

**RAUBANIZAM BIN HJ RAUB**

**AND**

**PUBLIC PROSECUTOR**

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**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 28 of 2020)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**7<sup>th</sup> June 2021**

Applicant in person

DPP Hajah Rozaimah binti Haji Abdul Rahman of Public Prosecutor for Respondent

**Seagroatt, JA.:**

This applicant, together with three co-defendants was tried before Judge Faisal on a number of counts for housebreaking, theft, armed gang robbery, and housebreaking by night (4 counts in all) between October and December 2016. He was convicted of the two most serious offences on the 21<sup>st</sup> August 2019. Two other co-defendants pleaded guilty to the counts concerning them before this applicant's trial. His notice of appeal is dated the 16<sup>th</sup> September 2019, so it is in time. His appeal is against conviction. There is another Notice of Appeal from him dated 28<sup>th</sup> September 2019 the meaning of which is not entirely clear. An even later document dated 22<sup>nd</sup> February 2021 is a detailed submission of the grounds he relies upon in contesting the findings of guilt against him, and an appeal against sentence based upon, essentially, grounds of hardship.

**The facts of the offences**

The first count relates to an offence of housebreaking. The owners were absent from the property at the time. A large quantity of valuable property was stolen including watches, cameras, computer equipment, jewellery, DVD players and speakers and a car key for a Jaguar motor car which was itself driven away by the defendants. A safe box also containing valuable items including documents of title of property was also taken away.

This appellant sold gold and jewellery to a goldsmith, KLT Goldsmith for about \$3,000. In his evidence at his trial the appellant admitted being involved in the sale of the jewellery to the goldsmith but only as a middleman for his brother.

On the second count, with a co-accused he committed armed robbery after breaking into a house occupied by a 72 year old man, Sung Ah Chit. He was threatened with a knife described as being 2 feet in length. They ransacked his house and stole valuable personal property including a Rolex watch, a mobile phone and his wallet containing money, bank card and other important items. They then took his Nissan motor car and his television set and a gas cylinder. When his car was recovered by the police it was missing its tyres and wheel rims. This appellant had been seen driving this stolen car. The victim in due course picked out the appellant on an identification parade.

The third count was another offence of gang robbery in which a 70 year old woman's house was broken into in the early hours of the morning. She was confronted by the appellant and a co-accused, the shorter of the two threatening her with a samurai sword or machete and forcing a gold bracelet off her wrist causing injury, and snatching a gold necklace from her neck. She screamed for help and feared for her safety and that of her granddaughter who was sleeping in the same bedroom. The jewellery was subsequently recovered from the same KLT Goldsmith as in the first count.

The last, fourth count, was an offence of housebreaking, also in the early hours, when the two intruders knocked the lady occupant to the floor and escaped with her handbag containing house keys and other personal effects.

There was significant evidence from an employee of KLT Goldsmith who identified this appellant as a frequent contact who sold items of gold and other jewellery, and, specifically, such items as were stolen from the houses in the second and third counts. The appellant had received \$9,400 from him for the two items of gold jewellery taken from the 70 year old lady in the third count, but the value of the items was almost certainly much higher.

The judge rejected the denials of the appellant in respect of the second and third counts being those of gang robbery in which knives or some similar weapon were used to threaten the two occupants in their seventies. There was ample evidence to justify these findings. He acquitted him of the two other offences and we are satisfied that there is no inconsistency in those outcomes.

The appellant's contentions in his submissions were adequately dealt with by the judge in his decision. Nothing has been raised before us which constitutes a new or varied ground of argument, or in any way casts doubt on or criticism of the judge's approach. The appeal against conviction is dismissed.

### **The appeal against sentence**

These were serious offences involving putting older house owners in fear at night. The carrying of knives, or similar cutting instruments can inspire terror. Valuable property was stolen. The appellant has a bad criminal record. His sentence is not to be based on that factor but he cannot claim the benefit of a hitherto good character. He had only recently been released from a prison sentence before committing these offences.

In the hearing before us the appellant raised the argument that whatever sentence of imprisonment was imposed upon him should take effect from the date he was taken into custody in respect of these offences. In so doing he was adopting this court's frequent statement that such periods of custody should properly be taken into account when a sentence of imprisonment was decided.

Ms. Rozaimah, for the Public Prosecutor, at this appeal provided a Chronology of Events which clearly supported this appellant's argument. It showed that he was taken into custody on the 4 January 2017 and remained in custody until he was granted bail on the 12 December 2018, a period of approximately 23 months and 1 week. He told this court that although bail was granted on 12 December 2018, he in fact remained in custody until 4 April 2019, a period of 2 years and 3 months. The prosecution was unable to provide this court with any detail concerning this interim period. However, there is no reason to doubt the appellant's contention, as it is explicable only in terms of his being unable to meet the bail conditions imposed on the 12 December 2018 until 4 April 2019. This is confirmed by the Bond and Bail Bond record obtained from the Magistrates' Court dated 4 April 2019.

It is proper therefore that he should have that full period of custody taken into account and set off against the sentence of imprisonment imposed on the 21 August 2019.

The judge settled on a sentence of 7 years and 12 strokes for both offences, the terms to be concurrent, a total of 7 years and 12 strokes. In the circumstances the judge could have made part of the second sentence consecutive resulting in a slightly higher sentence than the one passed, about which there could have been no complaint or criticism. This appellant may therefore consider himself fortunate in that respect. Nonetheless the period of custody must be reduced in effect by a period of 27 months to reflect fully the period in custody prior to the imposition of the sentence. The length of the period in custody remaining to run from the 21 August 2019 is therefore 4 years and 9 months.

Accordingly, this appeal against sentence is dismissed. The sentence of 7 years shall be with effect from 21 May 2017 thereby giving credit for 27 months spent in custody prior to the date of sentencing.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**