



Public Prosecutor

AND

Wong Yun Song (D2)

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 45 of 2013)**

Hj Abdullah Soefri POKSM DSP Hj Abidin, ICJ
7th December, 2013

Criminal Law – Sentence – Possession and use of forged credit cards – Cross border crime – Taking into considerations - Totality principle

DPP Awg Haji Mohd Abd Raafe' Hj Ibrahim for Public Prosecutor.
D2 In Person.

Cases cited in the Sentence:

Yap Teck Eng vs Public Prosecutor, Criminal Appeal No 3 of 2012
Jason vs Public Prosecutor, Criminal Appeal 14 of 2012

S E N T E N C E

[Full reasons for sentencing]

Hj Abdullah Soefri, ICJ.:

Wong Yun Song, hereafter known as D2 is facing with 6 charges. Three charges under section 420 of the Penal Code for obtaining goods by cheating with the use of counterfeit cards and three other charges for possession of three counterfeit credit cards with intent to use the same fraudulently contrary to section 474 read with section 467 and section 120B of the Penal Code

CHARGES

Amended 1st Charge (formerly 2nd Charge)

That both of you, on the 23rd of September 2013 at or about 1415 hours at Winmark Vin Vin Enterprise, Citis Square in Brunei Darussalam, did with common intention, cheat one Fera Gusti, a sales assistant at the said store by deceiving her into believing that the Credit Card encoded with account number: 5451 9846 1141 8615 in the name of H S Lee which was presented to her by Tan Hong Bee was genuine when you knew that it was not and both of you in your common intention, have thereby dishonestly induced the said Fera Gusti, so deceived to accept the said credit card for payment and deliver to both of



you certain properties, to wit, 4 perfume bottles worth \$477.90, which she would not have done so if she was not so deceived and both of you have thereby committed an offence punishable under section 420 of Penal Code, Chapter 22 read with section 34 of the same.

Penalty under section 420 of the Penal Code, Chapter 22 read with section 34 of the same
Imprisonment for a term which may extend to 7 years, and shall also be liable to a fine

Additional 2nd Charge

That both of you, on the 23rd of September 2013 at or about 1216 hours at Chiang Seng Goldsmith, Darussalam Complex in Brunei Darussalam, did with common intention, cheat one Goh Bee Tsuey, a sales assistant at the said store by deceiving her into believing that the Credit Card encoded with account number: 5451 9846 1064 9350 in the name of H S Lee which was presented to her by Tan Hong Bee was genuine when you knew that it was not and both of you in your common intention, have thereby dishonestly induced the said Goh Bee Tsuey, so deceived to accept the said credit card for payment and deliver to both of you certain property, to wit, 1 gold necklace worth \$1590, which she would not have done so if she was not so deceived and both of you have thereby committed an offence punishable under section 420 of Penal Code, Chapter 22 read with section 34 of the same.

Penalty under section 420 of the Penal Code, Chapter 22 read with section 34 of the same
Imprisonment for a term which may extend to 7 years, and shall also be liable to a fine



Additional 3rd Charge

That both of you, on the 23rd of September 2013 at or about 1043 hours at Guan Chuan & Sons Co, Teck Guan Plaza in Brunei Darussalam, did with common intention, cheat one Evangelyn Ferrer Valencia, a sales assistant at the said store by deceiving her into believing that the Credit Card encoded with account number: 5451 9846 3087 2271 in the name of H S Lee which was presented to her by Tan Hong Bee was genuine when you knew that it was not and both of you in your common intention, have thereby dishonestly induced the said Evangelyn Ferrer Valencia, so deceived to accept the said credit card for payment and deliver to both of you certain property, to wit, two Samsung mobile phones worth \$1426, which she would not have done so if she was not so deceived and both of you have thereby committed an offence punishable under section 420 of Penal Code, Chapter 22 read with section 34 of the same.

