

Public Prosecutor

AND

Ikas Sunaryo (D1)
Aris Irawan (D2)
Siti Sara Binti Hj Daud (D3)
Ali Rahman Bin Hj Daud (D4)
Jamudin Bin Hj Suhaili (D5)
Yuli Rudi Wijayanto (D6)
Sofian (D7)
Syamsul Ariffin (D8)
Wahid Bin Mazid (D9)

(High Court of Brunei Darussalam)
(Criminal Trial No. 4 of 2014)

Hairol Arni Majid, J.
6th March, 2014.

Criminal Law – sentence – 1 offence of house breaking by night with intend to commit theft – 3 offences of housebreaking - 1 offence of robbery with a deadly weapon – 1 offence of robbery – all defendants are 1st offender.

DPP Pg. Nina Jasmine Binte PLKDR Pg. Hj. Bahrin for Public Prosecutor.
Mr. Hj. Mohamad Rozaiman Bin Dato Haji Abdul Rahman (M/S Rozaiman Abdul Rahman Advocates and Solicitors) for D3 and D4.
D1, D2, D5, D6, D7, D8 and D9 In Person (unrepresented).

Cases cited in the Judgment:

Azman@Asrol bin Jaya vs Public Prosecutor (Criminal Appeal No 6 of 2011)
Muhd. Joli bin Tumih vs Public Prosecutor (Criminal Appeal No 5 of 2005)
Public Prosecutor vs Farley Anak Libau (Criminal Trial No 8 of 2007)
Public Prosecutor vs Lee Hock (Criminal Trial No 16 of 2006)

Hairol Arni Majid, J.:

All the Defendants except for the 3rd and the 4th Defendants who claim trial, between them pleaded guilty to a total of 6 charges which includes 1 counts of gang robbery with a deadly weapon (section 398 of the Penal Code), 1 count of gang robbery (Section 395 of the Penal Code), 1 counts of housebreaking by night with intention to commit theft (Section 457 of the

Penal Code) and 3 counts of housebreaking (Section 454 of Penal Code). The charges are as follows:

1st Charge (D3 and D9 only)

That both of you did, on the 20th day of November 2013 between 2000 and 2148 hours, in furtherance of your common intention, committed housebreaking by night by entering into the building at No 33, Simpang 185-82-21-4 in Brunei Darussalam, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, theft of: -

One watch brand Alba
 One watch brand Fossil
 One watch brand Casio
 Gold bracelet worth BND1,500
 Laptop "Acer" 17 inches
 Cash \$150
 White gold ring shape "s"
 3 copper bowl with Arabic inscription
 iPad 4
 1 ladies handbag

And you have both thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same.

2nd Charge (D9)

That you on the 20th day of November 2013 between 2000 and 2148 hours, at No 33, Simpang 185-82-21-4 in Brunei Darussalam, did commit mischief by causing wrongful damage to the following:-

One glass window costing \$277 to repair

belonging to NURHAFIZAH BINTI ABDULLAH, and you have thereby committed an offence punishable under section 427 of the Penal Code, Cap 22.

3rd Charge (D3 and D6)

That both of you did, on the 20th day of November 2013 between 1200 and 1600 hours, in furtherance of your common intention, committed housebreaking by entering into the building at No 51, Simpang 32, Kampong Pengkalan Batu in Brunei Darussalam, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, theft of:-

Cash of B\$2,000
 3 golden necklaces
 3 golden bracelets
 2 gold pins

1 pendant
 1 diamond jewelry set
 4 jade bracelets
 4 pearl bracelets
 2 watches
 1 Mobile phone "Samsung Note II"
 1 Mobile phone "BMobile"
 1 Mobile phone
 1 camera "Nikon"
 1 laptop "Buddie"
 1 "Bonia" watch

And you have both thereby committed an offence punishable under section 454 of the Penal Code, Chapter 22 read with section 34 of the same.

