

**MAHKAMAH MAJISTRET KUANTAN**  
**DALAM NEGERI PAHANG DARUL MAKMUR**  
**PERBICARAAN JENAYAH NO: 83RS – 206 – 08 / 2016**

5

**PENDAKWA RAYA**

**V.**

**SABARIAH BINTI ADAM**

**[IDENTITY CARD NO.: 680608 – 08 – 6124]**

10

**JUDGMENT**

**NORDIANA BINTI ABD AZIZ**

**INTRODUCTION**

[ 1 ] The accused person (Sabariah Binti Adam (Sabariah) who is 49 years old was charged with two counts of knowingly concealing stolen property, an offence under section 414 of the Penal Code. She claimed trial to both charge.

[ 2 ] Prosecution is conducted by Deputy Public Prosecutor (DPP) Mohamad Shahrizzat bin Amadan whilst the accused is represented by Encik Muhamad Saifuldin Bin Dato' Ab Rahman.

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**THE CHARGE**

[ 3 ] The charge preferred against Sabariah were as follows:

### The First Charge

5 Bahawa kamu pada 09.03.2015 jam lebih kurang 12.06  
tengahari bertempat di alamat Public Bank Jalan  
Beserah, Dalam Daerah Kuantan, dalam Negeri  
Pahang Darul Makmur dengan sengaja telah  
membantu menyembunyikan sesuatu harta iaitu wang  
bernilai lebih kurang RM3,500 yang mana kamu pada  
10 masa membantu menyembunyikan harta tersebut yang  
berkenaan itu, mempunyai sebab mempercayai  
bahawa harta itu harta percurian, maka kamu dengan  
ini telah melakukan suatu kesalahan yang boleh  
dihukum di bawah seksyen 414 Kanun Keseksaan.

### The Second Charge

15 Bahawa kamu pada 10.03.2015 jam lebih kurang 11.32  
tengahari hingga 11.34 tengahari bertempat di alamat  
Public Bank Jalan Beserah, Dalam Daerah Kuantan,  
dalam Negeri Pahang Darul Makmur dengan sengaja  
telah membantu menyembunyikan sesuatu harta iaitu  
20 wang bernilai lebih kurang RM6,000 yang mana kamu  
pada masa membantu menyembunyikan harta tersebut  
yang berkenaan itu, mempunyai sebab mempercayai  
bahawa harta itu harta percurian, maka kamu dengan  
ini telah melakukan suatu kesalahan yang boleh  
25 dihukum di bawah seksyen 414 Kanun Keseksaan.

[ 4 ] On 22 December 2017, based on the provision under section 158  
of the Criminal Procedure Code, the Court has amended the  
charge as follows:

### The First Charge (Amended Charge)

5 Bahawa kamu pada 09 Mac 2015 jam lebih kurang 12.06  
tengahari bertempat di Public Bank Jalan Beserah, dalam daerah  
Kuantan, dalam Negeri Pahang Darul Makmur dengan sengaja  
telah membantu dalam menyembunyikan sesuatu harta iaitu  
wang bernilai RM3,500 milik Normillah Binti Abdullah (KP:  
670125-06-5426) yang mana kamu pada masa membantu  
menyembunyikan harta tersebut, mempunyai sebab  
mempercayai bahawa harta itu harta percurian, maka kamu  
10 dengan ini telah melakukan suatu kesalahan yang boleh dihukum  
di bawah seksyen 414 Kanun Keseksaan.

### The Second Charge (Amended Charge)

15 Bahawa kamu pada 10 Mac 2015 jam lebih kurang 11.32  
tengahari hingga 11.34 tengahari bertempat di alamat Public Bank  
Jalan Beserah, dalam daerah Kuantan, dalam Negeri Pahang  
Darul Makmur dengan sengaja telah membantu dalam  
menyembunyikan sesuatu harta iaitu wang bernilai RM6,000 milik  
Normillah Binti Abdullah (KP: 670125-06-5426) yang mana kamu  
20 pada masa membantu menyembunyikan harta tersebut,  
mempunyai sebab mempercayai bahawa harta itu harta  
percurian, maka kamu dengan ini telah melakukan suatu  
kesalahan yang boleh dihukum di bawah seksyen 414 Kanun  
Keseksaan.

