

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
IN THE MATTER OF CRIMINAL TRIAL NO: 45SOM-03.04, 06,
07-10-2017

BETWEEN

PUBLIC PROSECUTOR

AND

SIEW KAM SEONG

JUDGMENT

This appeal on inadequacy of sentence is by the prosecution, aggrieved by the decision meted out by the Court on 6.4.2018 whereby the respondent was sentenced to a term of 3 years imprisonment from date of arrest ie 1.8.2017 after pleading guilty to an alternative charge pursuant to Section 26A of Anti-trafficking in Persons and Anti-Smuggling of Migrants Act, 2007.

The alternative charge:

'Bahawa kamu pada 25.1..2017 bertempat di Bahagian Paspot , Aras 2, Jabatan Imigresen Malaysia , Wilayah Persekutuan Kuala Lumpur, Kompleks Kementerian Dalam Negeri (KDN) No: 69, Jalan Sri

Hartamas1, Off Jalan Tuanku Abdul Halim, 50480 Kuala Lumpur telah bersubahat dengan Nazman Shah bin Rusli (KP No: 780418-14-5531) untuk menjalankan penyeludupan migran iaitu Wang Tai Fatt (Pasport Antarabangsa Malaysia No: A 39765198) yang merupakan warga China (PRC). Oleh itu kamu telah melanggar peruntukkan di bawah Seksyen 26A Akta Anti-Pemerdagangan Orang dan Anti-Penyeludupan Migran 2007 dan boleh dihukum dibawah seksyen yang sama dan dibaca bersama seksyen 109 Kanun Keseksaan.'

Once the charge was read and explained to the respondent, he pleaded guilty after knowing the nature and consequence of his plea of guilty.

The prosecution then tender the following exhibits:

- i) Facts of the case marked as P5;
- ii) Sentul Report No: 15059/17 marked as P6;
- iii) THSL Report No: 22547/17 marked as P7;
- iv) Borang Permohonan Pasport dan Dokumen Perjalanan Wang Tai Fatt marked as P8;
- v) Rekod Pergerakan Wang Tai Fatt oleh Jabatan Imigresen marked as P9;
- vi) Cabutan Daftar Pengenalan dari Jabatan Imigresen bertarikh 10.8.17 atas kad pengenalan Wang Tai Fatt No: 790912-10-8377 marked as P10;
- vii) Borang Permohonan Pasport dan Dokumen Perjalanan 25.1.2017 oleh You Chee Wei marked as P11;
- viii) Rekod Pergerakan You Chee Wei melalui sistem kawalan Imigresen 12.8.2017 marked as P12;
- ix) Cabutan Daftar Pengenalan daripada Jabatan Pendaftaran Negara atas nama You Chee Wei marked as P13;

- x) Borang Permohonan Pasport Dokumen Perjalanan 23.6.2017 melalui sistem oleh Tan Beng Huat marked as P14;
- xi) Rekod Pergerakkan Tan Beng Huat sistem kawalan imigresen marked as P15;
- xii) Cabutan Daftar pengenalan dari Jabatan Pendaftaran Negara atas nam Tan Beng Huat marked as P16;
- xiii) Borang Permohonan Pasport Dokumen Perjalanan bertarikh 7.7.2017 oleh Khor Boon Kheng marked as P17;
- xiv) Cabutan Daftar pengenalan daripada Jabatan Pendaftaran Negara atas nama Khor Boon Kheng marked as P18;
- xv) Rekod pergerakan Khor Boon Kheng sistem kawalan imigresen marked as P19;
- xvi) 38 photographs marked as P20(1-38) respectively;
- xvii) 2 set recorded statements of Siew Kam Seong from the immigration and the police marked as P21;
- xviii) Search list dated 1.8.2017 marked as P22;
- xix) Perakuan serah terima barang kes bertarikh 2.8.2017 marked as P23;
- xx) Perakuan serah terima barang kes bertarikh 14.8.2017 marked as P24;
- xxi) Presint 7 Police report 7192/17 marked as P25;
- xxii) Senarai pemeriksaan bertarikh 14.8.2017 marked as P26;
- xxiii) Satu bag sandang warna chocolate jenama Kaufman marked as P27;
- xxiv) Satu resit Public bank RM15,000 marked as P28;
- xxv) Satu resit Public Bank RM100 marked as P29;
- xxvi) 1 cek HLB No: 24-12072 marked as P30;
- xxvii) Buku akaun Public Bank No: 4-4236183-07 marked P31;
- xxviii) Buku akaun Public Bank No: 6-0722383-32 marked as P32;

- xxix) 1 kad Public Bank marked as P33;
- xxx) 1 kad HLB marked as P34;
- xxxi) 1 Maybank kad marked as P35;
- xxxii) 1 kad Public Bank marked as P36;
- xxxiii) 1 kad sim DIGI marked as P37;
- xxxiv) 1 sim kad DIGI marked as P38;
- xxxv) 1 kanta besar yang boleh dilipat marked as P39;
- xxxvi) 3 keping gambar suspek marked as P40(1-3);
- xxxvii) 4 keping gambar marked as P41 (1-4);
- xxxviii) 2 keping gambar marked as P42 (1-2);
- xxxix) 4 keping gambar marked as P43 (1-4);
- xl) 1 keping gambar marked as P44;
- xli) 1 sim card marked as P45;
- xlii) 35 kad memori Samsung marked as P46;
- xliii) Satu kad memori micro SD Kingston 64gb marked as P47;
- xliv) Kad memori mini SD 2 gb marked as P48;
- xliv) 39 sampul surat warna coklat marked as P49;
- xlvi) 1 pasport China marked as P50;
- xlvi) Satu sampul surat choklet marked as P51A;
- xlvi) Plastik lutsinar dalam P51A marked as P51A(i);
- xlvi) Satu handphone Nokia marked as P51A(i)(a);
- l) Satu balutan plastik lutsinar marked as P51A (ii);
- li) Satu telefon bimbit jenis Samsung marked as P51A(ii) (a);
- lii) Satu plastik lutsinar Jabatan Imigresen marked as P51A (iii);
- liii) Satu telefon bimbit Iphone 7 marked as P51A (iii) (a);
- liv) Satu plastic Jabatan Imigresen marked as P51A (iv);
- lv) Satu telefon bimbit jenama Huawei marked as P51A(iv) (a);
- lvi) Satu sampul surat coklet bertanda B marked as P51B;
- lvii) Satu telefon bimbit jenama Huawei marked as P51B (1);

