

Public Prosecutor v Idya Nurhazlyn Binte Ahmad Khir and another
[2013] SGDC 217

Case Number : DAC 41731-32, 41778-79/2012, Magistrate's Appeal No. 134/2013/01 & 135/2013/01, DAC 41786/2012

Decision Date : 22 July 2013

Tribunal/Court : District Court

Coram : Lee-Khoo Poh Choo

Counsel Name(s) : DPP Jiang Keyue for Public Prosecutor; Mr Derek Kang & Ms Nadia Yeo of Rodyk & Davidson for Accused.

Parties : Public Prosecutor — Idya Nurhazlyn Binte Ahmad Khir and another

22 July 2013

District Judge Lee Poh Choo:

Background

1 This Judgement arose from the appeal by both accused – Idya Nurhazlyn binte Ahmad Khir (“Idya”) and Zunaidi bin Jaafar (“Zunaidi”) against their respective sentences. They are husband and wife.

2 Zunaidi pleaded guilty to 1 charge under section 39(1) of the Passport Act (Cap 220) while Idya pleaded guilty to 2 charges under section 417 of the Penal Code (Cap224) and 2 charges under section 39(1) of the Passport Act (Cap 220). They understood the prescribed punishments.

Idya's charges

DAC 41731 /2012 – sometime in January 2011, cheated one Norizah binte Md Noor (“Norizah”) by deceiving her into believing that she (Idya) was able to purchase 2 Apple Macbooks and 3 Apple iPhones at \$1,800.00 and by such deception, dishonestly induced Norizah to deliver \$1,800.00 to her.

DAC 41732/2012 – on 9.6.2011, cheated one Katrina Chua Su Ling (“Katrina”) of ITIS Pte Ltd, by deceiving her into believing that the UOB cheque for \$10,509.00 she issued in purported payment for some Sony brand products, would be honoured on presentation for payment, and by such deception induced Katrina to deliver the Sony products to her.

Prescribed punishment under section 417 of Penal Code:

Imprisonment term which may extend to 3 years or fine or both.

DAC 41778/2012 - on 21.7.2010, at the High Commission of the Republic of Singapore in Kuala Lumpur, Malaysia, obtained a “Document of Identity Issued in lieu of a Passport” (“DOI”) by falsely stating in the “Declaration of Loss/Damaged of Singapore International Passport” that she lost her Singapore passport in Kuala Lumpur on 21.7.2010.

DAC 41779/2012 – on 21.7.2010, at the High Commission of the Republic of Singapore in Kuala Lumpur, Malaysia' obtained a "Document of Identity Issued in lieu of a Passport" ("DOI") by falsely stating in the "Declaration of Loss/Damaged of Singapore International Passport" that Safiah binte Abdul Majid's Singapore passport was lost in Kuala Lumpur on 21.7.2010.

Prescribed punishment under section 39(1) of the Passport Act:

Fine not exceeding \$10,000.00 or imprisonment not exceeding 10 years or both.

In addition, Idya admitted and consented to the following charges being taken into consideration for purposes of sentencing:

2 charges under section 417 of Penal Code (*DAC 41729 & DAC 41730/2012*) for cheating her father and her aunt into paying her \$550.00 each for Apple iPads.

2 charges under section 39(1) Passport Act (*DAC 41780 & DAC 41781/2012*) for making false statements in Idya's mother and grandmother's applications for "DOI" that their passports were lost in Kuala Lumpur on 21.7.2010.

Zunaidi's charge –

DAC 41786/2013 – on 30.7.2010 at the High Commission of the Republic of Singapore in Kuala Lumpur, Malaysia, obtained a "Document of Identity Issued in lieu of a Passport" ("DOI") by falsely stating in the "Declaration of Loss/Damaged of Singapore International Passport" that he lost his Singapore passport in Kuala Lumpur on 21.7.2010.

Prescribed punishment under section 39(1) of the Passport Act:

Fine not exceeding \$10,000.00 or imprisonment not exceeding 10 years or both.

Statement of Facts

3 Idya, aged 30 years, admitted to the Statement of Facts without qualification.

Facts pertaining to DAC 41778/2012 and DAC 41779/2012(Making false statements)

In early 2010, Idya was in Malaysia with 7 family members comprising of Zunaidi, 3 young children (then aged 1, 3 and 7 years), her mother (then 51 years), aunt (then 57 years) and grandmother (then 81 years) (collectively referred as "family members"). They stayed at the Lotus Desaru Resort ("the said Resort") and were unable to pay their hotel bills. As a result, the said Resort retained all their passports as security for payment. Idya and her family members eventually left the said Resort without settling the bills and without their passports.