25 [ 5 ] The offence is punishable under section 414 of the Penal Code  
which carries a punishment which may extend to seven years of  
imprisonment or with fine or with both.

[ 6 ] After the amended charges were read to the accused, she still claims trial to both charges.

### PROSECUTION CASE

5 [ 7 ] Trial in this action commenced on 24<sup>th</sup> May 2017 in which the prosecution in proving its case has called 3 witnesses:

(a) Det. Koperal (RF/127859) Sahrom Bin Mahat (PW1);

(b) Normillah Binti Abdullah (PW2);

(c) Sjn. (RF/186621) Mohd Hafri bin Mohd Yusof (PW3).

10 [ 8 ] Proceeding from the evidence of the witnesses, I shall now set out the facts relating to the charge.

[ 9 ] On 21 July 2016, PW1 has executed an arrest on Sabariah. He lodged a report at P1.

[ 10 ] PW2 is the complainant. She befriended a man named Nasir  
15 whom she met online via Facebook. She knew him as a pilot from Brunei. After getting to know each other for a year, a freight carrier agent by the name of Marisa called PW2 informing her to collect a package containing goods sent by Nasir. As she has this matter confirmed by Nasir, she agreed to collect the said package.

20 [ 11 ] Through series of phone call from Marisa, PW2 was apprised of a wad of greenbacks given by Nasir in the said package. Before she can collect the package, PW2 was instructed to bank in a sum of money into Public Bank account number: 6-8315929-09 for a motley of reasons – among which as payment for excess parcel  
25 fees and for customs clearance as the package has been found to

have contained undeclared dollar bill. Marisa demanded that a sum of money be banked in into the said account by threatening PW2 that she could be charged with criminal offence if she refused to comply. The petrified PW2 acted according to what was instructed and via 3 cash deposit transaction, she banked in RM13,500 into Public Bank account number: 6-8315929-09 as evidenced from P3 (A – C).

[ 12 ] On 11 March 2015, PW2 received another call from Marisa informing her that she has to bank in RM25,000 into the same account for customs clearance as the package has been found to have contained undeclared money amounting to USD150,000. Despite Marisa's attempt to continuously shake PW2 down by the threat of criminal prosecution, PW2 gave no credence to Marisa's request. Instead, she lodged a police report at P2.

[ 13 ] PW3 is the investigating officer assigned to investigate the report lodged by PW2. After making thorough inquiry and investigation over the matter, PW3 confirmed that PW2 has, via series of transaction, banked in RM13,500 into Public Bank account number: 6-8315929-09. By Borang Pembukaan Dan Salinan Dokumen Pengenalan Bagi Akaun Nombor 6-8315929-09 (P6) together with Perakuan Di Bawah Seksyen 90A (2) Akta Keterangan gained from Public Bank Berhad, PW3 concluded that Public Bank account number 6-8315929-09 is registered under the name of Sabariah binti Adam (KP: 680608–08–6124) i.e. the accused. His investigation into the report ended with the arrest of the accused.

## REDACTED VERSION OF PROSECUTION'S SUBMISSION

[ 14 ] According to prosecution, in order to prove the element of stolen property which came under the definition referred by section 414 of the Penal Code, prosecution only need to prove that PW2 was  
5 duped into depositing the money into Sabariah's account and that proof of actual theft is not necessary (*PP v. Zainiddin Bin Jaafar* [2010] MLJU 1523).

[ 15 ] As far as knowledge is concerned, prosecution submitted on circumstantial fact that the accused, as the account holder of  
10 Public Bank account number: 6-8315929-09 has full access to the account including its pin number. Thus when the accused took no action to series of banking transaction in her account, the inference is that she has knowledge of the devious transaction of concealing  
15 PW2's money and has voluntarily assisted in concealing stolen property (*Ahmad Bin Ishak v. PP* [1974] 2 MLJ 21; *PP v. Soong Chak Sung* [1955] 1 MLJ 144).