4th Charge (D3, D6, D9)

That all of you did, on the 1st day of December 2013 between 1200 and 1340 hours, in furtherance of your common intention, committed housebreaking by entering into the building at No 22, Simpang 607-21-10, Kampong Beribi in Brunei Darussalam, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, theft of:-

One Long service medal
 One PIKB medal
 One General service medal
 One medal "Jubli Perak ABDB"
 One medal "Jubli Perak Kebawah Duli"
 One watch
 One green stone bracelet
 One set needles
 One purple box
 One pink bag
 Two needles with marking "Allah"

And you have both thereby committed an offence punishable under section 454 of the Penal Code, Chapter 22 read with section 34 of the same.

5th Charge (D3)

That you together with 3 others still at large, between 0200 hours and 0330 hours at No 2, Simpang 842-60, Kampong Jangsak in Brunei Darussalam, committed theft, to wit

One mobile "Nokia"
 Cash of B\$300
 One motor vehicle BMW 520i in Imperial Blue

belonging to PG DATIN MARIAM BINTI PG HJ OTHMAN (F57) and in committing the said theft, you voluntarily caused wrongful restraint on the said HASSAN KARSO (M36) and thereby committed an offence of gang robbery and at the time of the commission of the gang robbery you were armed with a deadly weapon, to wit, 1 machete and you have thereby committed an offence under section 395 of the Penal Code read with section 398 of the same.

6th Charge (D3 only)

That you did, on the 9th day of November 2013 at around midnight, together with 2 others at large, committed housebreaking by night by entering into the building at No 31, Simpang 57-16, Kampong Sungai Buloh, Jalan Kota Batu in Brunei Darussalam, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, theft of:-

One Government ID pass
 One International Brunei Airport ID pass
 One laptop "Dell" 11 inches with adaptor and bag
 One bag containing BIBD and TAIB bank book
 6 pairs of pendrive
 Office keys
 Currency BND130.00
 Yellow gold 916
 Assorted gold jewelry and watches worth BND14,000
 One handbag "Louis Vuitton" containing TAIB, Baiduri, RHB and BIBD Bank Book
 One "APEC" bag containing documents
 Cash in currency BND2,000

And you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same.

7th Charge (D3 only)

That you did, on the 9th day of November 2013 at around midnight, together with 2 others at large, at No 31, Simpang 57-16, Kampong Sungai Buloh, Jalan Kota Batu in Brunei Darussalam, did commit mischief by causing wrongful damage to the following:-

One aluminum sliding window and security grill costing B\$187

belonging to KUSHAIRY BIN KASSIM, and you have thereby committed an offence punishable under section 427 of the Penal Code, Cap 22.

8th Charge (D3, D9)

That all of you did together with 2 others still at large, on the 12th day of December 2013 between 0700 hours and 1600 hours, in furtherance of your common intention, committed housebreaking by entering into the building at No 3, Simpang 136-27, Kampong

Sengkurong in Brunei Darussalam, used as a human dwelling, in order to the commission of a certain offence punishable with imprisonment, to wit, theft of:-

One watch "Casio"
 One watch "Swatch"
 One watch "BMW"
 One gold bracelet
 One bracelet
 One camera
 Car keys
 Assorted broaches
 One instant camera "Fujifilm"

And you have all thereby committed an offence punishable under section 454 of the Penal Code, Chapter 22 read with section 34 of the same.

9th Charge (D1, D3, D5, D6, D7, D8)

That all of you, at around 0200 hours on the 26th day of December 2013 at the vicinity of No 164, Jalan Laila Wijaya, Kampong Mata-Mata in Brunei Darussalam, committed theft, to wit

One handbag "Bonia"
 One handbag "Carlorina"
 One handbag "Michael Kors"
 One Chanel iphone case
 Cash \$200
 Identity card
 One Mobile phone "Samsung"
 One Mobile phone "Nokia"
 Assorted gold and diamond jewelry "Chanel", "Christian Dior", "Bulgari"
 One watch
 One Mobile Phone "iphone 4"
 One Mobile Phone "Iphone 5"
 One tablet "Samsung Galaxy 3"
 One laptop "Acer"

Belonging to PG HJH AZIZAH BINTE PG HJ MD SALLEH, and you have thereby committed an offence of gang robbery and you have thereby committed an offence under section 395 of the Penal Code read with section 34 Penal Code

10th Charge (D1, D3, D5, D6, D7, D8)

That all of you did together with 2 others still at large, on the 12th day of December 2013 between 0700 hours and 1600 hours, in furtherance of your common intention, at No 3, Simpang 136-27, Kampong Sengkurong in Brunei Darussalam, did commit mischief by causing wrongful damage to the following:-

One wire fence

belonging to ROSLI BIN HJ ABU BAKAR, and you have thereby committed an offence punishable under section 427 of the Penal Code, Cap 22.

