

Public Prosecutor

AND

Rialyn Lora Roxas
[(F 29), BGIC No: 51-134279]

(Intermediate Court Of Brunei Darussalam)
(Criminal Trial No: 4 of 2015)

Abdullah Soefri, ICJ.
25 February 2015

*Criminal Law – Breach of Trust - Plead Guilty - Sentence – Compensation
Order under Section 382(1) (b) of Criminal Procedure Code*

DPP Dk Hazirah Pg Mohd Yusof
Defendant in person

CasesCited:

Chua Tiong Tiong V PP (2001) 3 SLR 425
R v Ball (1951) 35 Cr App R. 164
Noradelina Binti Mohammad Vs Public Prosecutor
(Criminal Appeal No 15 of 2014)
R v Barrick (1985) 81 Criminal Appeal R.78
Public Prosecutor Vs Su Ling King [2010] 1 JCBD 272
Public Prosecutor Vs Rodeo Zambrano [2003]BLR 222
Mohd Noor Bin Litoh Vs Public Prosecutor [2005] 2 JCBD
158

Abdullah Soefri, ICJ:

The Defendant pleaded guilty to a charge for an offence under section 408 of the Penal Code, Chapter 22. The charge is as follows;

CHARGE

That you sometime between the month of March 2014 and the month of December 2014 at High Frequency Café, Batu Besurat in Brunei Darussalam, being a servant, to wit, a waitress and cashier, in the employment of Renjis Restaurant & Café and in such capacity entrusted with property, to wit, a sum of B\$6,000 being proceeds from the sale of food and beverages of the said company paid to

you, committed criminal breach of trust in respect of such property, and thereby committed an offence punishable under section 408 of the Penal Code, Chapter 22.

Penalty under section 408 of the Penal Code

Imprisonment for a term which may extend to 10 years and shall also be liable to a fine

STATEMENT OF FACTS

The Defendant admitted to all the 'Statement of Facts' in which the particulars of the commission of offences have been set out. The admitted 'Statement of Facts' are as follows;

1. The Defendant is a 29 year old Philippines national who is employed as a waitress and cashier at the High Frequency Café, Batu Bersurat in Brunei Darussalam since 19th December 2013. High Frequency Café is a subdivision of the Renjis Restaurant & Café.
2. As a waitress at the said café, her responsibilities including taking orders from patrons and collecting payment for the orders placed to be kept in the cash till. She was also entrusted to calculate the closing settlement of sales tally at the end of the day.
3. On 5th February 2015, the establishment received a notification from their Point of Sale (POS) System Provider that there were a large number of irregular activities by the same user who removed orders from the system after the customer's copy of receipts were printed out, a police report was lodged.
4. Police investigations revealed that the Defendant, under the surname "LJ" has voided 1,924 orders in the period between the month of March 2014 and the month of December 2014

5. According to investigations, the Defendant admitted to taking food and beverages orders from customers which she later keyed in into the POS System and stored into the system. However, where customers make additional orders, she will key in the orders but not save it into the system. When customers ask for their bill, she would print out the receipt containing all their orders including the additional ones. Once payment is made, she will then remove the additional items from the POS System and thus, voiding the additional orders. She keeps the money in the cash till and prints out the merchant's copy of receipts which excludes the voided items.
6. When she calculates the closing settlement of sales at the end of the day and finds that there is excess money not tallying up with the total sales made based on the merchant's copy of receipts, she will take the excess money for herself.
7. She admitted to doing this several times throughout the period between March 2014 and December 2014.
8. Further investigations showed that the total amount of money that she had taken from March 2014 to December 2014 was B\$6,000.
9. Investigations also revealed that she used the money for herself and also remitted the money to her family in the Philippines.
10. On record, she has no previous convictions.

MITIGATION

The Defendant is 29 years old and a single mother. She told the Court that she came to Brunei to earn a living in order to support her parents and son. She told the Court and this was confirmed by the Prosecution that her son has a heart problem and need full operation. Her son is currently receiving treatment and has to report to the hospital every 21 days. The Defendant told the Court

that she needs money for her son treatment. She also told the Court that she is the only breadwinner for the family.

The Defendant told the Court that she is willing to repay her employer within two weeks.

The Defendant pleaded for leniency and for her imprisonment sentence would not be too long as her son needs her.