## REDACTED VERSION OF DEFENCE'S SUBMISSION

[ 16 ] Counsel told the Court that PW2's testimony was sketchy with the  
20 intention of pulling the wool over the Court's eyes. It is also speculated that since PW2 befriended Nasir, she has knowledge about the package sent by Nasir ergo, she deposited the money on her own accord.

[ 17 ] Though is not disputed that Sabariah is the account holder for  
25 Public Bank account number 6-8315929-09, it is submitted that the accused has no intention in concealing the money deposited by PW2. Counsel prayed to the Court to adjudge the accused

blamelessness for the crime charged as she is said to have been the victim of Marissa's hoax and has no knowledge that her account has been fraudulently misused. In support, counsel tendered several police report lodged by the accused at exhibit D4 and D11.

[ 18 ] During cross examination, PW3 admitted not inquiring further about reports lodged by the accused and he also did not retrieved CCTV footage of the relevant time during which the money was withdrawn. PW3 rather dilettantish investigation over the matter, according to the counsel, has led prosecution case to Achilles' heel.

[ 19 ] In conclusion, counsel submitted that the above facts have created fatal gap which destroys prosecution case.

## 15 FINDINGS OF THE COURT AT THE CLOSE OF PROSECUTION CASE

[ 20 ] It is a well settled principle that prosecution case must stand on its own weight. At the end of prosecution case, prosecution has the burden of presenting prima facie evidence of each element of the crime charged (*Low Kow Chai & Anor. v. PP* [2003] 1 CLJ 734).

20 [ 21 ] For an offence under section 414 of the Penal Code, prosecution need to establish the following elements:

(i) The property in question is stolen property;

(ii) The accused assisted in in concealing or disposing of or making away with such property;

25 (iii) The accused did as in (ii) voluntarily.

(iv) The accused knew or had reason to believe that the property was stolen property.

(Ratanlal & Dhirajlal Law of Crimes)

5 [ 22 ] In deciding whether the given elements have been proved, I will consider and decide each of the element in seriatim.

10 [ 23 ] With regard to the definition of stolen property, my decision came in parallel with prosecution's submission. In this case, PW2 was duped into depositing a sum of money into Public Bank account no: 6-8315929-09 believing it to be payment for the release of a package sent by Nasir. She never got the package despite depositing a sum of money as instructed. In reference to the case of *Public Prosecutor v. Zainiddin Bin Jaafar* [2010] MLJU 1523 and section 410 of the Penal Code, I hold that money transferred by way of cheating (as in this case, by PW2 into Public Bank account no: 6-8315929-09) came within the definition of stolen property.

[ 24 ] On 09 and 10 March 2015, PW2 has deposited a sum of money into Public Bank account no: 6-8315929-09. Without reservation, the receipts at exhibit P3 and a bank statement at exhibit P6 stand as proof of the said transaction.

20 [ 25 ] Apart than that, exhibit P6 also proved that the accused is the account holder for Public Bank account no: 6-8315929-09. Thus it is to be taken as read that the accused as the account holder for Public Bank account no: 6-8315929-09 has possession of money deposited by PW2 akin to the definition of possession as being illustrated by Sharma J in *Public Prosecutor v. Hong Ah Huat* [1970] 1 LNS 113. The same bank statement (P6) also proved that all money deposited (by PW2) has been withdrawn. In that matter,

withdrawal of stolen property from Public Bank account no: 6-8315929-09 inhere the element of concealing such property.

[ 26 ] Unauthorized transaction using her account and having no knowledge of the fraudulent transaction have been forwarded by the accused as her defence all throughout the prosecution case. In support she tendered a report at D11 dated 18 June 2015. Hence, the question, whether the said defence can be valid reason to hold the crime as lacking in mental element on which criminality would rest?

[ 27 ] As for the element of mens rea, I would like to quote the decision made by the Court in in *Public Prosecutor v. Dato Haji Mohamed Muslim Bin Haji Othman* [1983] 1 MLJ 245 where Hashim Yeop A Sani J has held that mens rea can be proved in diverse way.

