

**ABDUL RASHID BIN HJ LIBUT**

**AND**

**PUBLIC PROSECUTOR**

---

**Court of Appeal of Brunei Darussalam  
(Criminal Appeal No. 20 of 2020)**

---

**MOHD SOFIAN BIN HAJI MD HASSAN**

**AND**

**PUBLIC PROSECUTOR**

---

**Court of Appeal of Brunei Darussalam  
(Criminal Motion No. 3 of 2022)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of Hearing: 1 November 2022

Date of Judgment: 22 November 2022

*Headnote: sentence-Libut's appeal allowed in one respect only. Judge's order that the effective date of sentence be the date of sentence, quashed; order made that the effective date of sentence was to run from the date the appellant was remanded in custody by an order made under the Criminal Law Preventive Detention Order. Sofian-application for leave to appeal out of time dismissed.*

**Criminal Appeal No 20 of 2020**

Applicant in person

DPP Dayangku Didi-Nuraza binti Pengiran Haji Abdul Latiff for Respondent

**Criminal Motion No 3 of 2022**

Applicant in person

DPP Dayangku Didi-Nuraza binti Pengiran Haji Abdul Latiff for Respondent

**Cases cited in the Judgment:-**

*Ajizul Bin Dagang v Public Prosecutor (Criminal Appeal No. 8 of 2019; unreported, 26 November 2019.)*

Lunn, JA:

1. We heard the appeal against sentence of Abdul Rashid Libut and the application for leave to appeal against sentence of Muhammad Sofian Hassan sequentially. They were

convicted of numerous charges, after a joint trial, together with other co-defendants, by HHJ Faisal, in the Intermediate Court on 28 November 2020. Following his pleas of guilty on 20 July 2020, and following his acceptance of the Statement of Facts, on 22 July 2020 Libut was convicted, of 7 other charges. Sentencing was adjourned until the conclusion of his trial.

### *Notices of appeal*

2. Libut appeals his sentence by a Notice dated 22 December 2020, filed by his wife, whereas Sofian seeks leave to appeal his sentence out of time by a Notice filed by his wife on 17 January 2022, more than 12 months out of time.

### *Trial*

3. After trial, Libut and Sofian were convicted by HHJ Faisal on 28 November 2020 of:
  - two joint offences of theft of motor cars (Charge 8 and Charge 45), contrary to section 379; and
  - two joint offences of housebreaking by night (Charge 9 and Charge 11, contrary to section 457 of the Penal Code.
4. In addition, Libut was convicted of;
  - three other offences of theft of motor cars (Charges 22, 44 and 46);
  - and an offence of dishonestly receiving or retaining a stolen motorcar (Charge 35), contrary to section 411 of the Penal Code.

For his part, in addition Sofian was convicted of two other offences of theft of motor cars (Charges 6 and 12).

### *Pleas of guilty*

5. Earlier in the proceedings, on 22 July 2020, Libut had been convicted on his pleas of guilty of:
  - two other offences of theft of motorcars (Charges 6 and 22);
  - four offences of dishonestly assisting in disposing /or receiving and retaining stolen property, including two motorcars (Charges 24, 28, 33 and 43) ;and
  - an offence of making false representations to an Immigration officer in respect of a Brunei passport, contrary to section 12 (1) of the Passport Act, Cap 146.
6. The offences of which Libut and Sofian were convicted occurred in the overall period of 16 February 2018 to 7 September 2018.

### *Sentencing*

#### *The Facts*

7. At the outset of sentencing, the judge said that the facts of the case were to be found in his Judgment. The factual basis on which Libut's pleas of guilty had been accepted was contained in the Statement of Facts.

8. In his Judgment, the judge said that the heart of the prosecution case lay in the testimony given by five accomplice witnesses. They had been convicted and sentenced. They testified of having committed offences such as housebreaking and theft of motor vehicles or both with at least one or other of Libut and Sofian. He accepted that evidence. The effect of their evidence was to show:

*“...an ongoing operation to steal vehicles and to bring them across the border and (to) be sold, presumably for profit. In the middle of the operation, lies D13 (Abdul Rashid Libut). Apart from D13, D2 (Mohammad Sofian Hassan) was the other defendant most involved in committing the offences.”*

#### *Charges 9 and 22*

9. Illustrative of that overall finding was the judge’s acceptance of the evidence of the accomplice (PW 14) Azizol Zaaidi of the circumstances in which he, together with Libut and Sofian had broken into domestic premises at night by forcing open the front door and stolen property, including a safe deposit box containing foreign currency and jewellery, together with the keys to a Lexus motorcar parked at the premises. (Charge 9) Later that day, on Libut’s instructions, he had returned to the premises and stolen the Lexus motorcar, which was taken to Miri, Sarawak by Libut and sold for RM 70,000. (Charge 22) The Judge convicted Libut and Sofian of the housebreaking and Libut of the theft of the motor vehicle.

