

**IN THE SUPREME COURT OF SEYCHELLES**

**CriminalSide: CO21/2016**

[2016] SCSC 682

---

**THE REPUBLIC**

versus

**HU DEJIN (a Chinese National)**  
First Accused

**HU DEHUA (a Chinese National)**  
Second Accused

**HU RUIPING (a Chinese National)**  
Third Accused

**SHISHUI ZHONG (a Chinese National)**  
Fourth Accused

---

Heard: 12 September 2016  
Counsel: Mr Khalyaan for the Attorney General for the Republic  
Mr Nichol Gabriel for the accused  
Delivered: 26 September 2016

---

**SENTENCE AND REASONS FOR SENTENCE**

---

**McKee J**

[1] The four accused were each charged with a number of theft charges and jointly charged with the offence of conspiracy to commit theft. There were a total number of seventy one charges. The four Chinese nationals came to Seychelles as visitors and by using cloned or

counterfeit ATM or credit cards extracted Rs 330,000 from various ATM machines belonging to the Mauritius Commercial Bank. Following a complaint from the bank the police carried out investigations and all four accused were arrested in an apartment block in Anse aux Pins and funds in excess of Rs 300,000 recovered. The Court had the services of a Mandarin interpreter. The charges were read to the accused in Mandarin , their chosen dialect. All proceedings were also translated and explained in Mandarin to the accused.

- [2] The charges preferred against each accused were read to that accused and each accused entered a plea of guilty to the individual charges of theft against him and also to the joint charge of conspiracy. The brief facts were then read to the accused in Mandarin and each agreed the brief facts. Thereafter I convicted each accused of the charges of theft to which they had entered a plea of guilty and the joint charge of conspiracy.
- [3] There was little mitigation in respect of the personal circumstances of each accused other than that each was a family man. The most notable factors in their favour were the pleas of guilty and that, so far as Seychelles was concerned, each accused was a man of clear record up to his present conviction.
- [4] In respect of sentence Mr Gabriel referred me to a Seychelles case – The Republic versus Tania Petkova Mullner and two others [ 2016 SCSC66]. He submitted that this case was of a similar nature and that sentences of six months and fines of RS 30,000 had been imposed on each accused in this earlier case. He submitted that the present accused could be dealt with in a similar manner. The Notes on Sentence in the Petkova case however provide little detail of the precise charges or the circumstances of the case.
- [5] I am of the view that sentences of six months imprisonment and a fine for the present case do not reflect the seriousness of the offences and the circumstances of the matter. I have sought guidance from the courts of Hong Kong where there is a strong mercantile culture and offences of a financial nature regularly come before the courts.
- [6] I refer to the Hong Kong District Court case – Hong Kong Special Administrative Region versus Ionut Leonard Oancea, Petricia Ghinea and Alin Ciumpuliac DCCC 782/2011,

where the facts are similar to the matter in hand. In this case the three accused pleaded guilty to the single joint offence of conspiracy to steal contrary to the Theft Ordinance. All three accused had conspired with the others to steal from ATM machines using false bank cards. A total of 1,100 attempts had been made to withdraw cash from six ATM machines. Of these attempts 628 had been successful and a total sum of Hong Kong Dollars 1,563,500 was successfully withdrawn. Following investigations at a hotel room the accused were arrested and cash recovered along with Romanian identification papers. District Court Judge Tallentire then proceeded to consider the factors to be taken into account in such cases and I am of the view that similar factors are relevant in our case.

- [7] In the case before me the Accused are four Chinese nationals travelling on Chinese travel documents. As in the Hong Kong case there is an international dimension. I would also adopt the guidance referred to in paragraph 21 of the District Court judgment in respect of sentencing as recommended by the Hong Kong Court of Appeal. The factors to be considered are as follows: [1] the size of the operation, for example, the amount of money involved, [2] the number of persons involved, [3] the number of forged or fake credit cards involved, [4] the level of sophistication and planning, [5] the international dimension, and [6] the role of the accused and whether they were mere cogs in the wheel or planners of the operation.
- [8] In our case I find that this was a well planned and well executed scheme. One bank was targeted. Fifty nine cloned or counterfeit ATM or credit cards were seized along with laptops, pen-drives, magnetic striped plastic cards and card reading and writing devices. The sum of Rs 330,000 had been stolen from three different bank locations. There had been seventy successful withdrawals. From all the facts I can infer that this was a sophisticated operation organized from outside Seychelles by a gang of foreign nationals. I find that all four accused acted in concert but there is no evidence to suggest that they were other than mere cogs in the wheel of this conspiracy. It would seem that a further mitigating factor would be that the bank did not suffer great loss since substantial funds were recovered. In my view there is a major additional aggravating factor in our case. This gang had targeted a small independent nation in the Indian Ocean. I have to infer

that this choice was deliberate in the hope that it could be easier to succeed in their venture here rather than in a major city such as Hong Kong, London or Tokyo.