[ 28 ] As in this case, the Court is drawn to the inference that an account holder must be held responsible for all transaction initiated or authorized using her account number including transaction by another person whom the account holder has given permission to. This is based on the decision in *Yap Khay Cheong Sdn. Bhd. v. Susan George T.M. George* [2017] 1 LNS 2041 which the Court of Appeal held as follows:

...an account holder, has sole legal control and custody of her own bank account. It is accepted that no person can have any access to another person's account unless consented to. In this case the Defendant had allowed Tharvinder free access to her account and she should be held responsible for the outcome of her action. Since she had allowed Tharvinder to meddle with her account, in our view she cannot absolve her responsibility by just feigning ignorance about what went on in her account. We all know

that under the normal order of the day, her bank would have contacted her about an unusually large transaction or an out of the ordinary transaction such as this. She would have been alerted and would have been aware of the transaction with the Plaintiff.

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[ 29 ] An apercu of the above facts, the accused as the account holder, has control and custody over her account. When a person has control and custody over a subject matter, he is also deemed to have possession and knowledge (*Henry Chan Kok Loon v. PP* [2017] 1 LNS 1174). As an account holder, the accused has the capacity to deal with the money deposited into her account. Hence, when the money was withdrawn from her account, she is said to have voluntarily assisted in concealing the property knowing or having reason to believe that it is stolen property.

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[ 30 ] In every aspect of evidence presented by the prosecution, in my considered opinion, prosecution has successfully proved all of the element under section 414 of the Penal Code. Therefore the accused is called to enter defence to the two charges framed against her. After the three alternatives consequent upon such finding were explained to the accused, she elected to give sworn evidence.

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### DEFENCE CASE

[ 31 ] From actus reus point of view, counsel contended that there is no evidence to proof that the accused assisted in concealing the money deposited by PW2. Instead she claimed to have been the victim of the same trumpery scheme and not the perpetrator. She claimed to have never instructed PW2 to deposit the money into

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the said account. The report at exhibit D4, D11 and D12 were tendered in support of her innocence. She told the Court that the case was investigated by Inspektor Megat.

[ 32 ] From mens rea viewpoint, it is asserted that the accused has no  
5 knowledge that her account has been used for criminal purposes. To prove the accused not responsible for the crime, counsel submitted that the first action taken when she was informed about the incident was to lodge a report at exhibit D11. Her defence regarding the incident was forwarded as early as prosecution  
10 stage. It is submitted that there was no element of afterthought or bare denial with regard to her defence.

[ 33 ] With conviction counsel told the Court that the accused, who was in desperate attempt to get her money back was conned into opening a bank account in 2015. In fear of facing criminal charges,  
15 she mailed the ATM card and its pin number to Husin. Thus she is said to have no control and custody over her account as what was espoused by the law by the definition of possession.

[ 34 ] According to counsel, the defence forwarded is sounder based on hard evidence such as exhibit P8 and IDD13. Despite not calling  
20 Inspektor Raabuan to verify Borang Pemeriksaan (Senarai Borang Bongkar) Bertarikh 08 Jun 2015 i.e. IDD13, counsel made reference to the case of *PP v. Jufarif Ahmad Sulong* [2017] 1 LNS 294 and prayed the said document be accepted as exhibit without calling the maker in order to get at truth and to come to a proper  
25 conclusion in trial.

## DUTY OF THE COURT AT THE CLOSE OF DEFENCE CASE

[ 35 ] At the conclusion of the trial, the Court shall consider all evidence adduced before it and shall decide whether prosecution has proved its case beyond reasonable doubt. If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it. If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal. There are multitudinous of cases on the duty of the Court at the end of defence case such as the encapsulated in the time honored decision of *Mat v. Public Prosecutor* 1963 29 MLJ 263 and *Public Prosecutor v. Mohd Radzi Bin Abu Bakar* [2005] 6 MLJ 393.