#### *Charge 6*

10. In convicting Sofian of the theft of a Toyota Prado on 10 July 2018, the judge accepted the evidence of the accomplice witness Azizol of the circumstances in which the vehicle had been stolen, in particular that Sofian was one of a number of men travelling together in a Toyota Vios following the Toyota Prado. After it had been parked, they used a key that had been stolen in an earlier housebreaking to enter the Toyota Prado and drive it away. Similarly, the judge accepted admissions made by Sofian in a statement to the police that he was a party to the theft of the vehicle and, more particularly that he had driven the vehicle to Kuala Belait, from where it was taken over the border to Miri to be sold.

#### *Charge 12*

11. In convicting Sofian of the theft of a Suzuki Swift motorcar on 6 July 2018, the judge accepted the evidence of the accomplice Sharizam that Sofian had used a set of keys to enter and steal the motorcar from where it was parked near the Jubilee Mosque in Kampong Jangsak. Similarly, the judge accepted admissions made by Sofian in a statement to the police that he was a party to theft of the vehicle. Later, the vehicle was recovered by police from where it was parked in the street.

#### *Mitigation*

12. The judge noted that both Libut and Sofian asked for leniency in sentencing on the basis of the hardship that would be suffered to their families and their absence. Sofian was a 47 year-old Bruneian, married with three children, two of whom were still at school. Libut

was 36 year-old Bruneian married to a Filipina, with whom he had three children. She had no family in Brunei.

### *Criminal record*

13. The judge noted that Libut had previous convictions for theft related offences:
- on 5 November 2007, he had been sentenced to one year's imprisonment for an offence contrary to section 380 of the Penal Code, theft in a dwelling house;
  - on 30 May 2013, he had been sentenced to a total of 4 years' imprisonment for another offence contrary to section 380 and for an offence contrary to section 406 of the Penal Code, criminal breach of trust.
14. In sentencing, the judge said that Libut and Sofian were "...active members of a gang" involved in systematically stealing motor vehicles and taking them across the border to sell to buyers in Miri, Sarawak. He noted that between them ten motor vehicles were involved, observing that most of them were unrecovered. Of those circumstances, he said that it may be necessary to consider a higher starting point. Finally, he noted that Libut and Sofian were also involved in housebreaking.
15. Of the seriousness of the offence of housebreaking at night, contrary to section 457, the judge adverted to the statements of Justice Stephen Chong, as the Chief Justice was then, in sentencing in the High Court in *Public Prosecutor v Rari Kako*<sup>1</sup>, in which he had noted that not only was the offence prevalent but also that it was difficult to detect, so that it required a deterrent sentence. In that case, the Chief Justice had imposed a sentence of 5 years' imprisonment and 5 strokes.

### *Starting point*

16. The judge stated that in sentencing Libut and Sofian he took the following starting points for sentence:
- 24 months' imprisonment for the offences of theft of a motor vehicle, contrary to section 379; and
  - 5 years' imprisonment and 5 strokes for the offences contrary to section 457 of the Penal Code.
17. For Libut's offences of dishonestly receiving or retaining stolen property, contrary to section 411, he stipulated different starting points for sentence, apparently related to the property concerned:
- motorcars (Charges 33 and 35 )-18 months imprisonment;
  - a mountain bike (Charge 28)- 12 months imprisonment; and
  - Pajero wheel rims (Charge 43)-6 months imprisonment.

### *Discount for pleas of guilty*

18. In sentencing Libut, the judge afforded him a discount of one-third from that taken as a starting point in respect of the offences to which he had been convicted following his plea of guilty.

---

<sup>1</sup> (Criminal Trial and No. 7 of 2008.)

*Sentencing*

(i) Libut

19. Accordingly, the judge imposed the following sentences on Libut for the following offences:

Section 457 : Charges 9 and 11- 5 years' imprisonment and 5 strokes;

Section 379 : Charges 8, 45 and 46- 24 months' imprisonment;  
Charges 6 and 22- 16 months' imprisonment; and

Section 411 : Charge 35-18 months' imprisonment;  
Charges 24 and 33-12 months' imprisonment;  
Charge 28-9 months' imprisonment; and  
Charge 43-4 months' imprisonment.

For the offence contrary to section 12(1) of the Passport Act (Charge 20), the judge imposed a fine of \$1,000 ordering that, in default of payment, he serve 3 months' imprisonment.

