

Public Prosecutor

AND

**D1 – Jailani
D2 – Sandi
D3 – Mazlan
D4 – Hidayat
D5 – Lalu Nikmanul Hakim
D6 – Malik Gerhana @ Usop
D7 – Amrullah**

**(High Court of Brunei Darussalam)
(Criminal Trial No. 5 of 2011)**

Dato Seri Paduka Hj Kifrawi, C.J.
6th June, 2011.

DPP Joe Chan for Public Prosecutor.
Defendants In Person.

Dato Seri Paduka Hj Kifrawi, C.J.:

S E N T E N C E

1. The 2nd Defendant (D2), 3rd Defendant (D3), 4th Defendant (D4), 5th Defendant (D5), 6th Defendant (D6) and 7th Defendant (D7) who are all Indonesians were charged as follows:

(i) 1st Charge (against D2, D3, D4, D6 and D7)

That all of you, sometime between 12.30 a.m. and 1.30 a.m. on the 20th April 2011 at house address TOL Lot No. 3525, Simpang 284-13, Kg Sg Teraban, Kuala Belait in Brunei Darussalam, did commit gang-robbery armed with a deadly weapon, to wit a parang and/or a screwdriver and that you robbed Kho Gee Chiong and the occupants of his house at the abovementioned address and you have thereby committed an offence punishable under section 395 of the Penal Code, Chapter 22 read with section 398 of the same.

(ii) 3rd Charge (against D5)

That you, on or about the 20th April 2011 in Brunei Darussalam dishonestly received stolen property, to wit BND 120.00, the possession whereof you knew to have been transferred by the commission of gang robbery, and you have thereby committed an offence punishable under section 412 of the Penal Code, Chapter 22.

(iii) 4th Charge (against D5 and D7)

That both of you together with 5 other persons who are still at large, between 2 a.m. and 3.49 a.m. on the 6th August 2010 at house address No.28, Jalan Lambak Kiri, Berakas in Brunei Darussalam, in furtherance of your common intention committed house breaking by night, in order to commit theft and you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same.

(iv) 5th Charge (against D7)

That you, together with 6 other persons who are still at large, sometime at about 3.55 a.m. on the 28th July 2010 at house address No. 7, Simpang 66-67-9, Kg Bengkurong, in Brunei Darussalam, did commit gang-robbery with a deadly weapon, to wit a knife and/or screwdriver and that you robbed Pehin Dato Paduka Hj Dani bin Hj Ibrahim and the occupants of his house at the abovementioned address and you have thereby committed an offence punishable under section 395 of the Penal Code, Chapter 22 read with section 398 of the same.

2. All the defendants except D6 (who is still at large) pleaded guilty to the charges against them. The defendants admitted to the following Statement of Facts.

Statement of Facts

1. The 2nd Defendant (D2) is an Indonesian and comes from Mataram, Indonesia. He is single and comes from a family of four. He works in a wet market in Indonesia.
2. The 3rd Defendant (D3) is an Indonesian and comes from Mataram, Indonesia. He is married. He works as a mobile phone salesman in Indonesia.
3. The 4th Defendant (D4) is an Indonesian and comes from Lombok, Indonesia. He is married. He works as a contract worker in Indonesia.
4. The 5th Defendant (D5) is an Indonesian and comes from Kerawang, Jawa Barat, Indonesia. He is married. He works as a labourer in Indonesia.
5. The 6th Defendant (D6) is an Indonesian and comes from Lombok, Indonesia. He is married. He is currently at large.
6. The 7th Defendant (D7) is an Indonesian and comes from Melabu, Indonesia. He is single and comes from a family of four. He works as a labourer in Indonesia.

For 1st Charge (against D2, D3, D4, D6 and D7) and 3rd Charge (against D5 only)