## 15 FINDINGS OF THE COURT AT THE CLOSE OF DEFENCE CASE

[ 36 ] In brief, the accused relied solely on the argument that the charge lacked criminal element. She denied to have ever instructed PW2 into depositing the money into her account nor was she involved in concealing the money deposited. As far as mens rea is concerned, the accused argued that she has no custody and control over the account as she has given the ATM card and its pin number to a man named Husin.

[ 37 ] Before dwelling into the defence raised by the accused, I am going to bring to notice on two points. Number one, I would like to embrace all of the findings that I made at the end of prosecution case.

[ 38 ] Secondly, with regard to Borang Pemeriksaan (Senarai Borang Bongkar) Bertarikh 08 Jun 2015 i.e. IDD13. According to DW1, IDD13 was prepared by Inspector Mohd. Raabuan B. Mohd Ain, an investigating officer from Bahagian Siasatan Jenayah Komersil IPD Cheras. When asked further by the prosecution, DW1 was not able to give detail about IDD13. Counsel attempted to submit the document as exhibit through the accused despite Inspector Mohd. Raabuan was not subpoenaed to give evidence with regard to this document. This has, of course, led to protestation from the prosecution.

[ 39 ] Suriyadi Halim Omar FCJ in the case of *PP v. Azilah Hadri & Anor* [2015] 1 CLJ 579 cited the judgment made in *Allied Bank (Malaysia) Bhd v. Yau Jiok Hua* [1998] 2 CLJ 33 which decides as follows:

It is settled law that where a document is sought to be proved in order to establish the truth of the facts contained in it, the maker has to be called (see *R v. Gillespie* [1967] 51 Cr App Rep 172; *R v. Plumer* [1814] R & R 264; *Hill v. Baxter* [1958] 1 QB 277; *R v. Moghal* [1977] Crim LR 373). Non-compliance with this rule will result in the contents of the documents being hearsay.

[ 40 ] After reviewing the submissions of the parties regarding Borang Pemeriksaan (Senarai Borang Bongkar) Bertarikh 08 Jun 2015 i.e. IDD13 and with reference to the case of *PP v. Azilah Hadri & Anor* (Ibid), the Court decided that Borang Pemeriksaan (Senarai Borang Bongkar) Bertarikh 08 Jun 2015 i.e. IDD13 shall remain as an ID because Inspector Mohd. Raabuan B. Mohd Ain as the document maker was not called to the Court to confirm the

contents of this document. Besides that DW1 was not able to state in detail about IDD13.

[ 41 ] Taken that every facts in the above have been considered, I now come to my judgment at the end of defence case. After maximum evaluation of all the evidence adduced before me, I find the credibility of the accused is openly thrown into issue based on several point. Firstly, the accused in my considered opinion was erratic and vacillating when answering questions posed by the Deputy Public Prosecutor that she has to be calmed down by her counsel. There are also times when she contradicts herself with numerous hard evidence presented before the Court. For instance, during chief examination, she told the Court that she was arrested on 08 June 2016 whereas the report at D11 proved that she was arrested on 08 June 2015.

15 [ 42 ] Secondly, it was asserted by the accused that Public Bank account no: 6-8315929-09 was controlled by Husin as she has mailed him her ATM card with its pin number. She claimed, she too, has fallen victim to the dupery cabal led by Raymond, Marisa and Husin. Essentially it is a well celebrated principle in the law of evidence that he who asserts has the burden of proving it (See section 103 of the Evidence Act 1950; *Harvinder Singh a/l Joginder Singh v. Public Prosecutor And Another Appeal* [2018] MLJU 51).

[ 43 ] Despite her assertion, the accused offered no evidence in support of her contention. There was no banking receipt, no postage receipt nor did she ever inscribed details of the artifice banking transaction in D4 and D11 to support her testimony.

[ 44 ] To rub salt into the wound, Inspektor Megat, Inspektor Razman or Inspektor Raabuan whom she claimed had investigated her case

and whom she claimed had gain access to Public Bank bankbook, hand phone and documents pertaining to the dupery scheme were not put before the Court. As these witnesses and documents were only known by the defence, the non-attendance of the witness affected the weight of evidence of the accused. Edgar Joseph Jr. J in *Public Prosecutor v. Tan Gong Wai & Anor* [1985] 1 MLJ 355 has held the following:

...the failure to call any particular witness is a matter which the Court may take into account in assessing the weight of evidence (without drawing any adverse inference) especially so when the potential witnesses were persons in respect of whom the prosecution had probably no means of knowing that they might have any relevant evidence to give until the accused himself came to give evidence.

