

**IN THE SESSIONS COURT AT SEPANG**  
**IN THE STATE OF SELANGOR DARUL EHSAN**  
**SUMMONS CASE NO. BK – 63 – 04 – 02/2020 & 9 OTHER CASES**

**BETWEEN**

**PUBLIC PROSECUTOR**

**... PROSECUTION**

**AND**

**MOHAMAD FAEZI BIN ABD LATIF**

**... ACCUSED PERSON**

**JUDGMENT**

**INTRODUCTION**

- [1] This judgment concerns sentences meted out by this court on Mohamad Faezi bin Abd Latif (the accused person) who pleaded guilty to ten charges of improper use of application service, offences in contravention of section 233(1)(a) of the Communications and Multimedia Act 1998 (the Act), punishable under section 233(3) of the Act.
- [2] I sentenced the accused person to a fine of RM5,000.00 in default of three months imprisonment, on each charge, totalling RM50,000.00 in default of thirty months imprisonment. And herein below, the reasons.

## **THE TEN CHARGES**

- [3] What follows is the subject matter of the charges. The charges against the accused person fall under section 233(1)(a) of the Act. They involve offences of improper use of application service by knowingly creating and initiating the transmission of obscene communications with intent to annoy another person. So far as material, the respective obscene communications concern explicit postings of still images and videos depicting male genitalia with lewd and lascivious captions on a Twitter account with the handle “plughijau002” belonging to the accused person.
- [4] For convenience, I reproduce below the respective charges:

### **First Charge – Summons Case No. BK – 63 – 04 – 02/2020**

*“Bahawa kamu pada 30 September 2018 jam lebih kurang 8.14 malam telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1046599098973868031> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran A dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

## **Second Charge – Summons Case No. BK – 63 – 05 – 02/2020**

*“Bahawa kamu pada 17 September 2018 jam lebih kurang 5:09 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/10416603447986094> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran B dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

## **Third Charge – Summons Case No. BK – 63 – 06 – 02/2020**

*“Bahawa kamu pada 14 September 2018 jam lebih kurang 4:56 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/10405699394661867> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran C dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

#### **Fourth Charge – Summons Case No. BK – 63 – 07 – 02/2020**

*“Bahawa kamu pada 8 September 2018 jam lebih kurang 12.30 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1038328685352520704> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran D dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

#### **Fifth Charge – Summons Case No. BK – 63 – 08 – 02/2020**

*“Bahawa kamu pada 30 Ogos 2018 jam lebih kurang 10.15 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1035214446451257344> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran E dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

### **Sixth Charge – Summons Case No. BK – 63 – 09 – 02/2020**

*“Bahawa kamu pada 28 Ogos 2018 jam lebih kurang 10.03 malam telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1034667856749780992> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran F dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

### **Seventh Charge – Summons Case No. BK – 63 – 10 – 02/2020**

*“Bahawa kamu pada 25 Ogos 2018 jam lebih kurang 5:36 petang telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1033513585933049857> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran G dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

### **Eighth Charge – Summons Case No. BK – 63 – 11 – 02/2020**

*“Bahawa kamu pada 19 Ogos 2018 jam lebih kurang 6:43 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1031174943189258242> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran H dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

### **Ninth Charge – Summons Case No. BK – 63 – 12 – 02/2020**

*“Bahawa kamu pada 9 Ogos 2018 jam lebih kurang 1:07 pagi telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1027466322437754880> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran I dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

## **Tenth Charge – Summons Case No. BK – 63 – 13 – 02/2020**

*“Bahawa kamu pada 7 Ogos 2018 jam lebih kurang 6.45 petang telah didapati menggunakan perkhidmatan aplikasi melalui akaun Twitter “plughijau002” di pautan <http://twitter.com/plughijau002/status/1027007826533658625> secara sedar membuat dan memulakan penghantaran komunikasi yang lucah sifatnya seperti Lampiran J dengan niat untuk menyakitkan hati orang lain, yang telah dibaca pada 2 Oktober 2018 jam lebih kurang 9:00 pagi di alamat Tingkat 8, Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, dalam daerah Sepang, dalam negeri Selangor Darul Ehsan. Oleh itu kamu telah melakukan suatu kesalahan di bawah seksyen 233(1)(a) Akta Komunikasi dan Multimedia 1998 [Akta 588] dan boleh dihukum di bawah seksyen 233(3) Akta yang sama.”*

### **GUILTY PLEAS**

- [5] Upon the charges being read and explained to the accused person, he pleaded guilty to all ten charges and understood the nature and consequences of his pleas.