7. Sometime between the 18th to the 20th April 2011, D2, D3, D4, D5, D6 and D7 was driven by D1 from Pontianak, Indonesia to the borders of Miri, Malaysia and Brunei in pursuance of a plan to commit a robbery in Brunei. It was agreed that D1 would drop them all off at the border and will pick them up after.
8. D2, D3, D4, D5, D6 and D7 then entered Brunei through a mouse trail close to the Sungai Tujuh Brunei Immigration checkpoint. However, D5 changed his mind halfway through whilst in the border forests of Miri and Brunei and turned back.
9. D2, D3, D4, D6 and D7 came into Brunei at about 9 pm on the 20th April, 2011. After 10 pm, upon observing that the Immigration checkpoint personnel and the police patrol officers were no longer in sight, D2, D3, D4, D6 and D7 took this opportunity to proceed quickly by foot to a village about 9 km away (Kg Sg Teraban).
10. All 5 defendants then approached the house they intended to rob and carried out their plan accordingly. By this time, they were armed with several parangs and screwdrivers. D3 and D6 broke the gate of the house at TOL Lot No. 3525, Simpang 284-13, Kg Sg Teraban, Kuala Belait. After doing so, all the defendants involved entered the property. D3 went to the back of the kitchen and pried open a window successfully with a screwdriver. D6 then climbed in through the pried open window and opened the kitchen door for the other defendants to enter the house.
11. Once inside the house, D4 checked the rooms and realized that the doors were not locked. All the defendants then entered a bedroom and found a mother with her daughter sleeping. The mother was awoken and fearing for the safety of her family, cooperated with the defendants. The defendants ransacked the room and took cash and valuable items.
12. After that, D6 went to another bedroom where Kho Gee Chiong (“Kho”) was asleep. Awoken and shocked by the defendants’ presence, Kho screamed. D2 kept Kho quiet by holding him down and closing his mouth. Kho was also struck by one of the defendants. The wife of Kho was immediately brought into the bedroom in order for Kho to calm down and cooperate. The defendants then tied up Kho and D4 watched over Kho’s wife. Kho’s wife was tied up next, by one of the defendants. Kho’s daughter (10 years old) was not harmed or tied by the defendants because they did not find her to be a threat, even when she was awake. She was asleep for the majority of the time the robbery happened.
13. The defendants took all the valuable items and cash that they could find in the house. D6 then looked for the car keys of Kho’s car. Kho’s wife realizing that they were looking for the car keys without hesitation informed them where they could obtain the keys to car. All of the defendants together with D6 then got into Kho’s car with registration BJ 6556 and drove straight to the

vicinity of the border checkpoint at Sungai Tujuh and abandoned the car at a secluded spot.

14. They then set off by foot and came across a small hut that sold food and bought food there. At about 1.20 a.m. on 20th April 2011, they went through the stolen items and threw away those they thought were of no value and kept the rest. The stolen cash were split amongst them. They set off again by foot to cross the Brunei border and met D5 at the Brunei borders and met up with D5 who told them that he lost his way in the forest when they were entering Brunei. As planned beforehand, D1 came to pick all of them up at an agreed spot at the Miri borders with his car. D1 was given BND650 being proceeds from the robbery. D5 was also given BND120 being proceeds from the robbery.
15. Not long after the robbers left his house, Kho called 993 and reported the robbery to the police.
16. On the 21st April at about 12.20 p.m, on the way back to Pontianak, the defendants (D1-D7) were apprehended by the Malaysian police in a roadblock at Km 12 Jln. Tembedu Serian and found them to be in possession of a substantial amount of cash (in Brunei dollars and other foreign currencies and other suspicious items). The Malaysian police arrested them based on a warrant issued by the Brunei Magistrate's Court on the 22nd April 2011. On the 24th April 2011, all 7 defendants were handed over to the custody of the Brunei police and remanded.
17. Upon police investigations, D2, D3, D4 and D7 admitted to committing the robbery at TOL Lot No. 3525, Simpang 284-13, Kg Sg Teraban, Kuala Belait.
18. The police managed to recover from the defendants (D1, D2, D3, D4, D5 and D7) the following stolen items:

Cash amounting to:

- i. BND2991.00
- ii. CAD 2.00
- iii. Rupee Nepal 50.00
- iv. GBP51.00
- v. Real 1.00
- vi. Bath 50.00
- vii. USD1.00
- viii. 20 Pesos
- ix. SGP154.00

Handphones

- x. Nokia e65-1
- xi. Nokia 6223 2 units
- xii. A white iPhone
- xiii. An LG handphone

4th Charge (against D5 and D7 only)

1. On the 6th August 2010, at about 12 am, D5 and D7 together with 5 others who are at large, went to a targeted house in Jalan Lambak Kiri in pursuance of their plan to commit theft. They then hid in the nearby forest waiting for the right time to break into the house. At about 2 am, one known as 'Suriadi' together with the rest walked over to the targeted house. At the house, 'Suriadi' plied open a window. D5 and D7 together with the rest then helped themselves to enter the house. Once inside the house, D5 entered a bedroom in which 2 female occupants were sleeping and stole a ladies handbag. D5 then immediately left that bedroom. D7 also took some items from the house as well. After stealing what they could, they immediately left the house.
2. The cash stolen from the house amounted to about BND3000 together with other valuables. Both D5 and D7 split the proceeds between themselves and their accomplices.
3. The occupants of the bedroom woke up and quickly called the police.
4. After D5 and D7's arrest on 21st April 2011 and upon police investigations, D5 and D7 admitted to breaking into the said house and committing theft with their accomplices who are still at large.
5. No stolen items were recovered.