On 21.7.2010, Idya lodged a police report in Subang Jaya, Malaysia stating that she and her family members lost their passports. Idya and her family members (except for Zunaidi who was remanded by Malaysian authorities for offence of overstaying) went to the High Commission of the Republic of Singapore in Kuala Lumpur ("Singapore High Commission") to apply for DOIs. In her application, Idya submitted a "Declaration of Lost/Damaged Singapore International Passport" form declaring that she lost her Singapore passport on 21.7.2010 in Kuala Lumpur. She also filled another Declaration Form on behalf of her aunt named Safiah binte Abdul Majid stating that the said Safiah binte Abdul Majid lost her Singapore passport on 21.7.2010 in Kuala Lumpur. She knew that these statements were false as their passports were retained by the said Resort in early 2010.

On the basis of these Declaration Forms which were supported by the Police Report made by Idya (as stated in preceding paragraph), the Singapore High Commission issued DOIs to Idya and Safiah binte Abdul Majid.

Facts pertaining to DAC 41731/2012 (Cheating)

4 Sometime in January 2011, Idya told her relatives that she was able to purchase Apple brand products at a cheap price from a supplier. The victim, Norizah, was Idya's aunt and she ordered 2 Apple Macbooks and 3 Apple iPhones. Idya requested that payment be made via fund transfer to her OCBC account and specified her account number. On 24.1.2011, Norizah duly deposited \$1,800.00 into Idya's OCBC account. The Apple products were not delivered.

Subsequently, on 8.2.2011, Idya arranged to meet Norizah at Multimedia Integrated ("MMI") located at Funan Digitalife Mall. She represented to Norizah that MMI was her supplier. Idya did not turn up at MMI. Norizah then inquired with the MMI staff who said they did not know Idya nor did they recognise the phone number which Idya led Norizah to believe was the supplier's phone number. In fact, this was Zunaidi's handphone number. Idya did not have a supplier for Apple products and she did not purchase the Apple products.

Facts Pertaining to DAC 41732/2012 (Cheating)

Sometime in June 2011, Idya called the head office of Sony Corporation (Singapore) to inquire about purchasing Sony products for her partnership business known as "NCloset". ITIS Pte Ltd ("ITIS"), an authorised Sony dealer was assigned to attend to her and Katrina, a sales executive with ITIS contacted her. Idya placed an order for 7 Sony laptops and 4 playstations consoles totalling \$10,509.00.

On 9.6.2011, Idya attended at ITIS premises at 6 Raffles Boulevard #03-305, Marina Square. She issued a UOB cheque for \$10,509.00 made payable to ITIS and took the Sony laptops and playstation consoles which she had ordered with Katrina. The said UOB cheque was dishonoured when presented for payment. Following this, Katrina was unable to contact Idya.

On 16.6.2011, Katrina went to NCloset located at East Point Mall to look for Idya. The latter promised to make cash payment by 10.30 am the next day at ITIS premises.

The next day, Idya phoned to say she would arrive at 11.30 am. She did not turn up. Later that afternoon, Katrina went to NCloset and Idya's residence but could not find her. She then found out from Idya's neighbours that Idya and family had left for Malaysia.

Investigations revealed that the business of NCloset was in children and adult apparel and accessories. Idya had no authority to purchase the Sony products or to issue the UOB cheque. There was only \$1,000.00 in NCloset account. She knew that the cheque would be dishonoured when presented for payment.

5 Zunaidi, aged 37 years, admitted to the Statement of Facts without qualification.

Facts pertaining to DAC 41786/2012 (making false statements)

The facts were similar to those in preceding paragraph 3. Zunaidi's passport was also retained by the said Resort for non payment of bills.

Sometime in mid July 2010, Zunaidi was remanded by the Malaysian authorities and was released on 28.7.2010. Then, on 30.7.2010, he applied for a DOI at the Singapore High Commission. He stated in the Declaration Form that he lost his Singapore passport in on 21.7.2010 at Kuala Lumpur, declaring *"lost when at uncle's house as per police report attached"*. He knew that this was false as his passport was retained by the said Resort.