*Charge 44*

20. It is to be noted that, although the judge had convicted Libut for the offence the subject of Charge 44, and had identified it in his sentencing remarks as one of the charges for which Libut was to be sentenced, nevertheless in imposing sentence he did not impose any sentence. Similarly, the judge did not make any reference to Charge 44 in the Warrant of Commitment, dated 28 November 2020.<sup>2</sup>

*Totality*

21. The judge stated that, having regard to his criminality and the appropriate totality of sentence, he ordered that the sentences of imprisonment imposed in respect of Charges 8, 9 and 43 be served consecutively and that all other sentences of imprisonment be served concurrently with that imposed in respect of Charge 9. The strokes were to be non-cumulative.

22. Accordingly, the total sentence imposed on Libut was 7 years and 4 months' imprisonment and 5 strokes, together with a fine of \$1,000, in default of payment of which the applicant was to serve 3 months' imprisonment.

(i) Sofian

23. The judge imposed the following sentences on Sofian:

Section 457 : Charges 9 and 11- 5 years' imprisonment and 5 strokes; and

Section 379 : Charges 6, 8, 12 and 45- 24 months' imprisonment.

*Totality*

24. The judge said that, having regard to his criminality and the appropriate totality of sentence, he ordered that the sentences of imprisonment imposed on Sofian in respect of Charges 8, 9 and 43 were to be served consecutively, but that all the other sentences of

---

<sup>2</sup> *HHJ Faisal's Judgment*; 28 November 2020, page 14.

imprisonment were to be served concurrently to the sentence imposed in respect of charge nine. The strokes were to be non-cumulative.

25. Accordingly, the total sentence of imposed on Sofian was 7 years' imprisonment and 5 strokes.

*Grounds of appeal against sentence*

*Libut's submissions*

26. In the Notice of appeal filed on behalf of Libut, his wife sought the mercy of the court and invited the court to have regard to the hardship visited on her family of three children, deprived of their father's support and without any family of her own in Brunei. In addition, she asked that the judge's order that the effective date of sentence be that of sentencing, namely 28 November 2020, be varied to commence at the date when her husband was remanded in custody in September 2018.
27. In a letter to the Court, dated 15 August 2022, Libut invited the court to reduce the sentence and the number of strokes he had been ordered to receive. Further, he asked that his sentence be ordered to be effective from the time that he had been arrested and remanded in custody on 7 September 2018. Further, he complained that the Prisons Department had refused to afford him the reduction in sentence of one-third given to prisoners for good behaviour in prison. Finally, he asked that consideration be given to the hardship visited on his family by the fact of his lengthy incarceration.

*Sofian's submissions*

28. The submission made on behalf Sofian was that there be a reduction in the length of his sentence and in the number of strokes to which he was to be subject. In submitting the Notice, his wife had asserted that the failure to make the application in time was because she was unaware of the "leave to appeal." At the hearing Sofian explained that because of Covid-19 restrictions he had received no family visits whilst imprisoned. The Notice was filed after his family was able to visit him.

*The respondent's submissions*

*Starting point for sentence*

29. DPP Didi submitted that, the appropriate starting point for sentence for the following offences contrary to the various sections of the Penal Code was:
- section 457- absent unusual circumstances, 5 years' imprisonment and 5 strokes;
  - section 379- 12 months' imprisonment for a person of clear record, to be increased for multiple offences;
  - section 414-18 months' imprisonment; and
  - section 411-a range of starting points to reflect the value of the property.

*Sentence*

30. DPP Didi submitted that the individual sentences and totality of sentence imposed on Libut and Sofian were entirely justified, having regard to the planned and sustained nature of their organised criminality.

31. She acknowledged that whilst Libut had a criminal record, Sofian had no criminal record. In that context, whilst the starting point for sentence taken for the theft of vehicles charges of which Sofian was convicted might seem higher than normal, those sentences had to be viewed against the findings by the judge of multiple aggravating features in the commission of those offences.

*Commencement of sentence*

32. In response to Libut's submission that the effective date of the sentence should be stipulated to be 7 September 2018, rather than 28 November 2020, in her written submissions DPP Didi provided the Court with a most helpful tabular chronology, from which it is clear that, having been arrested by the police on 7 September 2018, Libut was detained by the police and remanded in custody by the court thereafter until 6 October 2018. On that date two related events occurred: first, Libut was placed in Detention under the Criminal Law Preventive Detention Order for one year and secondly, the prosecution withdrew the charges against him, pursuant to section 186 of the Criminal Procedure Code. Thereafter, Libut was detained under the original Detention order and subsequently under renewed year-long Detention orders made under the Criminal Law Preventive Detention powers on 5 October 2019 and 5 October 2020.
33. DPP Didi reminded the court of its judgment in *Ajizul Bin Dagang v Public Prosecutor*<sup>3</sup>, in which the appellant was detained in similar circumstances to Libut. This court quashed the judge's order that the appellant's sentence was to be effective from the date of sentencing. In its place, it ordered sentence to be effective from the date that the appellant was first remanded in custody. In those circumstances, as was to be expected of her, DPP Didi acknowledged that Libut's sentence ought to be commenced on 7 September 2018, when he was first placed in custody.