Penalty under section 420 of the Penal Code, Chapter 22 read with section 34 of the same
Imprisonment for a term which may extend to 7 years, and shall also be liable to a fine

Additional (Amended) 4th Charge

That both of you **and one other**, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit HSBC MasterCard credit card embossed with account number 5451 9846 2736 5875 in the name of Tony Lee was in both of your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

Penalty under section 474 read with section 467 and section 120B of the Penal Code, Chapter 22
Imprisonment for a term which may extend to 15 years, and shall also be liable to a fine



Additional (Amended) 5th Charge

That both of you **and one other**, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Wells Fargo MasterCard credit card embossed with account number 5422 1750 1250 7876 in the name of Tony Lee was in both of your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

Penalty under section 474 read with section 467 and section 120B of the Penal Code, Chapter 22
Imprisonment for a term which may extend to 15 years, and shall also be liable to a fine

Additional (Amended) 6th Charge

That both of you **and one other**, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Citibank MasterCard credit card embossed with account number 5589 8710 0247 1318 in the name of Tony Lee was in both of your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

Penalty under section 474 read with section 467 and section 120B of the Penal Code, Chapter 22
Imprisonment for a term which may extend to 15 years, and shall also be liable to a fine

He also asked for 7 other offences of possessing counterfeit credit cards with the intent to use them fraudulently to be taken into consideration.



TAKING INTO CONSIDERATION

By virtue of Section 13A of the Criminal Procedure Code, Chapter 7, the Public Prosecutor consents to the exercise of the jurisdiction of the court to take into consideration the offences stated below:

Whereas the Prosecution believes that the Defendant has committed the following offences:

That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit HSBC MasterCard credit card embossed with account number 5451 9846 0372 6199 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Citibank MasterCard credit card embossed with account number 5451 9846 4180 8876 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.



That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit HSBC MasterCard credit card embossed with account number 5589 8710 0363 9921 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Citibank MasterCard credit card embossed with account number 5589 8710 0219 6360 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.



That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Citibank MasterCard credit card embossed with account number 5589 8710 0348 7297 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.



That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit Citibank MasterCard credit card embossed with account number 5451 9846 1141 8915 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

That you and two others, sometime on or about the 30th of September 2013, in Brunei Darussalam and elsewhere, did agree to do an illegal act, namely, knowingly possessing forged valuable security, to wit, a counterfeit credit card and intending it shall be fraudulently be used as genuine, and in pursuance of the conspiracy, an act took place sometime in the morning on the 30th of September 2013, in Brunei Darussalam, to wit, a counterfeit HSBC MasterCard credit card embossed with account number 5589 8710 0396 1077 in the name of Tony Lee was in your possession and you have thereby committed an offence punishable under section 474 read with section 467 and section 120B of the Penal Code Chapter 22.

The facts that agreed and admitted by the Defendant [D2] are as follows:

STATEMENT OF FACTS

The defendant is a Malaysian citizen. The defendant resides at Kampong Baru Broga, Negeri Sembilan, Malaysia.

Sometime before the 23rd of September 2013 the defendant and one other person (for the purpose of this statement of facts will be known as “Mr. X”) met with one Ah Ken who offered them to participate in a counterfeit credit card scamming scheme, which they agreed. The scheme required Mr. X and the defendant play different roles. The defendant and Mr. X would be given the counterfeit credit cards and Mr. X would be responsible for making the purchases with the counterfeit credit cards. The defendant would assist Mr. X by taking Mr. X to the areas where they would be able to use the counterfeit credit cards, helping Mr. X carry the resulting goods purchased as a result of the scheme and also to pay for any transport and expenses incurred by Mr. X and himself. The goods would then be handed to Ah Ken in Malaysia. Mr. X and the defendant would receive commission on any profits from the eventual sale of the resulting purchases.



On the 23rd of September 2013 Mr. X and the defendant came to Brunei to carry out the aforementioned scheme and they arrived in Brunei from Peninsular Malaysia at about 0905 hours via airplane.

Once they arrived in Brunei Darussalam Mr. X lead by the defendant took a taxi and headed towards the Bandar Seri Begawan Area.

At about 1043 hours on the said day Mr. X and the defendant went to Guan Chuan & Sons Co, Teck Guan Plaza in Brunei Darussalam with the common intention to commit cheating. Once at the shop Mr. X informed the sales assistant one Evangelyn Ferrer Valencia, that he wanted to purchase two Samsung mobile phones worth a total of \$1426.

Before purchasing the said items, Mr. X then handed a counterfeit Credit Card encoded with account number: 5451 9846 3087 2271 in the name of H S Lee which had been given to him by Ah Ken to the said Evangelyn Ferrer Valencia as payment for the items he wished to purchase.

Believing that the said card was genuine, the said Evangelyn Ferrer Valencia accepted it and proceeded to swipe the credit card through the Point-of-Sales (POS) system for approval. The said transaction was successful and Mr. X proceeded to sign at the credit card payment slip and the two Samsung mobile phones worth a total of \$1426 were handed to him (Additional 3rd charge). During this period the defendant was wondering around the store area waiting for Mr. X to complete the transaction.