5th Charge (against D7 only)

1. On or about the 25th July, 2010, D7 together with three others who are at large, entered Brunei. On this occasion, D7 entered Brunei legally through an Immigration checkpoint. D7 stayed with a friend known as Malek in Kg Sungai Besar after he arrived.
2. On the 27th of July 2010 at about 9 p.m., D7 together with 6 of his accomplices who are still at large drove to an area close to a house No. 7, Simpang 66-67-9, Kg Bengkurong ['the house'] in order to commit a robbery. They parked the car in a secluded spot and initially hid in the forests surrounding the house. They were all either armed with a knife and/or a screwdriver. One of D7's accomplices then approached the house and plied open a window with a screwdriver to enter the house. Once inside, the accomplice opened the door for D7 and the others to come in. Once they were in the house, they went up to the master bedroom and rammed open the locked door with a gas cylinder.
3. At about the same time, two other accomplices had tied up the daughter (Nurul Faezah) and the son (Hj Mohd Norfadlay) of the owner of the house Pehin Dato Dani. The two accomplices who did this brought Nurul Faezah and Hj Mohd Norfadlay to the master bedroom where Pehin Dato Dani and his wife, Datin Norhayati had been sleeping. Pehin Dato Dani's hands were also tied up by the defendants around the same time. D7 and his accomplices interrogated their captives and asked them where their valuable belongings were and if there were any safe boxes. Nurul Faezah told them there were no safe boxes in the house.

4. D7 and his accomplices quickly ransacked the house to grab whatever valuables they could find. All this time, there was one accomplice who kept watch of the captives in the house. After D7 and his accomplices finished ransacking the house, they made sure that they tied up all the captives properly before they made a quick exit. They took the keys to two of the cars, under registration (no.BR649 and BR649) in the house and drove off to the secluded spot where they had parked their car.
 5. D7 and 3 other accomplices split with 3 other accomplices into two groups. Each group went their separate ways. D7 and 3 other accomplices with him abandoned the car that they had stolen from the house they robbed and used the car they hid in the secluded spot to escape. The other group of accomplices went their own way.
 6. After the robbers left the house, the occupants of the house managed to free themselves and called the police.
 7. After D7's arrest on 21st April 2011, D7 admitted to the police of his involvement in the robbery at the house in Kg Bengkurong and confessed that he got BND150 and a black Nokia handphone as his share of the proceeds.
 8. No stolen items were recovered.
 9. On record, the defendants do not have previous convictions in Brunei Darussalam.
3. 1st Charge (against D2, D3, D4 and D7)

(i) Aggravating Factors

From the facts, they admitted it is very clear D2, D3, D4 and D7 entered Brunei illegally with the sole purpose of committing gang-robbery armed with several parangs and screwdrivers which is a very serious offence in Brunei, an offence punishable under section 395 of the Penal Code, read with section 398 of the Penal Code. The sections provide for mandatory imprisonment not less than 7 years and not more than 30 years and whipping with not less than 12 strokes. They broke into the house at Lot No. 3525, Simpang 284-13, Kg Sg Teraban, Kuala Belait, and awakened Kho Gee Chiong (Kho) and his wife. They were obviously shocked and terribly frightened. The victims were forced to cooperate. Kho and his wife were tied by the defendants. The defendants ransacked the house and took all the valuable items and cash. The other aggravating feature is that this offence is also a cross-border offence. After committing the crimes, they then left Brunei immediately making it difficult for the police to find them.

(ii) Mitigating Factors

I have taken into consideration several mitigating factors. D2, D3, D4 and D7 have pleaded guilty and thus have saved the time and costs. They have regretted what they have done. They did not harm Kho and his wife. They also did not harm Kho's 10 years old daughter. They also do not have previous convictions in Brunei Darussalam.

4. 3rd Charge (against D5)

I have taken into consideration D5 pleaded guilty and saved the Court's time and cost. I also note the amount is just \$120. D5 also has no previous conviction in Brunei Darussalam.

5. 4th Charge (against D5 and D7)

They broke into the house in the early morning when the occupants were sleeping and stole cash and other valuable.

I have taken into consideration both D5 and D7 pleaded guilty and therefore, again saved the court's time and cost. D5 and D7 also have no previous conviction in Brunei Darussalam. A deterrent sentence has to be passed since this offence is again a cross-border offence and the occupants were entitled to feel safe in the house they lived.

6. 5th Charge (against D7)

I take into consideration several aggravating features in this case. D7 committed another offence of gang-robbery armed with a knife and screwdriver. They tied the occupants of the house. This is again another cross-border offence. The court has to pass a deterrent sentence to protect members of the public living in this country. I have also taken into consideration the various mitigating factors. D7 again has pleaded guilty and thus saved the court's time and cost. D7 also has no previous conviction in Brunei Darussalam. I have also taken into consideration the occupants were not harmed.

7. 1st Charge (against D2, D3, D4 and D7)

I think the appropriate starting point would be 14 years and 12 strokes reduced to 9 years and 12 strokes due to the defendants' guilty pleas and other mitigating factors.