On the basis of this Declaration Form, the Singapore High Commission issued DOI to Zunaidi.

Antecedents

6 Both Zunaidi and Idya had no previous criminal convictions.

Mitigation

7 Counsel tendered written mitigation pleas and asked for a low fine for Zunaidi and a mandatory treatment order ("MTO") or probation for Idya.

8 Counsel elaborated on the background which he said led to both accused committing the offences under the Passport Act. In 2007, Idya and Zunaidi were cheated of a large portion of their life savings by one Rashid who promised them lucrative employments in Dubai.

9 In March 2009, both accused and the family members went to Kuala Lumpur to recover their money paid to Rashid. They remained in Malaysia for longer duration than planned because one Wahid who purported to be a Malaysian lawyer informed them that they had to stay in Malaysia until they recovered their money otherwise they would lose their chance of retrieving it. Wahid also represented to them that his company had booked them into hotels and that everything had been paid for. Relying on his representations, they stayed in hotels and were moved from hotel to hotel across Malaysia. Then in early 2010, the Lotus Desaru Hotel ("the said Resort") retained their passports because the bills were not paid. They left the said Resort without their passports and continued to remain in Malaysia. Some months later, in mid July 2010, they were detained at the police station for offence of over staying. The police also informed them that the bills of several the hotels they had stayed in were not paid. It was at this time that they realised they were involved in another scam.

10 For overstaying in Malaysia beyond the permitted period, Idya was remanded for one day by the Malaysian police. Zunaidi was remanded at the Kajang Prison and was released on 28.7.2010. After his release, Idya advised him to declare that he had lost his passport so that he could get a DOI which would enable them to return to Singapore quickly. She also said that the rest of them had obtained their DOIs without any problems using this method. Relying on this advice, Zunaidi made the false declaration that he lost his passport in Kuala Lumpur on 21.7.2010.

11 It was further mitigated that Zunaidi was a first time offender, pleaded guilty at the first available opportunity and regretted his action. He worked as a taxi driver to support his family.

12 For Idya, it was mitigated that -

(a) she pleaded guilty at the earliest opportunity;

(b) She is mother of 5 young children of ages between 12 years and 3 years; is the primary care giver to her aunt, mother and grandmother; lost contact with her father as her parents divorced when she was very young and re-established contact only after she turned 21 years;

(c) She was diagnosed with adjustment disorder with depressed mood in 2011, her behaviour was the result of her psychiatric condition and a predicate to her committing the offences.

Counsel cited 3 traumatising incidents which formed the background and caused Idya's "fragile state of mind" -

(a) Being cheated of a large portion of their life savings in 2007;

(b) On 30.1.2009, she gave birth to a premature baby at the Singapore General Hospital ("SGH"). The baby was still warded in SGH when in March 2009, she and her family went to Kuala Lumpur where they remained for a protracted period in their efforts to recover their money paid to Rashid. By leaving the baby in SGH indefinitely and without notifying SGH led to actions being taken against Idya and Zunaidi for abandoning the premature baby in SGH.

(c) Idya had to stay in the Kajang prison for one night for the offence of over staying.

Counsel submitted that Idya was in an extremely fragile state of mind at that time and she was desperate to return to Singapore. She was pregnant and was due to give birth in about 2 weeks. It was her uncle in Malaysia who suggested that she and family declare that they lost their passport in order to facilitate their return to Singapore. In desperation, she accepted this suggestion. Hence, in the application for DOIs, she filled all the declaration forms declaring the passports were lost.

13 As for the offences of cheating her relatives which were committed in 2011, it was mitigated that she committed them when she was suffering from the after effects of her traumatic one day in the Kajang prison. She was also affected by the feeling that she had betrayed her family's trust, her difficulties in securing a job and financial difficulties. It was in this state and being depressed that she cheated ITIS.

Prosecution's submission

14 The learned DPP highlighted the aggravating factors against Idya:

(a) Re-offended - In February 2011, she was being investigated for the cheating offences relating to her relatives and the Apple products. While investigations were on going, she went on to cheat ITIS of the Sony products in July 2011. She had become bolder and the value involved was at the larger sum of \$10,509.00.

(b) Betrayed trust of father and relatives - The victims involving the Apple brand products were her own father, aunt and relatives.