Once this transaction was completed Mr. X and the defendant then continued to walk around Bandar Seri Begawan to find other shops where the scheme could be carried out.

At about 1216 hours on the same day Mr. X and the defendant went to Chiang Seng Goldsmith, Darussalam Complex in Brunei Darussalam with the common intention to commits cheating. Once at the shop Mr. X informed the sales assistant one Goh Bee Tsuey, that he wanted to purchase a gold necklace worth \$1560.

Before purchasing the said items, Mr. X then handed a counterfeit Credit Card encoded with account number: 5451 9846 1064 9350 in the name of H S Lee which had been given to him by Ah Ken to the said Goh Bee Tsuey as payment for the items he wished to purchase.

Believing that the said card was genuine, the said Goh Bee Tsuey accepted it and proceeded to swipe the credit card through the Point-of-Sales (POS) system for approval. The said transaction was successful and Mr. X proceeded to sign at the credit card payment slip and the gold necklace worth \$1560 were handed to him (Additional 2nd Charge). During this period the defendant was wondering around the store area waiting for Mr. X to complete the transaction.

Once Mr. X and the defendant had exhausted the Bandar Area they then took a taxi to Times Square and arrived at about 1300 hours. They then proceed to look for shops to cheat in the said area and at about 1415 hours Mr. X and the defendant went to Winmark Vin Vin Enterprise, Citis Square in Brunei Darussalam with the common intention to commit cheating.

Once at the shop Mr. X informed the sales assistant one Fera Gusti, that he wanted to purchase 4 bottles of perfume worth a total of \$477.90. Before purchasing the said items, Mr. X then handed a counterfeit Credit Card encoded with account number: 5451 9846 1141 8615 in the name of H S Lee which had been given to him by Ah Ken to the said Fera Gusti as payment for the items he wished to purchase.

Believing that the said card was genuine, the said Fera Gusti accepted it and proceeded to swipe the credit card through the Point-of-Sales (POS) system for approval. The said transaction was successful and Mr. X proceeded to sign at the credit card payment slip and the 4 bottles of perfume worth a total of \$477.90 were handed to him (Amended 1st Charge). During this period the defendant was wondering around the store area waiting for Mr. X to complete the transaction.

The defendant and Mr. X made multiple further failed attempts of purchasing items with the counterfeit credit cards in their possession.

At about 1824 hours on the same day Mr. X and the defendant left Brunei via Sungai Tujoh into Miri, Malaysia.

The purchase of items by Mr. X and the defendant at Winmark Vin Vin Enterprise, Citis Square, triggered a fraud alert at the fraud centre of Baiduri Bank who was the Merchant Bank of Winmark Vin Vin Enterprise and a report was subsequently lodged by Muhammad Safwan Sofian one of the employees of Baiduri Bank as to the matter.

Investigations were then immediately conducted by the Police and the investigations resulted in Mr. X and the defendant being identified as the perpetrators of the fraud.

Mr. X and the defendant at the point of identification had already exited Brunei and their names were put on the immigration stop list, which would alert the police as to the presence of D1 and D2 if they chose to return to Brunei.

On the 30th of September 2013 whilst in Malaysia Mr. X, the defendant and Ah Ken conspired together to carry out the same credit card scheme as before (on the 23rd of





September 2013) which was to use counterfeit cards to make purchases. Part of the scheme required Ah Ken to supply counterfeit credit cards to Mr. X and the defendant.

Ah Ken supplied them with a total of 10 counterfeit credit cards, amongst them:

One Counterfeit HSBC MasterCard credit card embossed with account number 5451 9846 2736 5875 in the name of Tony Lee (4th charge)

One counterfeit Wells Fargo MasterCard credit card embossed with account number 5422 1750 1250 7876 in the name of Tony Lee (5th charge)

One counterfeit Citibank MasterCard credit card embossed with account number 5589 8710 0247 1318 in the name of Tony Lee (6th charge)

On the same day at about 1000 hours Mr. X and the defendant arrived in Brunei with the said counterfeit credit cards in their possession.

As they were about to go through the immigration checkpoint at the Brunei Darussalam International Airport they were detained as their names had been put on the immigration stop list. The police were immediately informed and the police proceeded to arrest the defendants and conduct further investigations.