No ifs, and buts, all of the above findings made her defence becoming specious and enervated – hence implausible.

[ 45 ] Last but not least, the mens rea defence. The accused claimed that she has no custody and control over the account as she has given the ATM card and its pin number to a man named Husin. Hence she denied having mens rea to bring about the criminal act as charged.

[ 46 ] Raja Azlan Shah FJ delivering judgment of the Court in *Tham Kai Yau & Ors v. Public Prosecutor* [1977] 1 MLJ 174 has held that intention or mens rea is not something which is capable of being established by direct evidence; it is a matter of inference. It could be gathered from all the facts and circumstances prevailing in the case.

[ 47 ] The accused primary defence with regard to mens rea element was that she has no possession of the ATM card as it was posted to Husin. When asked further, she could not provide any postage receipt to confirm her defence. In this case, the truth of her defence is dubious. The following are excerpts from her statement during cross examination:

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75. Soalan : Kamu hantar kad dan buku akaun melalui poslaju?

Jawapan : Ya.

76. Soalan : Kalau poslaju, mesti ada resit.

Jawapan : Ada.

82. Soalan : Kamu tidak pernah usaha dapatkan rekod apa jadi kepada barang yang dihantar kepada Husin Hasan?

Jawapan : Ya.

[ 48 ] Her next defence as to mens rea element was that the ATM card and its pin number was under the custody and control of Husin. Thus, she claimed having completely no knowledge of any transaction in Public Bank account no: 6-8315929-09. Nevertheless, when answering questions put forward by the Deputy Public Prosecutor, she contradicts her defence as she admitted having knowledge Husin is accessing her account and she also admitted using the account actively in 2015:

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70. Soalan : Kad bank kalau diserahkan kepada orang dan orang itu ada nombor pin pula, kita tahu dia akan ada akses kepada akaun kita?

Jawapan : Setuju.

85. Soalan : Kamu tahu dan sedar Husin Hasan ada akses kepada akaun kamu?

Jawapan : Ya.

86. Soalan : Rujuk P6.  
Adakah kamu menggunakan akaun Public Bank ini dengan aktif?

Jawapan : Ya.

[ 49 ] Furthermore in her report at D12, she admitted receiving a call from Public Bank Berhad informing her of a withdrawal amounting to RM5,000 from her account. This goes to show that the bank kept the accused abreast of the transaction in the account and in point blank proves that the accused is aware of what is going on in Public Bank account no: 6-8315929-09. Conspicuously by D12, despite the amount of money withdrawn from her account (as claimed), the accused did not lodge any report against Husin whom she claimed to have access to her ATM card and pin number – making her defence becoming full of holes and to boot, fictitious.

[ 50 ] Even though she claimed to have given Husin her ATM card and its pin number, I would like to recapitulate my findings at the end of prosecution case. It is adjudged that an account holder must be held responsible for all transaction initiated or authorized using her account number including transaction by another person whom the account holder has given permission to (See *Yap Khay Cheong Sdn. Bhd. v. Susan George T.M. George (supra)*).

[ 51 ] All in all, there is not a soupcon of truth in the defence suggested by the accused. Instead, her defence, in my considered opinion, were mere fabrication concocted in attempt to avoid culpability of the offence charged against her.

5 [ 52 ] That being said, I am satisfied to rule this judgment: After having considered the defence in totality of the evidence presented, I find that the defence has failed to cast a doubt on prosecution's case and in the circumstances, I find that prosecution has proved its case beyond reasonable doubt. For the first and second charge, I  
10 found the accused guilty and accordingly convict the accused of both charges.

