

Ibrahim Bin Hj Mutsuman

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 11 of 2005)**

Redzwan Bin Roslan

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 1 of 2006)**

Cons, P; Power and Mortimer, JJ.A.
30th November, 2006.

In 2 separate trials (Criminal Trial No 2 of 2004 and Criminal Trial No 1 of 2005) *Ibrahim* pleaded guilty to 13 joint offences of serious, premeditated housebreakings, thefts in dwelling houses, and thefts in offices with associated offences of damage. Each trial involved a series of offences in Jan/Feb 2004 and Oct to Dec 2004. He was sentenced for each separately on 4 June 2005.

Ibrahim pleaded guilty to a further similar offence (not under appeal) on 3 Oct 2005 (Criminal Trial No 17 of 2004)

When sentencing the judge passed a total of 12 years with 4 strokes in one and 11 years with 3 strokes in the other. Whereas the sentences of imprisonment were to be concurrent the strokes were cumulative making 12 years and 7 strokes in all. In Cr. T no. 13 of 2005 she made a 3 year sentence concurrent and 4 strokes non-cumulative with the sentence passed in No. 2 of 2005.

Redzwan pleaded guilty to 5 of the Jan/Feb series (Criminal Trial No 2 of 2004) jointly with *Ibrahim*. Judge passed total of 8 years and 3 strokes. She also sentenced *Redzwan* to 2 years imprisonment and 3 strokes in separate proceedings on the same day which are not under appeal. When sentencing no reference made to the sentences passed in the separate proceedings.

On the individual charges, the Judge's approach to sentence in each case was impeccable. However, when considering totality she gave no starting point and the totality for the sentences of the consecutive sentences was manifestly excessive.

Sentencers must carefully consider totality in each relevant case. See *Mohd Noor Bin Litoh v Public Prosecutor* Criminal Appeal No. 3 of 2005 and *R v Bocski* [1970] 54 Cr. App. R. 519.

Also, it is better practice to give a starting point of sentence after trial before reducing the sentence for pleas and other mitigation. Sentencers must also make the overall sentences passed in separate proceedings clear so that convicted persons are made aware of the total sentence passed.

The totality of the sentences in each appeal was excessive having regard to the overall criminality and the pleas of guilt. In *Redzwan's* case it was not made clear in the separate proceedings whether the corporal punishment was cumulative or non-cumulative.

In *Ibrahim* the overall sentences reduced to 8 years and 4 strokes. Appropriate starting point 12 years reduced to 8 for pleas. The 4 and 3 cumulative strokes to be non-cumulative making 4 in all.

In *Redzwan* the overall sentences reduced to 4 years and 3 strokes. Appropriate starting point 6 years reduced to 4 years after pleas and after considering his youth. The strokes imposed to be non-cumulative with those imposed in Criminal Trial 17 of 2005 (not under appeal) to make 3 in all.

Appellant in Person.

Norhayati Bte Dato Paduka Hj Omar and Christopher Sawan (Deputy Public Prosecutors) for the Deputy Public Prosecutors.

Cases cited in the Judgment:

Mohammed Ibrahim v Public Prosecutor [Cr. App. No 8 of 2004]

Mohd Noor Bin Litoh v Public Prosecutor Cr. Appeal No. 3 of 2005

Public Prosecutor v Jamal (HC Cr. Trial No.15 of 2003)

Public Prosecutor v Soleh Permana (HC Cr. Trial No 22 of 2003)

R v Bocski [1970] 54 Cr. App. R. 519

Mortimer, J.A.:

These appeals

We have heard *Ibrahim Bin Hj Mutsuman's* appeal, Cr. App. No 11 of 2005 (*Ibrahim's* appeal) and *Redzwan Bin Roslan's* appeal, Cr. App. No 1 of 2006 (*Redzwan's* appeal) together. After several ineffective hearings in both these appeals, we ordered that they should be heard together as both Appellants were convicted on their own pleas in Criminal Trial No 2 of 2004 of five joint offences. Additionally, each Appellant has been convicted of other offences in other trials.

Criminal Trial No 2 of 2004 (Ibrahim and Redzwan)

In Criminal Trial No 2 of 2004 *Ibrahim* pleaded guilty after the trial had begun to a series of 3 housebreaking and 3 office breaking offences which were charged contrary to Section 454 of the Penal Code. He also pleaded guilty to 2 associated offences of damage contrary to Section 427 of the Criminal Code. These offences were committed between 9 January 2004 and 15 February 2004.

