

HAJI AHMAD BIN HAJI TAMIN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 15 of 2018)**

Before: Burrell P, Seagroatt and Lunn JJ A.

14th November 2018

Sentence-appeal against a sentence of 6 years' imprisonment on a plea of guilty to an offence of arson in a commercial building, contrary to section 435 (1) (c) of the Penal Code, Cap. 22 dismissed. The offence was pre-planned by the appellant, a 57-year-old man with no previous convictions. Having driven in his motorcar to the premises from his home in the early hours of the morning, the appellant started the fire with a bottle of kerosene, which he ignited as a revenge attack against the owners of a neighbouring vendors Booth. Then, he left the premises and returned home in his motorcar. Over one hundred persons were evacuated from adjoining domestic premises. The damage to the premises was very extensive, the estimated cost of repair of which was \$134,800.

Appellant in person

DPP Siti Nurjauinah@Karmila Binti Haji Kula and DPP Nurul Fitri Binti Kiprawi for the Respondent

Cases cited in the Judgment:

Public Prosecutor v Roslan Bin Yousof (Criminal Trial No. 23 of 2000)

Mohammad Sharin Bin Awang Zani v Public Prosecutor (Criminal Appeal No. 18 of 2014)

Tan Hie Kiong v Public Prosecutor (Criminal Motion No. 12 of 2016)

Lunn, JA.:

1. The appellant appeals against the sentence of 6 years' imprisonment imposed by Dato Paduka Chong, Chief Justice on 10 September 2018, following his plea of guilty on 4 September 2018 to a charge of arson on 4 April 2018, contrary to section 435 (1) (c) of the Penal Code, Cap 22 by committing mischief by fire, inside a commercial building, namely Bangunan Halimutal Saadiah, Gadong in Brunei Darussalam intending to cause damage or knowing it to be likely to a vendor's booth in those premises.

Statement of Facts

2. In accepting the Statement of Facts as the basis of his conviction, the appellant acknowledged that, having driven from his home at Bangunan Thien Kong, Kampong Pular Ulak by motorcar, at about 02:15 hours on 4 April 2018 he entered that building and set fire to tissue inserted into a plastic bottle containing kerosene, which he placed on top of Booth No. 1, operated by Hajah Fatima (a typographical error in the Statement of Facts for Hajah Fauziah) on the ground floor of Bangunan Halimutal Saadiah. That booth adjoined Booth No. 2, which he and his wife operated. Then, the appellant left the premises immediately and, having returned to his motorcar, drove home.
3. The alarm as to the fire having been raised by a tenant, who lived in the building, about 03:00 hours, officers and firemen attended the premises, by which time smoke had spread within the building. About one hundred people living in the building were evacuated as thick smoke spread throughout the building. A man who had been forced to jump from the 2nd floor to escape was injured in doing so.
4. With the assistance of CCTV footage recorded at about the time of the fire of the immediate area outside Bangunan Halimutal Saadiah, the police began a search for the appellant. In the event, the appellant surrendered to Central Police Station at about 08:30 hours on 5 April 2018. In subsequent written statements made to the police, the appellant admitted having started the fire. He had done so intending to cause damage to Hajah Fauziah, against whom he harboured ill-feelings arising from disputes he and his wife had with her and accusations she made against him, so that he felt *“driven by his ill-feelings and revenge”* towards her. (Statement of Facts, paragraph 9)
5. The appellant accepted that the estimated cost of the damage to the premises was \$134,800.

Reasons for sentence

6. Having referred to the judgment of Hayati, J in *Public Prosecutor v Roslan Bin Yousof* (Criminal Trial No. 23 of 2000) and the judgment of this Court in *Mohammad Sharin Bin Awang Zani v Public Prosecutor* (Criminal Appeal No. 18 of 2014), in which the appropriate sentences to be imposed in respect of offences contrary to section 435 (1) (c) were considered, Chong CJ said that arson was a serious offence *“even when life is not endangered”*. He went on to add that the commission of the offence by the appellant was a *“premeditated and deliberate act of arson in a commercial building motivated by revenge”*. Of that, he said: (page 3)

“Whatever the defendant’s grievance, real or imagined, against Hajah Fauziah may be, it does not mitigate his criminal act. Whilst the defendant had no intent to put the life of anybody in danger the fact of the matter is that his criminal act endangered

100 lives. Fortunately, although substantial damage was caused to the building, only one person was injured.”

