

Abdul Malik Bin Mohmmad
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No 20 of 2024)

Khaliq Bin Mohamed
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 7 of 2024)

Steven Chong, C.J., Lunn and Woolley, JJA
18th June 2025.

Criminal law – Theft in a protected place – Sentence

Applicant In Person.

Appellant In Person.

DPP Pg Nor'Azmeena Bte Pg Hj Mohiddin for the Public Prosecutor,

Case cited:

Md Afindi Bin Ag Damit [Criminal Appeal No. 27 of 2015]

Steven Chong, C.J.:

Introduction

1. On 6 May 2024, in the Intermediate Court, the Public Prosecutor jointly charged three defendants with theft, in a protected place, an offence under section 380A of the Penal Code. For ease of reference, the 1st Defendant, who is the Applicant in Criminal Motion No. 20 of 2024, shall be referred to as Malik. The 2nd Defendant, who is the Appellant in Criminal Appeal No. 7 of 2024, shall be referred to as Khaliq. The 3rd Defendant is not relevant to the present proceedings, as no appeal has been filed on his behalf.
2. A total of 19 charges were brought against the three defendants. The 1st to 4th Charges were jointly preferred against Malik and Khaliq for the theft of copper cables from CCIE Engineering Sdn Bhd ("CCIE"). The 5th to 19th Charges were brought against Malik,

Khaliq and the 3rd defendant for the theft of copper cables from the storage areas of both CCIE and SCCB Sdn Bhd (“SCCB”).

Malik and Khaliq pleaded guilty to all 19 charges. The Judge sentenced each of them to a total of 8 years’ imprisonment and 4 strokes.

Malik is now applying for an extension of time to appeal against the sentence. Khaliq, on the other hand, has filed an appeal against the sentence imposed.

The facts

3. The offences before the court span a period of approximately four months, from October 2023 to February 2024. During the relevant time, the three defendants were employed as security guards by Daimun Security Services and were stationed at the Hengyi Headquarters located on Pulau Muara Besar. The companies CCIE and SCCB, both situated on Pulau Muara Besar, operate within a designated protected area.
4. The first nine charges relate to the theft of copper cables from CCIE, which occurred on nine separate occasions between October and December 2023. Those offences were committed by Malik and Khaliq.
5. The remaining ten charges concern the theft of copper cables from SCCB, carried out on ten separate occasions between January and February 2024. Those offences were perpetrated by all three defendants.
6. The modus operandi was similar across all incidents. The three defendants, while on duty during the night shift, - typically around midnight – would travel together in their employer’s van to the premises of CCIE or SCCB. They would unlawfully enter the storage areas, sever the copper cables from the rolls using a metal cutter, and subsequently load the copper cables into the van. The stolen copper cables were then transferred to the three defendants’ private vehicles at a nearby car park within Pulau Muara Besar.
7. Following this, the copper cables were transported to a jungle area located behind Malik’s residence. There, the outer protective casing of the copper cables was removed by burning. The stripped cables were then sold to Varsini Metal Sdn Bhd. The total weight of copper cables stolen amounted to approximately 1228.50 kgs for which the three defendants received a sum of approximately \$11,287.

8. Police reports were lodged by the managers of CCIE and SSCB on 19 February 2024 and 29 February 2024 respectively, following the discovery of the stolen copper cables. These reports ultimately led to the arrest of the three defendants.

The sentence

9. In determining the appropriate sentence to be imposed, the Judge took guidance from the case of *Md Afindi Bin Ag Damit* [Criminal Appeal No. 27 of 2015], in which this Court upheld a starting point of 24 months' imprisonment and 3 strokes, reduced to 16 months and 2 strokes upon a plea of guilty. That case involved an offence under section 380A of the Penal Code concerning the theft of money from a mosque donation box.
10. In the present case, the Judge considered several aggravating factors. Chief among them was the serious breach of trust by the defendants, who, while employed as security guards and acting in the course of their duties, stole from the very premises they were engaged to protect. The Judge further noted that the defendants had used their employer's van to facilitate the commission of the offences. The thefts were not isolated incidents but occurred on 19 separate occasions over an extended period. Additionally, the amount stolen was substantial, involving approximately 1228.50 kgs of copper cables, which were subsequently sold for profit.
11. The Judge imposed a sentence of 2 years' imprisonment and one stroke for each charge. In respect of both Malik and Khaliq, the sentence of imprisonment on four charges were ordered to run consecutively, with the strokes to be cumulative. Accordingly, each was sentenced to a total of 8 years' imprisonment and 4 strokes.
12. As for the 3rd Defendant, the sentences of imprisonment on three charges were ordered to run consecutively, with the strokes likewise to be cumulative. Consequently, he was sentenced to an aggregate term of 6 years' imprisonment and 3 strokes.

The appeal

13. Both Malik and Khaliq seek a reduction in sentence on the grounds that they pleaded guilty at an early stage, have no prior convictions, and cooperated fully with the police following their arrest.
14. Further, they submitted that they are the primary breadwinners for their respective families. Malik, who is 41 years old, supports his wife, child and two siblings, while Khaliq, aged 28, provides for his wife and child.

15. The Deputy Public Prosecutor (DPP) submits that while the individual sentences imposed by the court below are appropriate, the global sentence of 8 years' imprisonment on Malik and Khaliq is excessive. The DPP concedes that an appropriate total sentence would be 6 years' imprisonment, reduced from a starting point of 9 years' imprisonment to reflect their guilty pleas. However, the DPP maintains that the imposition of 4 strokes remains appropriate, given the gravity of the offences.

Decision

16. Having reviewed the matter, we are satisfied that the individual sentences for each charge are appropriate in light of the offences committed. The central issue in this appeal is whether the overall sentence imposed by the Judge is manifestly excessive when considered against the totality principle.

17. We agree with the DPP that, notwithstanding the serious aggravating factors highlighted by the Judge in her sentencing remarks, the total sentence imposed is manifestly excessive. We, too, are of the view that that a custodial sentence of 6 years' imprisonment would be appropriate in the circumstances.

18. However, we differ from the DPP's submission regarding the number of strokes to be imposed. We consider that a total of 3 strokes, consistent with the sentence imposed on the 3rd Defendant, would be appropriate.

19. Accordingly, we allow Malik's application for an extension of time to appeal and treat it as the substantive appeal. We also allow Khaliq's appeal.

20. We order the sentences of imprisonment on three charges – namely, the 1st, 10th, and 19th Charges – are to run consecutively, and that the strokes are to be cumulative.

21. The sentences imposed on Malik and Khaliq are therefore set aside and substituted with a sentence of 6 years' imprisonment and 3 strokes.



STEVEN CHONG, C.J.

A handwritten signature in cursive script, appearing to read "Michael Lunn".

LUNN, J.A.

A handwritten signature in cursive script, appearing to read "J.A. Woolley".

WOOLLEY, J.A.