11th Charge (D1, D2, D3, D4, D5, D6, D7, D8)

That all of you, at around 0300 hours on the 27th day of December 2013 at the vicinity of No 8, Simpang 502-56-13, Kampong Beribi in Brunei Darussalam, committed theft, to wit

One grey handbag
 BND2,000
 RM 700
 Driving license
 4 credit cards
 2 debit cards
 6 ATM cards
 3 brand "Samsung" mobile phone
 1 iPhone 4
 2 iPad 2
 Some jewelers
 Assorted keys for house, car and office

belonging to TSOK WUI CHIANG and in committing the said theft, you voluntarily caused wrongful restraint on the said TSOK WUI CHIANG and his wife KWA WEI MING (F39) and thereby committed an offence of gang robbery and at the time of the commission of the gang robbery you were armed with a deadly weapon, to wit, 1 machete and you have thereby committed an offence under section 395 of the Penal Code read with section 398 of the same.

The statements of facts tendered by the Prosecution are in the following terms.

Statement of Facts

1st Charge (D3 and D9 only)

1. *On 20th November 2013, between 2000 and 2148 hours, D3 and D9 together with 2 others still at large Amri and Jarot arrived at the back of the house at No 33, Simpang 185-82-21-4, Kampong Katok, Jalan Tungku. Amri drove the Urvan BAC8969. Amri and D3 waited in the car.*
2. *D9 and Jarot entered the property where Jarot broke the glass window to gain entry. D3 and D9 took the following items from the house:-*

*One watch brand Alba
 One watch brand Fossil*

One watch brand Casio
Gold bracelet worth BND1,500
Laptop "Acer" 17 inch
Cash \$150
White gold ring shape "s"
3 copper bowl with Arabic inscription
IPad 4
1 ladies handbag

3. *D3 and D9 then sold the ipad, laptop, mobile phones, watch and jewelry for cash. The proceeds were split between the four of them.*
4. *D3 then showed the police where the remaining items that were not sold were hidden and they were recovered by police.*
5. *A copy of the list of recovered items are Appendix and shown as "Appendix 1".*

2nd Charge (D9)

6. *The facts with regard to the 1st Charge are repeated. On the 20th day of November 2013 between 2000 and 2148 hours, at No 33, Simpang 185-82-21-4 in Brunei Darussalam, D9 together with Jarot did commit mischief by causing wrongful damage to the glass window costing \$277 to repair.*
7. *A copy of the repair is shown as "Appendix 2".*

3rd Charge (D3 and D6)

8. *On 20th November 2013, D3, D6 and Jarot, between 1200 and 1600 hours, went to No 51, Simpang 32, Kampong Pengkalan Batu in Brunei Darussalam. D3 drove the car to No 51 and waited in the car while D6 and Jarot entered the house.*
9. *Inside the house, D3 and Jarot took:-*

Cash of B\$2,000
3 golden necklaces
3 golden bracelets
2 gold pins
1 pendant
1 diamond jewelry set
4 jade bracelets
4 pearl bracelets
2 watches
1 Mobile phone "Samsung Note II"
1 Mobile phone "BMobile"
1 Mobile phone

1 camera "Nikon"
1 laptop "Buddie"
1 "Bonia" watch

- 10. After the theft, Jarot called D3 to pick them up in the same location. D3 then took the cash of B\$350 together with camera, accessories and laptop to her home. D3 then gave D6 \$100, Jarot \$100 and took B\$100 for herself. D6, D8 and Jarot then divided the rest of the items amongst themselves.*
- 11. D3 then showed the police where the remaining items that were not sold were hidden and they were recovered by police.*
- 12. A copy of the list of recovered items are Appendix and shown as "Appendix 3".*