3rd Charge (against D5)

The appropriate starting point would be 2 years (24 months) reduced to 1 year and 4 months due to D5's guilty plea and other mitigating factors.

4th Charge (against D5 and D7)

The appropriate starting point would be 6 years and 3 strokes reduced to 4 years and 3 strokes of whipping due to D5's and D7's guilty pleas and other mitigating factors.

5th Charge (against D7)

The appropriate starting point would be 14 years and 12 strokes also reduced to 9 years and 12 strokes due to the defendant's guilty plea and other mitigating factors.

The sentence against D2, D3 and D4 will be 9 years' imprisonment to run with effect from 24/4/2011 and 12 strokes of whipping. Applying the totality principles, the appropriate sentence against D7 will be the sentences of imprisonment on the 1st Charge is to run consecutively with the sentence of imprisonment on the 4th Charge, but the strokes to be imposed concurrently.

The sentence of imprisonment on 1st Charge and 4th Charge to run concurrently with the sentence of imprisonment on 5th Charge. The total sentence of imprisonment will be 13 years' imprisonment and 12 strokes with effect from 24/4/2011. Number of strokes to be imposed concurrently.

Again, applying the totality principles, the appropriate sentence against D5 will be the sentence of imprisonment on the 3rd Charge is to run consecutively to the sentence of imprisonment on the 4th Charge. The total will be 5 years 4 months (with effect from 24/4/11) and 3 strokes of whipping.

8. The 1st Defendant (D1) was charged as follows:

2nd Charge (against D1 only)

That you, on or about the 19th April 2011, abetted the commission of a gang robbery armed with a deadly weapon by Sandi (D2), Mazlan (D3), Hidayat (D4), Malik Gerhana @ Usop (D6) and Amrullah (D7), to wit, you intentionally aided D2, D3, D4, D6 and D7 by driving them from Pontianak, Indonesia to the Brunei/Miri border and thereafter picked them up again and which offence of gang robbery was committed in consequence of your abetment sometime between 1230 a.m. and 1.30 a.m. on the 20th April 2011 at house address TOL Lot No. 3525, Simpang 284-13, Kg Sg Teraban, Kuala Belait in Brunei Darussalam and you have thereby committed an offence punishable under section 109 of the Penal Code, Chapter 22 read with section 395 and section 398 of the same.

Alternative to 2nd Charge (against D1 only)

That you, on or about the 20th April 2011 in Miri, Sarawak dishonestly received stolen property, to wit BND 620.00, the possession whereof you knew to have been transferred by the commission of gang robbery in Brunei Darussalam, and you have thereby committed an offence punishable under section 412 of the Penal Code, Chapter 22.

D1 pleaded guilty to the alternative charge. D1 admitted the following statement of facts.

Statement of Facts

1. The 1st Defendant [D1] is an Indonesian and comes from Lombok, Indonesia. He is married and has three children. He is self-employed and provides transport services.

Alternative to the 2nd Charge (against D1 only)

2. Sometime between the 18th to the 20th of April 2011, D2, D3, D4, D5, D6 and D7 were driven by D1 from Pontianak, Indonesia to the borders of Miri, Malaysia and Brunei. It was agreed that D1 would drop them all off at the border and will pick them up later.
3. Sometime in early hours of the 20th April 2011, D1 came to pick all of them up at an agreed spot at the Miri borders with his car. D1 was given BND620 for his services and knew that the money given to him were proceeds from a gang robbery committed in Brunei Darussalam by the other Defendants D2, D3, D4, D6 and D7.
4. On the 21st April 2011 at about 12.20 p.m, on the way back to Pontianak, the defendants (D1-D7) were apprehended by the Malaysian police in a roadblock at Km 12 Jln. Tembedu Serian and found them to be in possession of a substantial amount of cash (in Brunei Dollars and other foreign currencies and other suspicious items). The Malaysian police arrested them based on a warrant issued by the Brunei Magistrate's Court on the 22nd April, 2011. On the 24th April 2011, all 7 Defendants were handed over to the custody of the Brunei police and remanded.
5. Upon police investigations, D1 admitted to the offence above.
6. On record, D1 does not have any previous convictions in Brunei Darussalam.

I have taken into consideration D1's plea of guilty to the Alternative Charge and therefore D1 has saved the time and costs. D1 also does not have any previous conviction in Brunei Darussalam. I also noted that he only received \$620. Nevertheless, he was to an extent assisted the robbery gang by providing them with transport to and from Brunei Darussalam.

The appropriate starting point will be 2 years (24 months) imprisonment reduced to 1 year and 4 months' imprisonment to run with effect from 24/4/2011 due to the D1's guilty plea and other mitigating factors.

D1 is therefore sentenced to 1 year and 4 months' imprisonment to run with effect from 24/4/2011.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice