

IN THE COURT OF APPEAL OF BRUNEI DARUSSALAM

CRIMINAL APPEAL NO 12 OF 1999

BAHAR BIN ARIS

V

PUBLIC PROSECUTOR

Before: FUAD, P.; HUGGINS, J.A. AND SILKE, J.A..

Date of Hearing: 10TH NOVEMBER 1999.

Date of Judgment: 10TH NOVEMBER 1999.

J U D G M E N T

SILKE J.A.

The appellant, Bahar bin Aris, pleaded guilty to two offences of house-breaking by night in order to commit theft: offences contrary to section 457 of the Penal Code.

On his plea, Judge Steven Chong, sitting in the Intermediate Court, sentenced, on the 17th of August 1999, the appellant on each of the charges to two years imprisonment and 2 strokes. These sentences were made to run consecutively giving a total of 4 years imprisonment and 4 strokes.

The brief facts were that on the 25th July 1999, the appellant together with another person went to a house in Jalan Sungai Tampoi, Sengkurong. He entered through a closed, unlocked window on the ground floors The accomplice keeping watch outside. Inside that house, the appellant stole jewellery and cash.

Two days later, on the 27th July, this time with two accomplices, the appellant went to a house at Ban 3 Mulaut, Sengkurong. He drove there in a car. He entered the house through a bathroom window which had been locked but which he opened with a screwdriver. The accomplices waited in the car. He ransacked the house but found nothing to take. He clearly had intention to commit theft.

The appellant was arrested on the same night and was found in possession of some of the jewellery he had taken in first house-breaking. Some \$5,000 dollars worth of jewellery was not recovered.

In passing the sentence he did, the trial judge noted that the appellant had a clear record, he was aged 34 and was an Indonesian on a visit to Brunei. He referred to the Public Prosecutor v Lisua bin Lee and others, 1990 [JCBD] page 243. In that case, the Chief Justice, in passing a sentence of 3 years for imprisonment for this offence, expressed the view that imprisonment of something like 2 years on a plea of guilty by a person with a clear record is the normal sentence.

Before us today the appellant, who is in person, told us he had family in Indonesia, in Salawesi, consisting of a wife and two children who did not know of the sentence pass upon him in Brunei. He asked us to reduce the sentence because both of his parents were very old.

We aware of the a difficulty which can be caused to the family of someone who is in jail. Indeed it is increased for a prisoner whose family is not in the same country and is therefore unable to visit him. These are matters which the offender should take into consideration before he commits an offence. The trial judge thought consecutive sentences were appropriate in this case. As the offences concerned two separated acts on different days he thought the totality should be 4 years and 4 strokes. He also was of the view that the offences were prevalent in Brunei and that, in the public interest, the sentences should have a deterrent effect. He noted the maximum penalty for an offence under section 457 is 15 years imprisonment and whipping.

The trial judge took into consideration every aspect of the matter which should be considered by him. We see no reason to differ from him in views he has expressed. The sentences were the proper sentences and therefore the appeal is dismissed.

The sentences will run from the day of first remand.

WILLIAM JAMES SILKE
Judge, Court of Appeal

DATO SERI PADUKA KUTLU TEKIN FUAD
President, Court of Appeal

SIR ALAN HUGGINS
Judge, Court of Appeal

Appellant
Pg Isa

In person
for Public Prosecutor