7. In consequence, Chong CJ said that “*a severe sentence is necessary for the protection of the public*” and stipulated a starting point for sentence of 9 years’ imprisonment. Then, having noted that the appellant was a man aged 57 years with no previous criminal convictions, who had not only surrendered to the police but also had admitted the offence and pleaded guilty, Chong CJ afforded the appellant a discount of one-third from that taken as the starting point for sentence. In the result, the appellant was sentenced to 6 years’ imprisonment.

The appellant’s submissions

8. In support of his appeal, the appellant invited this Court to have regard to his age, the various illnesses from which he suffered, namely diabetes, high blood pressure, high cholesterol and the fact that he had suffered from a stroke. Also, he invited the Court to note that his wife was Filipina and that she had no family in Brunei. His daughter, Fazalina Binti Haji Ahmad, said in the Notice of Appeal that, having suffered from unconsciousness and convulsions last year, the appellant had been detained in the RIPAS Hospital.

The respondent’s submissions

9. Helpfully, counsel for the respondent provided the Court with a bundle of photographs which depicted different floors of the building. Those photographs show the seat of the fire and the extensive damage caused to the ground floor. Also, the photographs depicted damage caused by fires to electric junction boxes on the 1st and 2nd floor of the building. The 1st floor was occupied by business premises, whereas multiple domestic premises occupied by families, some of whom were foreign workers, were situated on the 2nd floor. Smoke damage was evident in photographs of the 2nd floor.
10. In their written submissions, counsel for the respondent contended that at the time that the appellant had set fire to the Booth the appellant “knew... the building was occupied by tenants” and that “the tenants would be asleep in the building”. Further, that the appellant had started the fire “knowing the fire would spread to the rest of the building and possibly injuring the tenants inside.” In her oral submissions, Ms Siti Nurjauinah said that knowledge was to be inferred from the fact that the appellant operated a business on the ground floor of the premises, although she acknowledged that there was nothing before the judge that indicated how long the appellant had operated that business.
11. It was submitted that the sentence imposed by the judge on the appellant of 6 years’ imprisonment was justified. Further, that the hardships suffered by the appellant’s family and his own ill-health were not relevant to the imposition of the appropriate sentence of imprisonment.

Discussion

12. As the Chief Justice noted in his reasons for sentence, originally the appellant had been charged with mischief by fire *“with intent to destroy a building used as a place for human dwelling, contrary to section 436 of the Penal Code.”* However, *“On 4 September 2018, upon representations made by counsel for the defendant the Public Prosecutor preferred an alternative charge of mischief by fire with intent to cause damage to property inside a building, contrary to section 435 (1) (c) of the Penal Code.”* On that date, the appellant pleaded guilty to the alternative charge.
13. In context, it is to be noted from the Notes of Proceedings that, although the appellant was originally unrepresented, on 10 July 2018, he became represented by Mr Rozaiman on a *pro bono* basis. On that date, proceedings were adjourned for Mr Rozaiman to make representations to the Public Prosecutor. Those representations having been made, the hearing of 21 August 2018 was adjourned on the application of counsel representing the Public Prosecutor *“to consider the representations made.”* It was in those circumstances that, on 4 September 2018, the appellant pleaded guilty to the alternative charge presented on that date and accepted the Statement of Facts tendered to the judge.