### THE SENTENCE

[ 53 ] In this case the accused is convicted with two counts of knowingly  
15 concealing stolen property, an offence which is punishable under section 414 of the Penal Code that carries a punishment which may extend to seven years of imprisonment or with fine or with both.

[ 54 ] To reach an appropriate sentence, the Court has to consider the  
20 nature and the seriousness of the offences that the accused has been found guilty of, the personal circumstances of the accused as well as the interests of society. It also had to take into consideration the main purposes of punishment; namely retribution, deterrence, prevention and rehabilitation.

25 [ 55 ] The accused set forth for a sentence of fine in her mitigation as she has no previous conviction and was not the mastermind in this dupery scheme. Apart than that counsel prayed that no custodial

sentence be imposed against the accused as she is a housewife with 2 children to be taken care of.

[ 56 ] Prosecution on the other hand prayed that the accused be sentenced to imprisonment as he pointed out public interests is best served by sending the accused to prison. Reference is made to the case of *PP v. Loo Choon Fatt* [1976] 2 MLJ 256. As the accused is convicted of two counts of offence with distinct time and amount of loss, it is prayed that custodial sentence is to be imposed consecutively (*Saizaitumuhiddin Ab Rashid v. PP & Other Appeal* [2014] 1 LNS 385).

[ 57 ] It is also highlighted that a crime with similar modus operandi is booming incessantly in Kuantan as more people is reportedly have fallen victims to the same dupery scheme. By the rampancy of the offence, prosecution submits that custodial sentence is copacetic as it will serve as a lesson to the accused and to serve as warning to others.

[ 58 ] Submitting that the crime committed is serious in nature, prosecution implored for custodial sentence that bespeak the government's effort in combating such dupery scheme.

[ 59 ] With regards to sentencing, I would like to quote the decision by Hashim Yeop A. Sani J in *Public Prosecutor v. Loo Choon Fatt* [1976] 1 LNS 102 where his Lordship is quoted as saying:

Presidents and magistrates are often inclined quite naturally to be over sympathetic to the accused. This is a normal psychological reaction to the situation in which the lonely accused is seen facing an array of witnesses with authority. The mitigation submitted by a convicted person will also normally bring up problems of family hardship

and the other usual problems of living. In such a situation the courts might perhaps find it difficult to decide as to what sentence should be imposed so that the convicted person may not be further burdened with additional hardship. This in my view is a wrong approach. The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused.

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[ 60 ] As prosecution has rightly pointed out, the crime involving a scheme to conceal or dispose away stolen property is snowballing in Kuantan. This can be seen from the number of cases (with similar nature) registered in Mahkamah Kuantan.

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[ 61 ] In my considered opinion, the crime of such nature is considerably serious. It is not easily solved as it took years for the case to be cracked by dint of untiring efforts of the police. Despite concerted effort by PDRM in combating the crime, the fraudsters had always an ace up their sleeve, evidently by the upsetting figure of such crime being reported.

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[ 62 ] Thus, the sentence imposed must act as a reminder to prevent public from committing the same offence alongside of protecting public interest. Mohtarudin Baki JCA in *PP v. Muhammad Saifullah Awang* [2016] 3 CLJ 784 stated the following:

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A deterrent sentence must be passed to strengthen public confidence that an offense of this nature will be severely punished by the Court. A long imprisonment term by the court will create fear in the minds of future offenders besides sending a message to the public about the seriousness of this offense.

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[ 63 ] I also do consider that the money concealed by the accused is nowhere to be located. By this she has fraudulently gained unjust enrichment to complainant's detriment (*Mohd Irwan Shah Zainaul v. PP* [2017] 1 LNS 1438), and for that reason, severe sentence is apposite.

[ 64 ] Basing on the dictum as discussed in the above and the accused having been convicted of the two charges, I hereby sentence the accused as follows:

First Charge

12 months imprisonment with effect from 22 December 2017.

Second Charge

12 months imprisonment with effect from 22 December 2017.

[ 65 ] The sentence is to run concurrently for I find no justification in ordering the sentence to run consecutively.

**NORDIANA BINTI ABD AZIZ**

Mahkamah Majistret Kuantan

01 May 2018

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