4th Charge (D3, D6, D9)

- 13. D6, D9, Amri and Jarot found and targeted the victims house on 1st December 2013 between 1200 and 1340 hours, at No 22, Simpang 607-21-10, Kampong Beribi in Brunei Darussalam. D3 was in the car with D6, D9, Amri and Jarot.*
- 14. Amri and D3 dropped off D6, D9 and Jarot at the Simpang near the victims house. Jarot used a tyre bolt opener to pry open the window, Jarot used a crowbar to open the metal grill window. When they entered the house at No 22, they went to a display cabinet and took the items as follows:-*
- 15. D6 then opened a cabinet and a safe alarm sounded. Jarot then called D3 to be picked up. D3 then picked up D6, D9 and Jarot*
- 16. D3, D6 and D9 did not receive any money or proceeds of this offence as the stolen items were taken by Amri and Jarot.*
- 17. D3 showed the police where the items that were stolen were. A copy of the list of recovered items are Appendix and shown as "Appendix 4".*

8th Charge (D3, D9)

- 18. D3 planned this offence by showing the victim's house at No 3, Simpang 136-27, Kampong Sengkurong in Brunei Darussalam to D9, Amri and Wahid on 11th December 2013 between 2200 and 0000 hours.*
- 19. The next day, D3 picked up Amri and D9 and dropped them off near to the victims house. Amri and D9 then went into the back of the house. D9 broke the kitchen glass door to gain access into the house. Once inside, D9 and Amri took the following items:-*

One watch "Casio"
One watch "Swatch"

One watch "BMW"
One gold bracelet
One bracelet
One camera
Car keys
Assorted broaches
One instant camera "Fujifilm"

20. Thereafter, D3 picked up Amri and D9 in the same location. All the stolen items were passed to D3 in the car. D3 then sold the stolen items for \$602. D3 gave D9 \$201. D9 also took the Canon camera and sold it.
21. D3 showed the police where the items that were stolen were. A copy of the list of recovered items are Appendix and shown as "Appendix 5".

9th Charge (D1, D3, D5, D6, D7, D8)

22. D3 planned this offence by showing D1, D5, D6, D7 and D8 where the house of the victim at No 164, Jalan Laila Wijaya, Kampong Mata-Mata in Brunei Darussalam was.
23. D1, D3, D5, D6, D7, D8 and Amri went together on 26th December 2013 at around 0200 hours – 0330 hours to the area of the victims house. Everyone alighted except for D3, D5 and Amri who waited in the car.
24. D7 and D8 cut the wire fence using a cutter. D8 opened the window with a screwdriver and opened the door. D1 and D6 then entered the house first.
25. D1, D6, D7 and D8 entered the house. They startled one sleeping occupant of the house, Pg Hjh Siti Noorazelina (F44), and D8 told her "Kita mau cari wang, tidak mau menyakitkan kamu, kamu jangan teriak". Pg Noorazelina was heard by her mother Pg Hjh Azizah (F66) upstairs. D1, D6, D7 and D8 then went to Pg Hjh Azizah's bedroom and told her to be quiet and took her telephones from her, putting her in great fear. Then, D1, D6, D7 and D8 took the following items:-

One handbag "Bonia"
One handbag "Carlorina"
One handbag "Michael Kors"
One Chanel iphone case
Cash \$200
Identity card
One Mobile phone "Samsung"
One Mobile phone "Nokia"
Assorted gold and diamond jewelry "Chanel", "Christian Dior", "Bulgari"
One watch
One Mobile Phone iphone 4"
One Mobile Phone "iphone 5"

One tablet "Samsung Galaxy 3"
One laptop "Acer"

26. After D1, D6, D7 and D8 left the house, they called up D3 who collected them. The stolen items were then given to D3 to be sold. D3 then sold the items and the proceeds was divided amongst them.
27. D3 showed the police where the items that were stolen were. A copy of the list of recovered items are Appendix and shown as "Appendix 6".