(c) Pre-meditated - She had thought of and planned her schemes. She concocted a fake dealer, linked it to a proper Apple shop i.e. Multimedia Integrated to give an impression of legitimacy to the fictitious deal. She then kept a distance from her victims by dealing with them via the phone and not meet them. Instead, she asked that payments be made by transfers

(d) Use of dud cheque - The crime of using cheques which were bound to be dishonoured were easy to commit but difficult to determine, and this undermined the confidence in use of cheques and the financial system. Again, she had planned for this offence. She promptly left for Malaysia after lying to Karina that she would make cash payment for the dishonoured cheque. She then remained in Malaysia for a lengthy period and could not be found.

(e) Made false police report to Malaysian authorities.

14 The learned DPP also referred to the then Deputy Prime Minister and Minister for Home Affairs (Mr Wong Kan Seng)'s speech when moving the Passports Bill in 2007 and stressed that it was Parliament's intent that offences under the Passport Act be dealt with harshly. The learned DPP tendered a Table of Sentencing Precedents and submitted that the courts have consistently been meting out imprisonment sentences for offences under the Passport Act. He urged for custodial sentences.

Sentencing consideration

15 I felt Idya's accounts were excuses slanted to justify her dishonest acts. In fact, I found her story somewhat bizarre.

16 According to Idya, she was bringing her family members with her to Dubai in early 2007. It is unimaginable that Idya who had not secured employment in Dubai and would herself be a stranger in Dubai, would bring her family members comprising of very young children and elderly females with her. It was equally inconceivable that when she went to Malaysia in 2009, purporting to recover the monies she paid to Rashid, she brought these family members along. They remained in Malaysia for more than one year, living in several hotels across Malaysia, thereby depriving these vulnerable dependants of a stable home environment. It is incredible that a lawyer from the reputable law firm of Shearn & Delamore in Kuala Lumpur, would require their clients (i.e. accused and family) to remain in Malaysia for more than a year and pay their hotel expenses. It is incredible that Idya did not know that several hotel bills were unpaid until they were detained by the police in mid July 2010. Idya should have been alerted when the said Resort retained their passports for non payment of bills in early 2010. I do not believe she continued to be blissfully ignorant and blind to the obvious.

17 It was equally astonishing that even though they did not have their passports, Idya chose to remain in Malaysia until mid July 2010 when they were detained by the Malaysian police for overstaying. It would appear that from early 2010 (when their passports were detained by the Resort) to mid July 2010, she did not seek help from the Singapore High Commission or her relatives and friends to assist her to return to Singapore. I could only deduce that her desperation to return to Singapore came about **after** she, Zunaidi and her family members got into trouble for over staying in Malaysia.

18 Idya was not naive, illiterate or ignorant. It was admirable that she strove to upgrade herself and earned an Accountancy degree from the University of London through correspondence course. This showed her determination, drive and intelligence. In view of the above, I looked on her versions which painted her as an unknowing, innocent victim with a generous pinch of salt. I doubt the explanations given for their being in Malaysia for protracted duration and the unpaid hotel bills which led to their passports being detained were the complete truth.

19 I agree with the learned DPP that the situation Idya found herself in was the inevitable result of her own doing. Her series of actions illustrated her irresponsible and devious character. She had no qualms about cheating her relatives, including her father. She paid negligible heed to the welfare of those who are vulnerable and are under her care. As Counsel submitted, Idya was the most educated in the family and they looked to her. Yet, she led the family to run foul of the law in Malaysia and in Singapore. She also advised and led Zunaidi to offend.

20 There can be no excuses for lying in the applications for the DOIs. Both Idya and Zunaidi deliberately deceived a public official by making a false statement in each application for DOI. They knew this was material information for the decision whether DOIs would be given. They could have come clean at the Singapore High Commission and admit that the passports were held by the said Resort. Instead Idya made a false police report, thereby lying to the Malaysian authorities. She then used this police report to mislead the Singapore High Commission. I would have viewed the matter differently if Idya and Zunaidi had come clean after they returned safely to Singapore and informed the authorities that they made false statements. However, they did nothing. Instead, they obtained new passports and travelled to Malaysia after Idya cheated ITIS. It was left to police investigations to uncover their criminal acts – investigations which the learned DPP informed me took considerable time as it involved liaising and working with the Malaysian counterpart.