The Statement of Facts

14. The Statement of Facts noted that the appellant was an employee of Radio Television Brunei and that, in addition, *“he also operated a small business with his wife selling goods at a vendor’s booth which was located on the ground floor at Bangunan Halimutal Saadiah.”* Although the Statement of Facts went on to state that the appellant had made four statements to the police on four separate days in April 2017, in which he had *“made admissions that he started the fire on Hajah Fauziah’s booth and he outlined how he committed the said act”*, no reference was made to any admission by the appellant in respect of the period of time over which the appellant and his wife had operated their business, his involvement in those operations or of any knowledge that he had of activities that were carried on in the upper floors of the building. Moreover, counsel for the respondent confirmed that no translation of the Malay original of those written statements by the appellant to the police had been prepared and put before the Chief Justice or were available to be put before this Court.
15. Clearly, the appellant’s plea of guilty to the alternative charge and his acceptance of the Statement of Facts were made at a time when he was represented by counsel and in the context of *“representations”* made by the defence to the prosecution. No doubt, the content of the Statement of Facts was a matter considered carefully by both parties. In those circumstances, it is not for the prosecution to seek to introduce new matters in respect of the appellant’s knowledge at this stage before this Court.

16. In *Public Prosecutor v Roslan Bin Yusof*, following the defendant's pleas of guilty, Hayati J sentenced the defendant to 7 years' imprisonment on each of eleven charges of arson, contrary to section 435 (1)(c) of the Penal Code, in circumstances where he had first set fire to his own home and then had caused the destruction of the other ten homes, the subject of the other charges. In doing so, the judge identified general principles applicable to sentencing for arson in those circumstances. In *Mohammad Sharin Bin Awang Zani v Public Prosecutor*, in dismissing the appellant's appeal against the sentence of 3 years' imprisonment for a similar offence, this Court approved of the trial judge's recourse to the principles identified by Hayati J, noting that they were (page 2):

- "1) the nature of the premises attacked whether they were known or likely to be occupied;*
2) the degree of planning, if any;
3) the motive for the offence, including whether any individual owners of the premises are targeted as act of revenge;
4) whether any meaningful steps were taken to raise the alarm;
5) the damage which might have been expected and which did in fact result;
6) the defendant's state of mind;
7) whether he might in time present a danger to the victim or the public."

It is clear from the judge's reasons for sentencing that he was mindful of these factors in identifying the appellant's culpability.

17. Obviously, the judge was entirely justified in determining that the appellant's conduct was *"premeditated and deliberate"* and that, in acting in revenge for his perceived grievance against Hajah Fauziah, he was targeting an owner within the premises. Given that the fire was begun in the middle of the night, it was to be expected that it would have taken hold before any attempts could be made to extinguish the fire. Relevant to that issue was the fact that the appellant left the scene without taking any steps to raise the alarm.
18. In all the circumstances, the judge was entitled to determine that a "severe" sentence was necessary for the protection of the public. In our judgment, the starting point of 9 years' imprisonment and the sentence of 6 years' imprisonment imposed on the appellant were entirely appropriate.
19. Whilst the Court sympathises with the appellant for what we are told is the ill-health from which he suffers, that is not relevant to the appropriateness of the sentence imposed on the appellant. As counsel for the respondent pointed out in their helpful written submissions, observations to that effect were made by Dato Seri Paduka Hj Kifrawi, CJ in his judgment in *Tan Hie Kiong v Public Prosecutor* (Criminal Motion No. 12 of 2016): (paragraph 7)

"As regards the defendant's health, the courts in England and Hong Kong have commented that the ill-health of an accused person is not a licence to commit crime,

nor should be used as a shield by an accused person from the consequence of his conduct.

I agree that, in general, an accused's ill-health should not be treated as a mitigating factor except for exceptional circumstances where judicial mercy may be exercised."

20. As was noted in that judgment and in various judgments in England and Wales and Hong Kong one powerful reason for that approach is that the medical needs of prisoners are accommodated by the prison authorities.

Conclusion

21. For the reasons we have given, we are satisfied that there is no merit in the appellant's appeal, which is dismissed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A