defendant to 4 months imprisonment for each charge.

To ensure that the sentences are not manifestly excessive, the court takes into account the totality principle. I hereby make an order that the sentences of all 5 charges to run concurrently.

Final Sentence: 3 years imprisonment. The sentences are to take effect from the date of remand.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court

