

MUHAMMAD ZULAZLAMIE BIN ZOEALALIFFIN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 28 of 2014)**

Before: Mortimer P, Leonard and Burrell JJ A.
4th November 2014

Applicant in person
DPP Karen Tan Chai Mei for Respondent

Leonard, JA.:

The appellant Mohammad Zulazlainie bin Zoelaliffin who was the third (D3) of 6 defendants, after agreeing a statement of facts, pleaded guilty before the Intermediate Court to the following eleven charges.

2nd Charge (against D1 and D3 only)

That both of you, in furtherance of your common intention, in the early hours of 23rd January 2014 in the vicinity of Bangunan Wisma Pg Hj Apong, Spg 150, Kg Kiulap in Brunei Darussalam, did commit theft of a white Toyota Super Kijang bearing registration number BV 545 belonging to Pg Hjh Ajjah binti Pg Hj Ahmad and that both of you have thereby committed an offence punishable under section 379 of the Penal code, Cap 22 read with section 34 of the same.

3rd Charge (against D1, D3 and D6 only)

That all of you, in furtherance of your common intention, after the hours of sunset on 2nd March 2014 and before the hour of sunrise on 3rd March 2014 at No 11, Spg 508, Jln Muara, Kg Sg Hanching in Brunei Darussalam, did commit housebreaking by night by entering into the said premise belonging to Teo Seng How, used as a human dwelling, in order to commit an offence, to wit theft, and that all of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

4th Charge (against D1 and D3 only)

That both of you, in furtherance of your common intention, sometime in the early hours of 3rd March 2014 at No 11, Spg 508, Jln Muara, Kg Sg Hanching in Brunei Darussalam, did commit theft, to wit, one black Honda CRV bearing registration number BAH 9831 belonging to Teo Seng How and that both of you have thereby committed an offence punishable under section 379 of the Penal code, Cap 22 read with section 34 of the same.

5th Charge (against D1 and D3 only)

That all of you, in furtherance of your common intention, after the hours of sunset on 20th March 2014 and before the hour of sunrise on 21st March 2014 at Seri Kiantan Restaurant did commit housebreaking by night by entering into the said restaurant used for the storage of property, in order to commit an offence, to wit theft, and that both of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

6th Charge [previously 1st charge in charge sheet dated 20th May 2014] (against D1, D2 and D3 only)

That all of you, in furtherance of your common intention, after the hours of sunset on 25th March 2014 and before the hour of sunrise on 26th March 2014 at No 9, Jln 2, Spg 10, Perpindahan Lambak Kanan in Brunei Darussalam, did commit housebreaking by night by entering into the said premise belonging to Hj Ghazali bin Hj Ibrahim, used as a human dwelling, in order to commit an offence, to wit theft, and that both of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

7th Charge (against D1 and D3 only)

That both of you, in furtherance of your common intention, sometime in the early hours of 3rd March 2014 in the vicinity of the parking lot in front of Restoran Piring Emas in Brunei Darussalam, did commit theft, to wit, one Toyota Corolla bearing registration number BP 2696 in the possession of Hanybal Lomansag Bona and that both of you have thereby committed an offence punishable under section 379 of the Penal code, Cap 22 read with section 34 of the same.

10th Charge (against D3 and D4 only)

That both of you, in furtherance of your common intention, after the hours of sunset on 10th May 2014 and before the hour of sunrise on 11th May 2014 at Small Village Restaurant, Kg Keriam, Tutong in Brunei Darussalam did commit housebreaking by night by entering into the said restaurant used for the storage of property, in order to commit an offence, to wit theft, and that both of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

11th Charge (against D2, D3 and D4 only)

That all of you, in furtherance of your common intention, after the hours of sunset on 12th May 2014 and before the hour of sunrise on 13th May 2014 did commit housebreaking by entering one Sing U. Me Restaurant, Warisan Mata-Mata Complex, in Brunei Darussalam, a building used for the custody of property, in order to commit an offence, to wit theft, and that both of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

13th Charge (against D3 and D4 only)

That both of you, in furtherance of your common intention, after the hours of sunset on 14th May 2014 and before the hour of sunrise on 15th May 2014 at KTM Café House, Sengkurong in Brunei Darussalam did commit housebreaking by night by entering into the said restaurant used for the storage of property, in order to commit an offence, to wit theft, and that both of you have thereby committed an offence punishable under section 457 of the Penal Code, Cap 22 read with section 34 of the same.

14th Charge (against D1 and D3 only)

That both of you, on the 8th day of June 2014, sometime between 11.00 a.m and 5.00 p.m, in furtherance of your common intention, did commit housebreaking by entering into house No 6, Staff Quarters, Agro Technology Park, Agricultural Department, Kg Tungku in Brunei Darussalam, used as a human dwelling in order to commit an offence punishable with imprisonment, to wit, theft, and that both of you have thereby committed an offence punishable under section 454 of the Penal Code, Cap 22 read with section 34 of the same.