### **THE FACTS**

- [6] I now set the facts in the barest outline. A fuller account appears at the statement of facts which was marked as Exhibit P2. Acting upon a public complaint, on 7.9.2018, the Malaysian Communications and Multimedia Commission (MCMC) officer lodged a First Information Report No. EP 209/18 regarding active transmissions of obscene communications on several Twitter accounts. One of the Twitter accounts was “plughijau002”, accessible via the link

<https://twitter.com/plughijau002> belonging to the accused person (the twitter account).

- [7] MCMC's preliminary investigation revealed that there were ten obscene communications posted on the twitter account, comprising still images and videos depicting the male genitalia with lewd and lascivious captions between the period of 7.8.2018 to 30.9.2018.
- [8] On 2.10.2018, the complainant read the obscene communications posted on the Twitter account at Menara MCMC 1, Jalan IMPACT, Cyber 6, 63000, Cyberjaya, Selangor.
- [9] On 19.3.2019, MCMC, with the cooperation of the Royal Malaysian Police conducted a raid at No. 44, Jalan Tasek 21, Bandar Seri Alam, 81750, Masai, Johor. The raiding team seized a mobile phone model iPhone 6S Plus Serial No.: FCDW6318HFM2 (IMEI No. 355729077252133) and a Hotlink sim card (IMSI No. 896001161242501939) belonging to the accused person. The exhibits seized were then sent to the MCMC digital forensic lab for analysis.
- [10] The MCMC digital forensic team analysed the seized items and found that they contained the obscene materials which had been uploaded to the Twitter account. They confirmed that the mobile phone seized had access to the Twitter account, with the accused person as the administrator.
- [11] The MCMC digital forensic team also identified that the mobile phone bearing the number 018-5844390 was registered at the



material time under the name of Mohd Faizi bin Saim, who is the accused person's relative. He confirmed that the accused person used that number and is also the owner of the Twitter account.

[12] The accused person admitted the facts as true.

### **LIST OF EXHIBITS**

[13] The following exhibits were then tendered by the prosecution before this court:

- Exhibit P3 – First Information Report No. EP 209/18 dated 7.9.2018
- Exhibit P4 – Search List
- Exhibit P5 – Digital Forensics Report dated 27.3.2019
- Exhibit P6A – iPhone 6S Plus Serial No.:  
FCDW6318HFM2 (IMEI No.:  
355729077252133)
- Exhibit P6B – Hotlink sim card  
IMSI No. (896001161242501939)

### **CONVICTIONS**

[14] Having satisfied that the accused person understood the nature and consequences of his pleas and voluntarily admitted to the charges without qualification, including the facts of the cases as well as the exhibits, I convicted the accused person on all ten charges.

## **PLEA IN MITIGATION**

[15] Counsel from the Legal Aid Department representing the accused person made a fervent plea in mitigation. She said the accused person is a twenty-five-year-old first offender. He has no previous convictions. He is the youngest of 6 siblings. He is a bachelor who is staying with his mother, at a rented house in Masai, Johor. She further submitted that the accused person is working as an online trader with a salary of RM1,000.00 per month. According to her, he posted obscene communications on the twitter account to promote his reproductive health product, known as the “*belacak*” oil. He offered an apology for his actions. Accordingly, she urged this court to consider his early pleas of guilt. This, she said, has saved judicial time. She therefore prayed for leniency.