In the same trial Redzwan pleaded guilty to 2 of the housebreaking, to 2 of the office breaking offences and to 1 of the associated criminal damage offences committed with Ibrahim between 21 January and 15 February.

The property stolen in these offences by both the Appellants included a multi-media projector, a slide projector, cameras, a VCD, a decoder, 2 mobile phones and jewellery.

The additional 3 offences pleaded to by Ibrahim included an office breaking in which a safe and its contents (passports, ID cards and cheques) were taken and a housebreaking in which jewellery was stolen.

The only items recovered by the police from these offences were the multi-media projector (worth \$4,450) and the contents of the safe.

Sentences in Criminal Trial No 2 of 2004

On 4 June 2005 Her Honour Judge Lim sentenced *Ibrahim* to 2 years' imprisonment and 3 strokes on each of his 6 offences of housebreaking or office breaking charged under Section 454 of the Penal Code and to 1 year's imprisonment and 2 strokes for the 2 associated offences of criminal damage.

She sentenced *Redzwan* also to 2 years' imprisonment and 3 strokes for each of the 4 housebreaking and theft cases in which he was involved and to 1 year's imprisonment and 2 strokes for the single joint offence of criminal damage. In each case, the Judge ordered that the sentences of 1 year and 2 strokes for the criminal damage offences should be served concurrently but all the other sentences were to be served consecutively. The strokes were ordered to be non-cumulative.

The consequence was that Ibrahim was sentenced to a total of 12 years' imprisonment with 3 strokes and Redzwan to 8 years' imprisonment and 3 strokes.

Criminal Trial No 2 of 2005 (Ibrahim alone)

In Criminal Trial No 2 of 2005 *Ibrahim* pleaded guilty to a similar series of joint offences committed between 22 October 2004 and 23/29 December 2004. The offences were 1 of housebreaking contrary to Section 454 of the Penal Code, 2 of theft in dwelling houses contrary to Section 380, 1 of office breaking and theft contrary to Section 380 and 1 of housebreaking by night and theft contrary to Section 457.

In all, 36 items were stolen in these offences. They included electrical goods such as televisions and VCD players, together with cameras, welding equipment, gas cylinders, jewellery and a small amount of cash. Of these 36 items taken, 19 were recovered including some of the most valuable after Ibrahim was arrested. It can be assumed that this was at least partly in consequence of assistance given by him.

Also on 4 June 2005 Her Honour Judge Lim sentenced *Ibrahim* to 3 years' imprisonment and 4 strokes for the housebreaking by night offence. On each of the other 4 offences she sentenced him to 2 years' imprisonment and for the first offence of housebreaking in which 19 items were taken committed on 22 October 2004, she ordered 3 strokes.

The total sentence passed in this case was 11 years as each sentence was ordered to be served consecutively. The strokes were ordered to be non-cumulative making 4 in all in this case.

Although it does not appear in the written record of the judgment we have been told by DPP Ng that the judge made it clear that the 11 year sentence in this case and the 12 years in No 2 of 2004 were to be concurrent but that the strokes were to be cumulative making 7 in all.

Criminal Trial No 17 of 2005 (Ibrahim)

We note that *Ibrahim* later appeared before Judge Lim on 3 October 2005 when he pleaded guilty to 1 joint offence of housebreaking by night in which it appears 1 item was stolen but recovered. He was sentenced to 3 years' imprisonment and 3 strokes but on this occasion the Judge ordered that the imprisonment was to run concurrently with the sentence in Criminal Trial No 2 of 2005 with no additional strokes for *Ibrahim*. No mention was made of the sentence he was serving in Criminal Trial 2 of 2004.

Criminal Trial No 15 of 2004 (Redzwan)

In yet further proceedings on 4 June 2005 in front of the same Judge, *Redzwan* was sentenced for an offence of housebreaking contrary to Section 454 to which he pleaded guilty. This offence was committed on 9 November 2004. *Redzwan* and another broke into a house and gathered property together in preparation for removing it. The owner returned. *Redzwan* fled but was chased and caught by the owner.

For this offence the Judge sentenced *Redzwan* to two years' imprisonment and 3 strokes. So far as we are aware this was without reference to the other sentences she had passed on the same day on this Appellant.

Summary of the sentences currently being served by each Appellant

We summarise the sentences now being served by each appellant.