15th Charge (against D3 only)

That you in the early hours of 9th June 2014, in the vicinity of NRA Restaurant Menglait Gadong, in Brunei Darussalam, did commit theft of a Suzuki Swift bearing registration number BK 648 belonging to one Dimyati, and that you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22.

Maximum Penalty under section 379 Penal Code

Maximum imprisonment of 3 years and fine (unspecified)

Maximum Penalty under section 454 Penal Code

Imprisonment for a term which may extend to 5 years and with whipping, and if the offence intended to be committed is theft the term of imprisonment may extend to 10 years

Penalty under section 457 Penal Code

Imprisonment for a term which may extend to 5 years and with whipping, and if the offence intended to be committed is theft the term of imprisonment may extend to 15 years

The 2nd, 4th, 7th and 15th charges are for theft of motor vehicles. The 3rd, 5th, 6th, 10th, 11th, 13th and 14th charges are for housebreaking, all but 2 of them by night and the facts, which it is not necessary to recite in detail, reveal an all too familiar pattern of young men, acting together, committing numerous thefts of cars and housebreakings, stealing what they can find in the vehicles and the premises. It is well settled that such conduct merits deterrent sentences in view of the need to protect the public from the invasion of their homes and the theft of their belongings.

The appellant was sentenced as follows:

2nd Charge: 12 months' imprisonment
 3rd Charge: 30 months' imprisonment and 2 strokes.
 4th Charge: 12 months' imprisonment
 5th Charge: 30 months' imprisonment and 3 strokes
 6th Charge: 30 months' imprisonment and 3 strokes
 7th Charge: 12 months' imprisonment
 10th Charge: 30 months' imprisonment and 3 strokes
 11th Charge: 30 Months' imprisonment and 3 strokes
 13th Charge: 30 months' imprisonment and 3 strokes
 14th Charge: 24 months' imprisonment and 3 strokes
 15th Charge: 12 months' imprisonment

He now appeals against sentence.

In mitigation below the appellant asked for lenient concurrent sentences. He said that he stole because he was unemployed and had a family to support. He had two children (and a third child has since been born). His wife was working but her income was only enough to support their car loan.

The Intermediate Court Judge took as his starting point 36 months and 3 strokes for each offence of housebreaking and for the car thefts 18 months. In order to give credit for the guilty pleas, he reduced each term of imprisonment by 6 months. It is a general practice that a plea of guilty should attract a discount of one third. We can see no reason in the present case why that practice was not followed. Had it been followed, the sentences of 36 months would have been reduced to 24 months and the sentence of 24 months would have been reduced to 16 months. 3 strokes would have been reduced to 2 strokes.

The judge, applying the totality principle, ordered that the sentences on charges 3, 5 and 6 be concurrent. The sentences on charges 10, 11 and 13 were to be concurrent with each other. The sentence on charges 2, 4 and 7 were to be concurrent with each other and the sentence on charges 14 and 15 were to be concurrent with each other. The sentences on each group of charges were to be consecutive, making an effective sentence of 8 years imprisonment and all the whipping charges were ordered to be non-cumulative, giving an effective total of 3 strokes.

Had the eventual sentence been within the acceptable range we would not have interfered but bearing in mind the inadequate discounts given for the guilty pleas and the fact that

overall sentence seems to us to be manifestly excessive, representing as it does a sentence of 12 years after trial we will revisit the question of sentence.

The appeal against sentence is allowed, the sentences set aside and the following sentences are substituted.

- 2nd Charge: 12 months' imprisonment
- 3rd Charge: 24 months' imprisonment and 2 strokes.
- 4th Charge: 12 months' imprisonment
- 5th Charge: 24 months' imprisonment and 2 strokes
- 6th Charge: 24 months' imprisonment and 2 strokes
- 7th Charge: 12 months' imprisonment
- 10th Charge: 24 months' imprisonment and 2 strokes
- 11th Charge: 24 months' imprisonment and 2 strokes
- 13th Charge: 24 months' imprisonment and 2 strokes
- 14th Charge: 16 months' imprisonment and 2 strokes
- 15th Charge: 12 months' imprisonment

We order that the sentences on charges 2, 3, 4, 5 and 6 be concurrent with each other. The sentences on charges 7, 10, and 11 are to be concurrent with each other and consecutive to the sentences imposed on charges 2, 3, 4, 5 and 6. The sentence on charge 13, 14 and 15 are to be concurrent with each other and consecutive to the sentence on charges 7, 10 and 11, making a total effective sentence of imprisonment of 6 years. The strokes are to be non-cumulative.

Mortimer, P.

Leonard, J.A.

Burrell, J.A.