## **SUBMISSION ON AGGRAVATING FACTORS BY THE PROSECUTION**

[16] The MCMC Prosecuting Officer proposed a sentence of fine of RM15,000.00 to be imposed on the accused person, on each charge. She submitted that the prevailing trend of sentencing is a sentence of fine ranging between RM5,000.00 and RM10,000.00. In support, she tendered a comprehensive analysis on the trend of sentencing for offences pursuant to section 233(1)(a) of the Act imposed by Sessions Courts throughout the country.

## PRINCIPLES OF SENTENCING

[17] I shall now turn to the principle of sentencing. Lawton LJ made it clear in **Reg v Sargeant (1974) 60 Cr App R 74, 77** that there are four classical principles of sentencing. His Lordship said:

*“Those classical principles are summed up in four words: retribution, deterrence, prevention and rehabilitation. Any judge who comes to sentence ought always to have those four classical principles in mind and to apply them to the facts of the case to see which of them has the greatest importance in the case with which he is dealing.”*

These principles have since been judicially endorsed in this country on innumerable occasions (see **PP v Loo Choon Fatt [1976] 1 LNS 102**; **Public Prosecutor V. Chung Kwong Huah [1981] 1 LNS 67**; and **Public Prosecutor V. Rajandran & Anor [1985] 1 LNS 30**)

## THE LAW

[18] It is trite that in meting out the sentences against the accused person, I am bound to pass sentences according to the law. The starting point is section 173(b) of the Criminal Procedure Code. It provides:

*“173 Procedure in summary trials*

...

*(b)If the accused pleads guilty to the charge, whether as originally framed or as amended, the plea shall be recorded and he may be convicted on it and the Court shall **pass sentence according to law...**. (Emphasis added)*

[19] So far as concerns the phrase "*sentence according to law*", a concise explanation was given by Mohd Azmi J (later LP) in **Public Prosecutor v. Jafa bin Daud [1981] 1 LNS 28**. His Lordship observed:

*"A 'sentence according to law' means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles".*

[20] In the present cases, the accused person pleaded guilty to all ten charges under section 233(1)(a) of the Act. These offences are punishable under section 233(3) of the Act which provides:

*"233 Improper use of network facilities or network service, etc*

*...*

*(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction."*

## EVALUATION AND SENTENCES OF THIS COURT

[21] Pausing at this outset, I acknowledge that in preparing this judgment I take cognizance of the media reporting on the proposed amendment to section 233 of the Act, in particular, the Attorney General's Chamber's Media Release dated 5.2.2020 stating that *"...Section 233 should be the subject of Parliamentary amendment..."*.

### The Importance of Public Interest Considerations

[22] As is well-established, the public interest is of paramount importance in the assessment of sentence. On this score, I subscribe to the stern guidance given by Hashim Yeop Abdullah Sani J (later CJM) in **PP v. Loo Choon Fatt [1976] 1 LNS 102** where His Lordship said:

*"One of the main considerations in the assessment of sentence is of course the question of public interest. On this point I need only quote a passage from the judgment of Hilbery J in Rex v. Kenneth John Ball as follows:*

*In deciding the appropriate sentence a court should always be guided by certain considerations. The first and foremost is the public interest."*

[23] A balance should then be struck between the interest of the public and the interest of the offender (see **PP v. Mohamad Ramly [1973] 1 LNS 120** per Mohamed Azmi J (later LP)). In balancing these two

competing interests, the interest of the public should take precedence over the interest of the offender (see **PP v Tia Ah Leng [2000] 5 CLJ 614** per Augustine Paul J (later FCJ)).

### **The relevance of a timely guilty plea**

[24] Almost invariably, an admission of guilt in the form of a timely guilty plea is judicially accepted as a mitigating factor in sentencing. The law on this is well-established. Of relevance, the statement of principle by Suffian LP in **Sau Soo Kim v. Public Prosecutor [1975] 1 LNS 158** where His Lordship tersely stated “... *Whether a person is a hardened criminal or not, I feel that a plea of guilty should be treated as a mitigating factor. It not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many, particularly the witnesses.*” I too keep in mind the salutary reminder by Augustine Paul FCJ in **Bachik Abdul Rahman v. PP [2004] 2 CLJ 572** where His Lordship essentially outlined the circumstances based on the authoritative precedents in which a guilty plea is bereft of weight.

