

**MUHAMMAD AFFIZAN BIN YAHYA**

**AND**

**PUBLIC PROSECUTOR**

---

**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 14 of 2014)**

---

Before: Mortimer P, Leonard and Burrell JJ A.  
**26<sup>th</sup> of November 2014**

Appellant in person  
DPP Hjh Rozaimah Haji Abd Rahman for Respondent

**Leonard, JA.:**

This is an appeal against sentence. After a trial (which started on the 18<sup>th</sup> of September 2013) the appellant, who had been acting in concert with three others, was convicted on the 5<sup>th</sup> of June, 2014 of housebreaking by entering a human dwelling on the 30<sup>th</sup> of March, 2013 with a view to theft contrary to section 454 of the Penal Code, Chapter 22, read with section 34 of the same code. The goods stolen in the course of the commission of that offence were a mobile telephone (with its memory card) and a hard disc. Such an offence is punishable by up to 10 years' imprisonment and whipping. Two defendants pleaded guilty and gave evidence for the prosecution.

After a preliminary reconnaissance the defendants left but later returned to the house and by using a crowbar three of them including the appellant forced an entry through the back door while the fourth one kept a lookout. Two young women aged respectively 17 and 18 years, daughters of the householder, hearing that the intruders were in the house and ransacking the rooms, locked themselves in a bedroom and telephoned for help, only to find that the intruders were attempting to pry open the bedroom door and unscrew the door handle. They were terrified. One of them screamed for help and that caused the intruders to leave the house and escape in a car. The stolen items described in the charge were not recovered.

On the 9<sup>th</sup> of June 2014 the appellant was sentenced to 37 months' imprisonment and 3 strokes, the prison term to take effect from the 5<sup>th</sup> of June, 2014. The trial judge noted that the appellant had recently been released from imprisonment having been sentenced on the 13<sup>th</sup> of May, 2013 to 14 months' imprisonment for two offences of theft. Commenting that all the charges should have been tried together, the judge decided to treat the appellant as a first offender. This court has on a number of occasions observed that it is undesirable where there is a series of offences to try some charges in one tribunal and the rest in another though it is true that on rare occasions it is unavoidable. Piecemeal sentencing by more than one judge can lead to injustice. We find that in the present case it was not practicable for all the charges to be tried together but the judge was alive to the situation and took the circumstances into account when imposing the sentence now under consideration.

In mitigation the appellant who is aged 24 and has a wife and two children professed remorse. He described to us the adverse effect his imprisonment is having on his family. Sadly, family hardship is usually caused when the breadwinner is sent to prison but that is not a matter which the court will normally take into account. Had he pleaded guilty like two of his co-defendants instead of running a spurious alibi defence the appellant would have received a lighter sentence. He has brought his situation upon himself. The sentence for the serious offence of housebreaking was appropriate and in keeping with the sentences imposed on his co-defendants, being neither wrong in principle nor manifestly excessive. There is no merit in the appeal.

The appeal against sentence is dismissed.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**