Further investigations resulted in the seizure of a total of 10 counterfeit credit cards amongst them:

One Counterfeit HSBC MasterCard credit card embossed with account number 5451 9846 2736 5875 in the name of Tony Lee

One counterfeit Wells Fargo MasterCard credit card embossed with account number 5422 1750 1250 7876 in the name of Tony Lee

One counterfeit Citibank MasterCard credit card embossed with account number 5589 8710 0247 1318 in the name of Tony Lee



As part of the investigation the defendant's statement were taken and he admitted to having being involved in a scheme where by they (him and Mr. X) came to Brunei to purchase goods using counterfeit credit cards, the goods would be given to Ah Ken to be sold off and they would be given a commission from the sales. The defendant also further stated that they were recruited by Ah Ken to join the scheme.

The defendant stated that the reason why he had joined the scheme was to pay for his ailing father's medical bills.

The defendant also admitted that the reason why they had come to Brunei on the 23rd and 30th of September was to carry out the scheme.

Further investigations also confirmed that the seized credit cards were counterfeit.

All the items purchased were not recovered.

MITIGATION

Defendant pleaded for lenient sentence and for his sentence to run concurrently as he has pleaded guilty. He also pleads for his sentence to commence from 30th September 2013 and for his items to be returned back to him and this was not objected by the Prosecution. Defendant is single and 35 years old. He told the Court that he committed the offence because he needed the money for medical treatment for his father.

SENTENCING CONSIDERATIONS

The Court of Appeal, in **Yap Teck Eng vs Public Prosecutor, Criminal Appeal No 3 of 2012**, cited **Jason vs Public Prosecutor, Criminal Appeal 14 of 2012** held that:-

“Credit card fraud is a huge sophisticated international enterprise carried out by organized crime. It is so widespread as to be a common experience.

Those who commit this prevalent type of commercial crime must expect heavy deterrent sentences. It is more serious when criminals come over national borders to commit offences in the hope of escaping back before they are arrested.”

In *Yap Teck Eng’s* case, the Court of Appeal upheld the sentence of 3 years and 6 months imprisonment for possession of counterfeit cards and 2 years and 3 months imprisonment for the cheating offences and upheld the cheating and possession of counterfeit cards sentences to run consecutively.

In *Yap Teck Eng’s* case, the Defendant is facing one charge under section 474 read with section 467 and section 120B of the Penal Code. He was also facing with 4 offences under section 420. In the present case, the Defendant is facing with 3 charges under section 420 and 3 charges under section 474 read with section 467 and section 120B of the Penal Code.

In the present case, the Defendant also asked for 7 other offences of possessing counterfeit credit cards with intent to use them fraudulently into consideration. The facts of the case are very disturbing. It is well stated by the Court of Appeal and I agreed that this is type of offences are serious and deterrent sentence are to be imposed. Even more serious if it is committed by foreign national whose sole purpose of coming into this country is to commit the offence and left the country immediately after the commission to avoid detection. D2 and another committed the offences not once but several times. D2 and another came back again to Brunei to continue with their activities. This type of offences will cause the vendors lose confidence to credit cards transactions and this will in turn cause inconvenience to the public and will also cause the reputation of the country at stake.

This justify custodial sentence. The next issue is what is the appropriate length of custody to be imposed by this court?

The Court takes into account that the Defendant has pleaded guilty, first offender and taking into account of the offences taken into consideration, the Court believes that the



starting point of 18 months for the s.420 Penal Code offence and a starting point of 24 months for the possession of counterfeit card with intend to use the same fraudulently are justifiable.

Taking into account of this guilty plea and clean record the Court reduced 1/3 off from the starting points which are 6 months and 8 months respectively. Thus, the Court imposes the following sentence.



1st Charge under section 420: **12 month's imprisonment**

2nd Charge under section 420: **12 month's imprisonment**

3rd Charge under section 420: **12 month's imprisonment**

4th Charge under section 474 and read with section 467 and s.120B: **16 month's imprisonment**

5th Charge under section 474 and read with section 467 and s.120B: **16 month's imprisonment**

6th Charge under section 474 and read with section 467 and s.120B: **16 month's imprisonment.**

In view that the offences were committed at different transactions and places, all the sentences for charges one to sixth are to run consecutively to each other.

In respect of the T.I.C offences, the sentences shall be 12 months for offences under section 420 and 16 months for offences under section 474 and read with section 467 and s.120B.

Having regard to the overall criminality of the offences, the sentences and taking into account of the totality principle, the sentences of imprisonment on the first, second, third, fourth, fifth and sixth charges are to be concurrent with the T.I.C offences.

Total sentence: **84 months (7 years) imprisonment with effect from 2nd October 2013.**

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judge, Intermediate Court