[25] Against the breadth of the foregoing propositions, I now turn to the present cases. Here, the accused person pleaded guilty in the first instance, immediately, upon the charges being read. There was no unnecessary delay in the disposal of the cases. That, in my view, warrants leniency. As well, I acknowledge that the accused person’s pleas of guilt did obviate the need for a trial which otherwise would have been lengthy and thus spared the witness of the ordeal of facing the rigour of examinations under oath in court.

And of course, much judicial time and resources which would otherwise be expended at trial, are saved. For that reason alone, I would consider imposing a more lenient sentence than I would have imposed had the accused person been convicted at the end of trial.

### **Character and antecedent**

[26] It is trite that sufficient consideration is also given to the remaining mitigating factors favouring an offender, in particular, character and antecedent. That proposition is indeed bolstered by a welter of authoritative precedents. They include three classic statements which have been regularly quoted in judgments. In **Mohamed Jusoh bin Abdullah And Another v. Public Prosecutor [1947] 1 LNS 73**, Willan CJ observed *“In our view no sentence can be assessed by a simple mathematical formula. Many factors must be taken into account according to the circumstances of each individual case.* In **Ho Kin Luan & Anor. v. Public Prosecutor [1959] 1 LNS 33**, Thomson CJ observed *“Each case, of necessity, must depend upon its own facts and upon the character and antecedents of the offender”.* In **Kharudin V. Public Prosecutor [1968] 1 LNS 56**, Syed Othman J observed *“The Court must consider not only the facts of each case but also the character and antecedents of the offender.”* The course of time has not diminished the force of the foregoing statements.

[27] I am however mindful of the principle that, the personal circumstances of an offender, as having little, if any, of mitigatory effect, save for only valid reasons. That, as is well established,

depends on the peculiar facts of the case. The following passage from the judgment of Abdul Rahman Sebli J (now FCJ) in **Public Prosecutor v. Shahrul Azuwan bin Adanan & Anor [2013] 2 CLJ 686** is, in my view, instructive. His Lordship said:

*"[14] The sentencing court must only consider circumstances that mitigate the crime and not those that are personal to the offender and unconnected to the crime such as hardship to the offender and his family if he is sent to prison. These are matters that the offender should have thought of before committing the offence. If he was brave enough to tempt fate and got caught he must be brave enough to face the natural and probable consequences of his act. **But if for any valid reason there is a need to temper justice with mercy a proper balance has to be struck between sympathy for the offender and the pain and suffering that he had inflicted on his victim or the damage that his criminal activity had done to society**". [Emphasis added]*

[28] The accused person in the present cases is the first offender who has no previous brushes with the law. At the time of the commission of the offences, he was an online trader earning an average income of RM1,000.00 per month. In his prayers for leniency, he made no attempt to justify his actions. He appeared to be remorseful. The duration of time over which the offending incidents occurred between 7.8.2018 and 30.9.2018 was, in my view, relatively short. He too has since stopped posting obscene communications on the Twitter account.



## Severity of Offence - Proportionate Punishment

[29] I hold in mind that a sentencing court has a duty to ensure a sentence imposed on an offender is proportionate to the severity of the offence and the degree of responsibility depending on the circumstances of the case (see **PP v Abdul Halim Ishak & Anor [2013] 9 CLJ 559** per Zawawi Salleh JCA (now FCJ)). And certainly, a sense of proportion must apply.