- [9] I accept the submission of Counsel that the maximum sentence in respect of the offences of theft and conspiracy to commit theft is seven years imprisonment. I also accept the submission of Counsel that concurrent sentences are appropriate in this case. I consider the appropriate sentences in respect of each of the offences of theft and also that of conspiracy to commit the felony of theft. In my view the conspiracy offence is the more serious charge; all accused acted in concert and followed a well thought out plan of operation after due preparation.
- [10] In respect of Count 71, conspiracy to commit the felony of theft, I take as a starting point a term of imprisonment of five years. I give each Accused a discount of 20% in view of the pleas of guilty and other mitigating factors.
- [11] In respect of each of the Counts 1 to 70, the charges of theft, I take as a starting point a term of three years imprisonment. I take into account the mitigating factors, give an appropriate discount and impose a sentence of two years five months in respect of each Accused in respect of the separate counts to which each has entered a plea of guilty.
- [12] ACCORDINGLY, the position is as follows:
- [13] The First Accused, HU DEJIN, now stands CONVICTED of the following counts of THEFT, Counts 1,3,4,7,9, 29, 30,31,32, 33, 34, 36, 37, 39, 40, 41, 42, 45, 46, 47, 48, 49, 50, 58, 59, 63, 65, 66, 67, 68, 69 on the charge sheet. In respect of each of these charges I impose a sentence of 2 years 5 months imprisonment, these sentences to be concurrent so, in respect of these charges, the total term is 2 years 5 months imprisonment. The First Accused, HU DEJIN, also now stands CONVICTED on count 71, CONSPIRACY TO COMMIT THE FELONY OF THEFT and in respect of this count I impose a sentence of 4 years imprisonment. All sentences will be concurrent so the total term of imprisonment in respect of this accused is **4 years imprisonment.**
- [14] The Second Accused, HU DEHUA, now stands CONVICTED on the following counts of THEFT, Counts 8, 11, 12, 13 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,27 and 28

on the charge sheet. In respect of each of these charges I impose a sentence of 2 years 5 months imprisonment, these sentences to be concurrent so, in respect of these charges, the total term is 2 years 5 months imprisonment. The Second Accused, HU DEHUA, now also stands CONVICTED on Count 71, CONSPIRACY TO COMMIT THE FELONY OF THEFT, and in respect of this count I impose a sentence of 4 years imprisonment. All sentences will be concurrent so the total term of imprisonment in respect of this accused is **4 years imprisonment.**

[15] The Third Accused, HU RUIPING, now stands CONVICTED on the following Counts of THEFT, Counts 10, 60, 61, 62 and 64 on the charge sheet. In respect of each of these charges I impose a sentence of 2 years 5 months imprisonment, these sentences to be concurrent so, in respect of these charges, the total term is 2 years 5 months imprisonment. The Third Accused now also stands CONVICTED on Count 71, CONSPIRACY TO COMMIT THE FELONY OF THEFT, and in respect of this count I impose a term of 4 years imprisonment. All sentences will be concurrent and hence the total term of imprisonment in respect of this accused is **4 years imprisonment.**

[16] The Fourth Accused, SHISHUI ZHONG, now stands CONVICTED on the following Counts of Theft, Counts 2, 5, 6, 35, 38, 43, 44, 51, 52, 53, 54, 55, 56, 57 and 70 in the charge sheet. In respect of each of these charges I impose a sentence of 2 years 5 months imprisonment, these sentences to be concurrent, so, in respect of these charges, the total term is 2 years 5 months imprisonment. The Fourth Accused also now stands CONVICTED on Count 71, CONSPIRACY TO COMMIT THE FELONY OF THEFT, and in respect of this count I impose a term of 4 years imprisonment. All sentences will be concurrent and hence the total term of imprisonment in respect of this accused is also **4 years imprisonment.**

[17] It follows that each of the First, Second, Third and Fourth Accused, namely HU DEJIN, HU DEHUA, HU RUIPING and SHISHUI ZHONG will each serve a term of four years imprisonment.

[18] Time spent in custody on remand will be taken into account when calculating the ultimate date of release.