10th Charge (D1, D3, D5, D6, D7, D8)

28. The facts with regard to the 9th Charge are repeated. On 12th December 2013 between 0700 hours and 1600 hours, in furtherance of your common intention, at No 3, Simpang 136-27, Kampong Sengkurong in Brunei Darussalam, did commit mischief by causing wrongful damage to the wire fence.
29. A copy of the repair is shown as "Appendix 7."

11th Charge (D1, D2, D3, D4, D5, D6, D7, D8)

30. D3 and D4 invited D2 to go with D4 to No 8, Simpang 502-56-13, Kampong Beribi in Brunei Darussalam. D1, D6, D7 and D8 went in D5's car to the same address.
31. At the victim's house, D1, D6, D7 and D8 entered the house whilst D3 and D4 waited in their car and D2 and D5 waited in their car.
32. In order to gain entry, D8 brought a screwdriver to open the window. D7 and D8 opened the rear door.
33. D7 and D8 then woke up the victims Tsok Wui Chiang (M45) ("Mr Tsok") and his wife Kwa Wei Ming (F39) ("Mrs Kwa") who were sleeping in their bedroom. D6 tied up Tsok Wui Chiang and D7 tied up Kwa Wei Ming using telephone wires. D7 was using a balaclava at the time.
34. D7 threatened Kwa and Tsok with the screwdriver and asked them "where is the money".
35. D8 found the maid and brought her to the victim's room.
36. D7 then went to get a machete, which he gave to D6. D6 placed the machete behind the Mrs Kwa's neck to force Mr Tsok to open the safe. Mr Tsok then tried to open the safe but discovered that it had been damaged. After several attempts he finally opened it. D7 then took a bag and placed everything in the safe in it. The items stolen included:-

One grey handbag

BND2,000
RM 700
Driving license
4 credit cards
2 debit cards
6 ATM cards
3 brand "Samsung" mobile phone
1 iPhone 4
2 iPad 2
Some jewelry
Assorted keys for house, car and office

37. D6 then called D5 and they were picked up in the two cars together with D3 and D4 and returned to D3's house. There, the proceeds of the crime were divided amongst them. Each of the Defendants received B\$450 and RM\$150. In addition:-

D1 received one Samsung
D3 took the jewelry and bag and all electronic items
D5 took the album containing old currency

38. After their arrest, D3 showed the police where the balances of the stolen items were that had not been distributed amongst them.

For All offences

39. None of the Defendants have previous convictions in Brunei Darussalam to date.

40. D1 and D2 were arrested on 27th December 2013 at 1730 hours. When they were arrested, they tried to evade arrest by driving away from the police. However, they met with a car accident and suffered injuries.

41. D5 was arrested on 28th December 2013 at 2228 hours at a house in Kampong Perpindahan Mentiri.

42. D6, D7 and D8 were arrested in a house in Jerudong on 28th December 2013 at 0017 hours. D6, D7 and D8 resisted arrest and suffered injuries whilst doing so.

43. D9 was arrested on 10th January 2014 at about 2220 hours at a house in Jalan Tutong.

Sentences

In their mitigations, all the Defendants pleaded for lenient sentences and said they are remorseful of what they had done. All the Defendants prior to this have clean records and have no previous convictions. As such they are 1st offenders for these serious offences.

Offences of gang robbery with a deadly weapon under section 398 and gang robbery per se under section 395 of the Penal Code carry penalties of a custodial sentence of not less than 7 years and custodial sentence, which may extend to 30 years respectively. Both offences are punishable with the minimum of 12 strokes each.

Whilst, housebreaking offences with intend to commit theft under section 457 and section 454 is punishable with imprisonment, which may extend to 15 years and 10 years respectively and whipping.

As reflected by the penalties these are extremely serious offences that affect the safety of property and harmony of the people. The facts of the case reveal that these are premeditated and well-planned robberies and housebreaking. They were executed involving several gang members, some of whom are still at large. This was to ensure that they would be able to overcome and subdue any resistance by their victims with their numbers. These were committed in a series and the manner of how these offences were committed showed they are very determined and committed bunch as illustrated with the use of the deadly weapon. With the exception of the 9th Defendant, the rest are foreigner, Indonesian nationals who had entered into this country with the sole purpose of committing these acts with the local Defendants who were also acting as guides.