[30] In like vein, the classic statement of law is found in the words of His Royal Highness Raja Azlan Shah J (later LP) in **Liow Siow Long v. PP [1969] 1 LNS 98; [1970] 1 MLJ 40**, where His Royal Highness stated:

*“It is not in doubt that the right measure of punishment for an offence is a matter in which no hard and fast rules can be laid down and it is to be determined by a consideration of a variety of circumstances. In assessing sentence, the primary consideration is the character and magnitude of the offence, but the court cannot lose sight of the proportion which must be maintained between the offence and the penalty and the extenuating circumstances which might exist in the case.”*

[31] With the foregoing principles at the forefront of my mind and given the particular facts of the cases, I am of the view that a custodial sentence would not be appropriate. The reason is this. The thrust of section 233(3) of the Act is clear: the maximum sentence is prescribed as a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding one year or to both. As is

evident, imprisonment is not mandatory. And in exercising the discretion of not imposing a custodial sentence on the accused person, I also consider the effect such sentence may have on the accused person and his chance of returning to orderly behaviour without the necessity of being incarcerated behind prison wall. Of course, these offences are serious ones. But there are also some circumstances, which in my view, merit consideration. To my mind, they call for leniency. So stated, I therefore have no doubt that a fine is a condign sentence befitting the offences.

### **Trend of Sentencing**

[32] Insofar as the prevailing trend of sentencing is concerned, a particular reference is drawn to the comprehensive tabular analysis of sentences imposed by Sessions Courts throughout Malaysia in a number of cases concerning offences in contravention of section 233(1)(a) of the Act. The period ranges between 2017 and 2019. There follows the barest summary of the trend.

<b>NO.</b>	<b>CASE</b>	<b>OFFENCE</b>	<b>SENTENCE</b>	<b>REMARKS</b>
1	PP v Ranendar Bijoy Bhattacharyya  Kuala Lumpur Sessions Court WA-63-1024-10/2019	S.233 (1)(a) of the Act  The offender posted fake content using application service Facebook	A fine of RM5,000.00 in default of 3 months imprisonment	Guilty Plea at first instance

2	See Foo Hoong  Petaling Jaya Sessions Court  BB-MS4-63-29-9/2019	S.233 (1)(a) of the Act  The offender sent obscene video to the complainant using application service Facebook Messenger	A fine of RM10,000.00 in default of 4 months imprisonment	Guilty Plea at first instance
3.	Ruziman bin Kamaruzaman  Petaling Jaya Sessions Court  BB-MS3-63-28-9/2019	S.233 (1)(a) of the Act  The offender sold obscene content using application service Telegram	A fine of RM8,000.00 in default of 12 months imprisonment	Guilty Plea at first instance
4.	Azhar bin Mamat  Kuala Lumpur Cyber Court  WA-63-130-01/2018	4 charges under S.233 (1)(a) of the Act  The offender sent offensive communications using application service Facebook	A fine of RM5,000 in default of 1 month imprisonment for each charge	Guilty Plea at first instance
5	Mohd Shariman Shahir bin Omar  Kuala Lumpur Cyber Court  WA-63-785-12/2017	S.233 (1)(a) of the Act  The offender sent offensive communications using application service Facebook	A fine of RM10,000.00 in default of 6 months imprisonment	Guilty Plea at first instance

6.	Mohd Nazri bin Sulaiman  Klang Sessions Court  BI-63-14-7/2017	S.233 (1)(a) of the Act  The offender sent false communication using application service Facebook	A fine of RM7,000.00 in default of 3 months imprisonment	Guilty Plea at first instance
7.	Ng Thai Quen  Kuala Lumpur Cyber Court  WA-63-199-08/2017	S.233 (1)(a) of the Act  The offender sent offensive communication using application service Facebook	A fine of RM7,000.00 in default of 3 months imprisonment	Guilty Plea at first instance
8.	Mazlan bin Yusoff  Kuala Lumpur Cyber Court  WA-63-202-08/2017	S.233 (1)(a) of the Act  The offender sent offensive communication using application service Facebook	A fine of RM7,000.00 in default of 3 months imprisonment	Guilty Plea at first instance
9	Kamarzaman bin Mustafa  Kuala Lumpur Cyber Court  WA-63-209-08/2017	S.233 (1)(a) of the Act  The offender sent false communication using application service Facebook	A fine of RM5,000.00 in default of 3 months imprisonment	Guilty Plea at first instance