- lviii) Satu telefon bimbit jenama Samsung marked as P51B(2);
- lix) Satu telefon bimbit jenama Samsung marked as P51B (3);
- lx) Satu bungkusan plastic lutsinar Jabatan Imigresen berisi Tab jenama Huawei marked as P51B(4);
- lxi) Item 49 marked as P52;
- lxii) Item 50 marked as P53;
- lxiii) Item 51 marked as P54;
- lxiv) Item 53 marked as P55;
- lxv) Satu beg kertas hitam marked as P56;
- lxvi) Beg duit warna coklat marked as P57;
- lxvii) 2 keping My kad masing marked as P58A & B;
- lxviii) Satu lesen pemandu marked as P59;
- lix) Satu keping kad akses putih marked as P60;
- lxx) Satu jam tangan jenama 'Guess' marked as P61;
- lxxi) Satu power bank jenama Lite marked as P62;
- lxxii) 1 bingkai cermin mata lutsinar di tangan marked as P63.

The respondent admitted the correctness of the facts of the case and also confirmed the other exhibits from P5 to P63 tendered in Court.

The Court noted that the plea of guilt by the respondent was unequivocal and was made after knowing its nature and consequence of the plea. The Court record the plea of guilty of the accused/respondent and found the respondent guilty of an offence charged.

The Court proceeded to hear the plea in mitigation by learned counsel for the respondent as follows:

That the respondent was 58 years and had suffered a stroke and the medical record was shown at Tab 1. The respondent was alleged to have abetted in smuggling a migrant, namely a Chinese national and had connived with another accused named Nazman Shah bin Rosli to issue a fake Malaysian passport to the migrant. Nazman had 11 charges against him and this Court had sentenced him to a term of 5 years imprisonment for an offence under Section 26E of the Act of which no appeal was filed by either parties. The respondent after been arrested had cooperated fully with the enforcement agency. The learned counsel urged the Court to impose a lenient imprisonment sentence of between the ranges of 2 to 3 years. The respondent expressed his regret and remorsefulness for the offence he had committed.

The rebuttal submission by the prosecution:

The learned deputy confirmed that the respondent had no previous conviction. The offence committed by the respondent was a serious cross border offence which necessitated it to be placed under the Sosma Act. Public interest demand that the offender be given a severe sentence as a deterrent to others would harbour any notion of committing similar crime. The respondent and the other accused Nazman had reaped thousands of Ringgit through the crafty ingenious plan by Nazman in issuing fake Malaysian passports to Chinese national for a fee.

Observation and decision of the Court:

The Court would be greatly guided by the pronouncement of the Court of Appeal in **PP v Mohamed Danny bin Mohamed Jedi (W-05 (H) -390 -10-2016)** where Justice Dato' Setia Zawawi (as his lordship then was) in reference to the case of **R v Ipeelee (2012) SCC 13** at paragraph 37 quoted as follows:

“Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justices for victims and ensures public confidence in the justice system. Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness the offender; in this sense, the principles serves a limiting or restraining function and ensures justice for the offender.

In the instant case, the Court acknowledged that the offence committed by the respondent was serious and the Court has a duty to ensure that the public interest element is considered when meting out the sentence notwithstanding that the respondent had pleaded guilty at the first available opportunity when the charge was read to him. The Malaysian passport has being dubbed as *‘one of the 10 powerful passport of countries in the world’*. What it means is that a holder of a Malaysian passport could gain entry to 165 countries without having to apply for a visa. That's the reason why foreign national would go to such a great length to get hold of a Malaysian passport albeit fake. People like the respondent and his co-conspirator Nazman could make this possible upon a payment of a fee. The offence committed by the respondent in smuggling a migrant and Nazman who worked at the Immigration

Department was a breach of security procedure of the country and should not be treated lightly by law enforcement agencies of the country.

The Court in its final analysis was of the considered view that there was extenuating factor in favour of the respondent. The fact that the respondent had cooperated fully with the authority has resulted in the clandestine activity of Nozman, an officer with the Immigration Department was exposed and '*nip at the bud*'. The Court also took into account the other cases involving the accused namely cases with code 03, 04 and 07 respectively when sentencing the accused.

In conclusion, and taking into account all the factors as adumbrated above and in all circumstances, the Court was of the view that a just and appropriate sentence on the respondent, would be to sentence him to a term of imprisonment of 3 years out of the maximum sentence of 15 years as provided.

Dated 14. 6.2018


Dato' Indera Mohd Sofian bin Tan Sri Abd Razak

Judge

High Court of Malaya, Kuala Lumpur.

For the prosecution;

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For the Accused:

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46050 Petaling Jaya,
Selangor. (Ref: NS.670, 2018 (KK).

Cases cited:

1. **PP v Mohamed Danny bin Mohamed Jedi (W-05 (H) -390 - 10-2016);**
2. **R v Ipeelee (2012) SCC 13**