SENTENCING CONSIDERATIONS

The Court has to look into various factors in determining the appropriate sentence. In the case of **Chua Tiong Tiong V PP (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 the case of **R v Ball (1951) 35 Cr App R. 164**, Hillbery J laid out the guiding consideration which this Court also took into consideration. Learned Hillbery J stated:

"In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It might deter others who may be tempted to try crime as seeming to offer easy money on the supposition, that if offender is caught and brought to justice, the punishment will be negligible."

Such sentence may also deter the particular criminal from committing a crime again, or, induce him to turn from a criminal to an honest life. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living."

The punishment for offence under section 408 is an imprisonment which may extend to 10 years and shall be liable to a fine.

The facts of the case are very disturbing. Point of Sale (POS) System Provider was put in the establishment to ensure that the takings of the day can be monitored and to curb any person from taking away the money. She misused her knowledge of the system's shortcoming and committed the offence. The offence was not a one off incident but going on for several months before it was detected.

It was held in **Noradelina Binti Mohammad Vs Public Prosecutor (Criminal Appeal No 15 of 2014)**, Burrell, JA held as follows:

"The fundamental principle enunciated by the Lord Chief Justice **in R v Barrick (1985) 81 Criminal Appeal R.78** provides the proper approach in such cases:

"In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves the Court should nevertheless pass a sufficiently substantial term of imprisonment to mark publicly the gravity of the offence. The sum involved is obviously not the only factor to be considered, but it may in many cases provide a useful guide."

In the present case, the question need to address is whether there is exceptional circumstances existed for the Court to depart from imposing custodial sentence.

The Defendant told the Court that she committed the offence because she needed money to pay for her son's treatment and to feed her family. The amount that she had taken is \$6000. Are these exceptional circumstances?

In the case of **Public Prosecutor Vs Su Ling King [2010] 1 JCBD 272**, the learned Judge Lim Siew Yen, held:

"While I sympathise with the family the result of this prosecution, I am mindful of the reminder from the Chief Justice in Public Prosecutor Vs Rodeo Zambrano [2003]BLR 222 at page 225 where he said:

"...without in any way sounding completely heartless, I am bound to say that judicial officers are not expected, in their endeavour to uphold the basic principles of justice, to let

their emotions take over their decision-making or shy away from imposing a deserving sentence, having taken into consideration whatever acceptable mitigation that an accused person may have put forward.”

Having said all the above, I am satisfied that there are no exceptional circumstance and custodial sentence is justifiable in this case.

There are several cases in Brunei that the courts have been faced with a number of similar cases. In **Public Prosecutor Vs Su Ling King [2010] 1 JCBD 272**, the starting point was 3 years imprisonment and after discount the overall sentence was 2 years imprisonment.

In **Mohd Noor Bin Litoh Vs Public Prosecutor [2005] 2 JCBD 158** the starting point of 9 years was considered as excessive and the overall sentence of 6 years was reduced to 4 years. In that case the Defendant was facing with 3 charges.

In **Public Prosecutor Vs Rodeo Zambrano [2003] BLR 222**, the Defendants were sentenced to 2 years imprisonment. The money had been misappropriated to help their relatives who were gravely ill and in need of medical treatment.

In the present case, this Court will take 3 years as a starting point. Taking into account that the Defendant pleaded guilty at the very first instance and she has a clean record the court deduct 1 year from the starting point as a discount.

The cases that I have cited above are cases where the amount taken ranged from B\$34,427 to B\$327,094. In the present case the amount taken is B\$6000. In view of the amount taken is much smaller than the cases that I have stated above and that the Defendant has shown her willingness to pay back the money, I further deduct the starting point by 6 months. Thus the total deduction is 1 year and 6 months.

Thus the total imprisonment that the Defendant is to serve is **1 year and 6 months.**

The imprisonment sentence is take effect **from 18th February 2015.**

COMPENSATION ORDER

Pursuant to **Section 382(1)(b) of the Criminal Procedure Code**, this Court orders for the Defendant to pay compensation to the complainant of the equivalent of the amount that she had taken which is B\$6000. This money is to be paid to the complainant

Name: High Frequency Café, Batu Bersurat

The compensation must be paid within two months of today's date and the last date of paying compensation is 25th April 2015. Failure of paying the compensation the Defendant is to serve an extra 2 months imprisonment on top of the 1 Year 6 months.

Payment is to be made through the Deputy Public Prosecutor who appears today and this case is fixed for mention on the 25th April 2015 at 9am to check whether the compensation has been made or otherwise.

Hj Abdullah Soefri Bin POKSM DSP Hj Abidin
Intermediate Court Judge
25 February 2015