Ibrahim

1. In Criminal Trial No 2 of 2004 (sentence passed 4 June 2005) a total of 12 years' imprisonment and 3 strokes.
2. In Criminal Trial No 2 of 2005 (sentence passed 4 June 2005) a total of 11 years' imprisonment and 4 strokes. The sentence of imprisonment to be concurrent with that imposed in Criminal Trial No 2 of 2004 but the strokes to be cumulative making 7 in all.
3. In Criminal Trial No 17 of 2005 (sentence passed 3 October 2005) a total of 3 years' imprisonment and 4 strokes concurrent with the sentence in No 2 of 2005 and the strokes not to be cumulative with that sentence.

Redzwan

1. In Criminal Trial No 2 of 2004 (sentence passed 4 June 2005) a total of 8 years' imprisonment and 3 strokes.
2. In Criminal Trial No 15 of 2004 (sentence passed 4 June 2005) a total of 2 years' imprisonment and 3 strokes.

In each case with the exception of Criminal Trial No. 17 of 2005 the judge ordered the imprisonment to take effect from the date of the detention at Jerudong Prison.

The sentencing of the Appellants

On 4 June 2005 the Judge passed sentence on the 2 Appellants at the same time in Criminal Trial No 2 of 2004. On another occasion on the same day she sentenced *Ibrahim* for another series of offences in Criminal Trial No 2 of 2005. On yet a further occasion on the same day she sentenced *Redzwan* for another similar offence.

The Judge dealt with each of these trials separately. In these circumstances it was difficult for a judge to weigh the overall criminality demonstrated by all the offences for which each Appellant had to be punished. Sentencing convicted persons piecemeal for various offences increases a judge's burden when assessing the appropriate total sentence.

When this is done it is important that the total effect of all sentences passed is made clear. Here, although the Judge ordered that the total sentence in each case was to start on the date when each Appellant was detained in Jerudong Prison, she did not specifically say whether the total sentences should be served concurrently although this was undoubtedly her intention. When sentencing *Ibrahim* on the second occasion she said that the 11 year sentence was to be concurrent with her earlier 12 year sentence. Also she said that the strokes were to be cumulative even though nothing appears in her written judgment to this effect.

However, it seems from the record that she did not tell *Redzwan* specifically that the sentences in his second case were concurrent. Nor did she address the question whether the strokes were to be cumulative. The effect of her judgment is that they are cumulative making 6 in all.

It is good practice for judges and administrators to ensure, whenever possible, that a convicted person is sentenced by the same Judge on the same occasion for all outstanding offences. This holds whether he happens to be charged in single proceedings or whether he is charged in multiple proceedings.

We turn now to briefly consider the sentencing process when there is a series of offences.

Sentencing for a series of offences

When sentencing for a series of offences a judge must first determine the proper sentence for each offence. In all these cases the judge did so. There can be no criticism of the individual sentences she passed on each.

However, after a judge has determined the appropriate sentence for each offence it is imperative that he or she then considers the appropriate total sentence for the overall criminality of all the offences. His or her duty is to ensure that the total is adjusted as to be appropriate but not excessive.

See *Mohd Noor Bin Lito v Public Prosecutor* Criminal Appeal No. 3 of 2005 and *R v Bocski* [1970] 54 Cr. App. R. 519, in which the point was succinctly made:

“The final duty of the sentencer is to make sure that the totality of the consecutive sentences is not excessive.”

Finally, as this Court said in *Mohammed Ibrahim v PP* [Cr. App. No 8 of 2004] it is useful, both to the sentencer and to any court which may later review the sentence, if the Judge determines first the appropriate starting point for sentence after trial before making any deductions for plea or other mitigation. On other occasions, we have pointed out that this leads to a more coherent and uniform sentencing policy and assists a Judge to determine the proper sentence.

Housebreaking offences

We have been reminded of sentences passed in other cases. These show that offences of housebreaking are prevalent. They are often committed during the day when the householders are out at work so that their houses are an easy target. Such offences cause immense distress. Heavy deterrent sentences are called for.

See *Public Prosecutor v Soleh Permana* (HC Cr. Trial No 22 of 2003) and *Public Prosecutor v Jamal* (HC Cr. Trial No.15 of 2003).

It is to be noted however, that there were special circumstances which led to an overall sentence of 15 years in Jamal’s case. In the absence of such this should not be adopted as the appropriate starting tariff in other cases. The level must be appropriate having regard to the recognised levels in other more serious crimes.

Ibrahim’s Submissions

Ibrahim asks that his sentences of imprisonment and the strokes should be reduced on the grounds that they are both manifestly excessive. He has a wife and family dependent upon him and urges his remorse evidenced by his pleas.