[33] The preceding analysis shows the prevailing trend of sentencing for the respective offences where guilty pleas were recorded, at the first instance. As is apparent, the prevailing trend is a sentence of fine ranging between RM5,000.00 and RM10,000.00. That, merely serves as a guide on the prevailing trend of sentencing and the range thereof. It does not in any way take precedence over my judicial discretion on sentencing. Some observations made by Gageler and Gordon JJ in the joint judgment of the Australian High Court case in **Director of Public Prosecutions v Dalglish (a pseudonym) [2017] HCA 41** are, in my view, expressive. Citing **Wong v. The Queen [2001] HCA 64** and **Director of Public Prosecutions (Cth) v. De La Rosa (2010) 79 NSWLR 1**, their Lordships observed in the barest summary that “*Sentences are not binding precedents, but are merely historical statements of what has happened in the past*”.

### **Final analysis**

[34] I note this in passing. The Internet’s rapid expansion has seen a rise in netizen’s reliance on social media as a contemporary source of news and information. They browse through it, they pause and read. Echoing the preceding propositions are observations made by the High Court of Justice Queen’s Bench Division regarding Twitter, which in my view, telling. In **Monir v Wood [2018] EWHC 3525 (QB)**, Nicklin J observed “*Twitter is a fast-moving medium. People will tend to scroll through messages relatively quickly.*” In **Monroe v. Hopkins [2017] EWHC 433 (QB)**, Warby J observed “*Twitter is an online news and social networking service, which is widely used and very well known. It allows people using the Twitter website or a*

*mobile device app to post and interact with messages of not more than 140 characters, called ‘tweets’. This much is common knowledge.”* I pause to state that more recently, the twitter character count doubles from 140 to 280. Both these cases were cited in the recent English Supreme Court decision in **Stocker v Stocker [2019] UKSC 17**.

[35] The emphasis in the foregoing observations is clear: Twitter’s reach is indeed extensive. As a fast-paced network, it offers a borderless networking platform to the target audience. That includes, commercial advertisement. Perhaps unsurprisingly, the accused person in the present cases who is a twenty-five-year-old online trader resorted to the Twitter account to promote his reproductive health product for men known as “*belacak*” oil. That done, he however posted obscene communications. Worse still, the respective communications were not only obscene in nature but laced with lewd and lascivious captions. His deliberate and calculated actions in posting them for his personal gain is, in my view, repulsive. He plainly disregarded the detrimental impact of his actions may have on social media users. Indeed, the instant cases appear to be the first in this country involving commercial exploitation of obscene communication on Twitter where an online trader is slapped with a total of ten charges pursuant to section 233(1)(a) of the Act. A further perusal of Exhibit P3 reveals that MCMC has also launched separate investigations into obscene communications posted on Twitter accounts belonging to a number of different administrators. It therefore appears clear that this pattern of communication is on a rapid surge on Twitter.

[36] Obscene communications on social media is pervasive in this country: it leaves no benefit but adverse peril. Even more detrimental, the extensive social media network heightens rapid dissemination of such communications across boundaries. Once posted, they could 'go viral' in seconds, far beyond reach. And this happens, upon a mere click of a link.

## **CONCLUSION**

[37] For the reasons adumbrated, in particular having regard to the primacy of the public interest, the guilty pleas, the relevant facts and circumstances of the cases, the admission of exhibits, the factors of mitigation and aggravation, the long-standing sentencing considerations as well as its prevailing trend, I sentenced the accused person to a fine of RM5,000.00 in default of three months imprisonment on each charge, totalling RM50,000.00 in default of thirty months imprisonment.

[38] Accordingly, I granted a forfeiture order of the Exhibits P6A and P6B (the exhibits which were admitted by the accused person as having been used in the commission of the offences) as provided under section 260(2) of the Act.

Signed

**(NOORHISHAM MOHD JAAFAR)**

Judge

Sessions Court

Sepang, Selangor

**Dated: 1 June 2020**

**For the prosecution** : Norhani Mohd Adzhar  
Prosecuting Officer  
Malaysian Communications and  
Multimedia Commission  
(MCMC)

**For the accused person** : Farasyeriza Md Zabani  
Legal Aid Department