In passing sentence I have taken into account of their guilty plea and clean records. I have considered the principles enunciated and the sentences passed in the following cases in arriving at my sentences in this case, which are as follows:

Muhd Joli bin Tumih vs Public Prosecutor (Criminal Appeal No 5 of 2005)

Azman@Asrol bin Jaya vs Public Prosecutor (Criminal Appeal No 6 of 2011)

Public Prosecutor vs Lee Hock (Criminal Trial No 16 of 2006)

Public Prosecutor vs Farley Anak Libau (Criminal Trial No 8 of 2007)

The housebreaking charge under section 457 of the Penal Code is Charge 1. Had this been a conviction after trial, I would have minded to impose a sentence of 6 years imprisonment. The fact that the Defendant pleads guilty entitles him to a 1/3 discount. Therefore, I believe a sentence of 4 years and 5 strokes is appropriate in this case.

As regard the charge of housebreaking under section 454 of the Penal Code (Charge 3, 4 and 8), I believe starting point of 3 years reduce to 2 years and 3 strokes is justified here upon plea of guilty on a single offence. Given, the 6th and 9th Defendants had committed 2 offences; I am obliged to add 1 more year to the sentence. Therefore, I believe a 3-year custodial sentence is justified.

Section 398 charge for robbery with a deadly weapon (charge 11), the punishment for 1st offender is minimum of 7 years and with no less than 12 strokes. Whilst section 395 robbery charge (charge 9) which is a lesser charge, I believe that a starting point of 7 years with 1/3 discount, reduced to 4 years and 8 months is justified with the mandatory minimum 12 strokes.

In summary the sentences against the Defendants are as follows:

1st Defendant

9th charge (section 395 of penal code) 4 years and 8 months and 12 strokes

11th charge (section 398 of penal code) 7 years and 12 strokes

I order that the sentences to be served consecutively and the strokes to be non-cumulative.

Total: **11 years 8 months and 12 strokes.**

2nd Defendant

11th charge (section 398 of penal code) **7 years and 12 strokes**

5th Defendant

9th charge (section 395 of penal code) 4 years and 8 months and 12 strokes

11th charge (section 398 of penal code) 7 years and 12 strokes

All the sentences are to be served consecutively and the strokes to be non-cumulative.

Total: **11 years 8 months and 12 strokes.**

6th Defendant

3rd charge (section 454 of penal code) 3 years and 3 strokes

4th charge (section 454 of penal code) 3 years and 3 strokes

9th charge (section 395 of penal code) 4 years and 8 months and 12 strokes

11th charge (section 398 of penal code) 7 years and 12 strokes

Applying the totality principle, I order that the sentences on the 3rd and 4th charge to be served concurrently but consecutively to the sentences on the rest of the charges and the strokes to be non-cumulative.

Total: **14 years 8 months and 12 strokes.**

7th Defendant

9th charge (section 395 of penal code) 4 years and 8 months and 12 strokes

11th charge (section 398 of penal code) 7 years and 12 strokes

I order the sentences to be served consecutively and the strokes non-cumulative.

Total: **11 years 8 months and 12 strokes.**

8th Defendant

9th charge (section 395 of penal code) 4 years and 8 months and 12 strokes

11th charge (section 398 of penal code) 7 years and 12 strokes

I order the sentences to be served consecutively and the strokes non-cumulative.

Total: **11 years 8 months and 12 strokes**

9th Defendant

1st charge (section 457 of penal code) 4 years 5 strokes

4th charge (section 454 of penal code) 3 years and 3 strokes

8th charge (section 454 of penal code) 3 years and 3 strokes

Applying the totality principle, I order the sentences on the 4th and 8th charges to run concurrently but consecutively to the rest of the sentences and the strokes to be non-cumulative.

Total: **7 years and 5 strokes.**

The imprisonment sentences to take effect from the date of their arrest.

DATO PADUKA HAIROL ARNI MAJID

Judge, High Court