He asks us to give effect to his previous record having not committed any offence of this type for many years before the present series. He professes an intention not to commit further offences on his release.

Conclusion in Ibrahim’s appeal

All these offences were serious, persistent, premeditated, and professional. High value goods were stolen. Using a car houses and offices were attacked and many items stolen when the householders or occupiers were away. Although before this series *Ibrahim* had a good record these 13 offences were committed over a lengthy period. Heavy deterrent punishment is merited.

Having passed perfectly proper sentences for the individual offences the judge ought to have considered the appropriate starting point after trial having regard to the overall

criminality involved. Only having done this should she have given the usual discount for the pleas and any other mitigation.

Had she adopted this approach the judge would have realised at once that the total sentence of 12 years after pleas of guilt was manifestly excessive. It would have involved a starting point after trial of at least 16 years.

Applying the principles we have indicated, we consider the appropriate starting point after trial for the criminality in these 13 offences is 12 years, which we reduce to 8 years for the pleas of guilt even though some of which were not made at the earliest opportunity. In spite of the late pleas in the first series the saving of time and expense must have been considerable.

For these reasons we allow *Ibrahim's* appeal. We order that the sentences in Criminal Trial No 2 of 2004 on each of charges 1, 2, 3, 4, 5, 6, and 8 for which 2 years was imposed should run concurrently making 2 years but the 1 year sentence on count 7 should be consecutive making 3 years in all for these offences.

In Criminal Trial No 2 of 2005 we order that the sentences of 2 years on each of charges 1, 2, 3, and 5 should be concurrent but the 3 years imposed on charge 4 should be consecutive making 5 years in all for these offences.

The 5 years in Criminal Trial 2 of 2004 shall be consecutive to the sentence of 3 years in Criminal Trial 2 of 2005, making a total of 8 years in all.

We turn to the corporal punishment. In spite of ordering that the sentences of imprisonment in the 2 cases should be concurrent with each other the judge gave no indication why she thought the strokes should be cumulative. We are aware of no reason why they should be cumulative. We therefore order that all the strokes ordered in each trial should be non-cumulative making 4 strokes in all. With the imprisonment this is sufficient to mark the gravity of the offences.

Redzwan's Submissions

Redzwan asked the court to hold that his 8 year sentence was manifestly excessive having regard to his pleas and his youth. He was 19 when sentenced below.

He expressed remorse and a determination to start a new life when released. He was troubled whether his reputation would be such that he would not be accepted back into local society.

Conclusion in Redzwan's appeal

Redzwan was sentenced for 5 offences committed with *Ibrahim*. 2 offences of office breaking, 2 offences of house breaking and 1 associated offence of damage. It follows from our earlier remarks that these were serious, persistent, premeditated and professional. *Redzwan's* pleas were not at the earliest opportunity nevertheless he is entitled to credit for them for the saving in court time and expense involved was great. Significantly he was only 19 years of age when he was sentenced. It can be assumed that he was under *Ibrahim's* influence. He had a previous conviction in 2002 for a similar offence for which he received 6 months.

Even for a young man a heavy sentence is indicated but the total sentence passed by the judge of 8 years – assuming she intended the sentences in Criminal Trial 2 of 2004 and 15 of 2004 to be concurrent – was manifestly too heavy.

Applying the principles we have outlined we consider that the appropriate starting point in his case for sentence after trial is 6 years. Taking into account his pleas and his age we reduce the 6 years to a total of 4 years. This remains a heavy deterrent sentence in the circumstances.

We allow his appeal and substitute the following sentences of imprisonment. The sentences of 2 years on each of the charges 4 and 5 will be consecutive but the other sentences on charges 1, 2 and 3 will be concurrent making a total of 4 years. We also order (for the avoidance of doubt) that this sentence will be served concurrently with the sentence of 2 years imposed by the judge in Criminal Trial 17 of 2005.

This leaves the corporal punishment. In the case under appeal the judge imposed 3 strokes in total. She also imposed 3 strokes on him in 17 of 2005 without indication or consideration whether these sentences were to be cumulative. As they stand they are cumulative making 6 strokes in all. There is no appeal in Criminal Trial No. 17 of 2005.

Bearing in mind the mitigation we also allow the appeal in part in respect of the corporal punishment and order that the 3 strokes imposed in the case under appeal will not be cumulative with the sentence in 17 of 2005. There will be 3 strokes in all.