*Discussion*

*Overall culpability*

34. Clearly, the judge was entitled to determine that Libut and Sofian were active members of a gang systematically stealing motor vehicles and bringing them across the border into Sarawak to sell them. That conduct was related to their housebreaking offences. Equally, the judge was entitled to determine that Libut was, "...in the middle of this operation" and that Sofian was the other person most involved in the commission of the offences.

*Libut*

35. We accept DPP Didi's submission that of particular relevance to the assessment of the culpability of Libut is the fact that he was convicted of offences involving a total of 10 stolen motorcars: the theft of 7 motorcars; the dishonest receipt or retention of 2 stolen motorcars in an attempt to assist in the disposal of another stolen motorcar. Six of the vehicles were unrecovered. Although, the court had been provided with no assessment of the value of the motor cars, clearly it was of significance and the loss substantial.

---

<sup>3</sup> *Ajizul Bin Dagang v Public Prosecutor* (Criminal Appeal No. 8 of 2019 at paragraphs 46-50; unreported, 26 November 2019.)

36. Clearly, Libut's conduct demonstrated sustained lawlessness in the commission of serious criminal offence,s which resulted in significant loss to the victims of their conduct. We are satisfied that the judge was correct to assess Libut's role as being at the middle of an ongoing operation to steal motorcars and transport them out of Brunei into Sarawak for profit.
37. We are satisfied that the judge was correct in determining the individual sentences that he imposed on Libut and in the orders that he made that some of those sentences be served consecutively. The total sentence of imprisonment and strokes imposed on Libut by the judge was fully justified. There is no merit in these grounds of appeal.

*Remission of sentence for good behaviour*

38. Libut's complaint that the Prison's Department had informed him that they refused to allow him a one-third remission of sentence for good behaviour was not supported by any evidence from Libut. In any event, it is not a matter within the remit of this court. The remission system is governed by Part VI of the Prisons Rules of the Prisons Act.

*Hardship*

39. Whilst we accept that an inevitable consequence of a long period of incarceration in prison will visit hardship on the family of prisoners, that is a matter that flows from their culpability for their conduct and is not a matter to which this court can have regard.

*The effective date of sentence*

40. As noted earlier, at the conclusion of sentencing of Libut, on 28 November 2020 the judge ordered that sentences of imprisonment to take effect on that date. He made that order, notwithstanding the request from Libut in mitigation that the effective date of sentence run from the day that he had been arrested and detained in custody, namely 7 September 2018.
41. As DPP Didi pointed out, the issue that arose from that, having been arrested and detained by the police, Libut had then been detained under an order made pursuant to the Criminal Law Preventive Detention Order. For his part, Libut told the judge at his sentencing that, notwithstanding that he had been detained in the same circumstances, a fellow prisoner Mohd Khairol Azizan bin Abd Karim had benefitted from a sentence imposed by Judge Masni in which the effective date of sentence was fixed as the date of his first remand in custody. The judge indicated that he disagreed with that decision . Then, DPP Mu'izzah confirmed the appellant's assertion that the Court of Appeal had made the same order in its judgment in *Ajizul Bin Dagang v Public Prosecutor*. He was another co-defendant of the appellant. Regrettably, notwithstanding that he had been given that information, the judge went on to make made the order referred to earlier. He fell into error in doing so. As we told Libut at the outset of his appeal, given DPP Didi's most sensible concession, we intended to quash the judge's order and in its place order that the effective date of sentence be 7 September 2018.

*Conclusion*

42. Accordingly, we allow Libut's appeal against sentence, but only to the extent that we quash the judge's order that the effective date of sentence be 28 November 2020. In its place, we order that the effective date of sentence be 7 September 2018.

*Sofian*

43. Prior to his conviction after trial of 4 charges of theft of motorcars and 2 charges of housebreaking by night, Sofian was man with no criminal convictions. Moreover, he was a man of mature years, married with children. However, his multiple convictions evidence his role in being actively involved in an ongoing operation to steal motorcars to take them across the border to Miri, Sarawak to be sold for a profit. Obviously, considerable loss was caused to the victims of his offences, which occurred over the period February 2018 to August 2018.

44. We are satisfied that the sentences of 2 years' imprisonment that the judge imposed on Sofian for each of the 4 charges of theft of a motor car was justified, having regard to the context in which the offences were committed, namely that Sofian was actively involved in a series of carefully planned thefts, together with other culprits, as part of an operation to steal motorcars, some of which were successfully taken across the border to be sold.

45. Having regard to all the circumstances, we are satisfied that the total sentence of 7 years and 5 strokes imposed on Sofian was not manifestly excessive.

*Conclusion*

46. Accordingly, Sofian's application for leave to appeal against sentence out of time is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**