21 As I see, the fact that Idya voluntarily returned to Malaysia within one year of her *traumatic one day in Kajang Prison* showed it was not as traumatic as claimed or she had got over the experience.

22 The cheating offences were not one-off incident. There were obvious indications of these being premeditated. Idya was unrepentant and bold when she re-offended while under police investigations. And, it was evident that she planned to make-off to Malaysia after cheating ITIS.

23 In the final analysis, I saw little worthy mitigating factors in both accuseds' pleas. I noted in Idya's favour that she made full restitution in respect of the cheating offences. However, these were made at the very late stage, i.e. about 2 weeks before she pleaded guilty to the charges. Their pleas of guilt had little mitigating value as the evidence against them was overwhelming and Prosecution would have no difficulty in proving their case (see *PP v Wong Kai Chuen*[1990] 1 SLR 1011).

24 Whether a custodial sentence or a fine was justified depended, among other factors, on the seriousness of the offence, the circumstances leading to it and the offender's culpability. Where the offence relates to or is against a government authority, the sentencing purpose is one of general deterrence (see *PP v Law Aik Meng* [2007] 2 SLR 814). Sentencing practices show that a custodial sentence is almost always imposed. The cases of *Abu Syed Chowdhury v PP* [2002] 1 SLR 301 and *Lai Oei Mui Jenny v PP* [1993] 3 SLR 305 involve furnishing false information under section 57(1)(k) of the Immigration Act (Cap 133) and section 182 Penal Code (Cap 224) respectively and both offenders were sentenced to 2 months' imprisonment. Although Idya and Zunaidi faced offences under the Passport Act, the principles and purpose of general deterrence for furnishing false information to government authority should apply.

Sentence

25 After careful consideration and weighing the various factors presented by Counsel and Prosecution, I decided that a custodial term was the appropriate punishment. I rejected Counsel's call for an MTO or probation. There was no basis for either. The IMH Report dated 15.8.2011 (almost 2 years ago) diagnosed Idya to have Adjustment Disorder and Depressed Mood. As

the learned DPP aptly noted there was no indication of causal link that led to her committing the offences. It was obvious from the Statements of Facts that Idya knew and intended her criminal acts. Moreover, she was gainfully employed since 2012 and had performed well in her employment as Residents' Committee Manager with the Peoples' Association. The certificates exhibited in the Written Mitigation applauded her for her "*commendable collaboration with the Singapore Police Force*". These showed she was not be labouring under any mental or psychiatric condition that warranted departure from the sentencing norm.

26 I then considered the appropriate length of custodial term and referred to the following precedent cases for guidance :

Making false statements

PP v Steve Segar Selva [DAC 829/2013, Unreported] - the offender was convicted on one charge under section 39(1) of the Passport Act for falsely declaring in his application for replacement passport that he had lost his passport. In fact, he had deposited his passport with another person as assurance for a debt owed. The offender was sentenced to 6 weeks' imprisonment.

Cheating

PP v Jai Shanker s/o Muniandi [2006 SGDC43] - the offender had a renovation company, conspired with an accomplice and submitted a false application for a renovation bank loan knowing that the accomplice had no intention to carry out any renovation, thereby inducing the bank to discharge \$13,230 to his company. After deducting \$4,500 as his commission, he paid the balance to his accomplice. He pleaded guilty to the charge under section 417 of the Penal Code and was sentenced to 2 months' imprisonment.

PP v Vimlesh kumar Lakhi Khemani [2006] SGDC 278 - The offender pleaded guilty to 3 charges under section 417 of the Penal Code. He produced a boarding pass to purchase duty free liquor at the duty free shop at Changi Airport. However, the offender had no intention to board the flight and wanted to re-enter Singapore after purchasing the liquor. He was sentenced to 2 months' imprisonment on each charge.

27 After carefully considering all the facts and circumstances, the submissions by Counsel and Prosecution, I sentenced – Zunaidi to 6 weeks' imprisonment ; and Idya as follows:

DAC 41731/2012 (cheating) – 2 months' imprisonment;

DAC 41732/2012 (cheating) - 3 months' imprisonment;

DAC 41778/2012 (passport offence) - 2 months' imprisonment

DAC 41779/2012(passport offence) - 2 months' imprisonment.

I ordered *DAC 41732/2012* and *DAC 41778/2012* to run consecutively. The total sentence was 5 months' imprisonment.

Both accused are on bail pending appeal.

BACK TO TOP