

NELSON MANCHA ANAK PO

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 3 of 2019)**

AMIRIZAL BIN MOHAMMAD

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 4 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.
14th November 2019

Headnote: Criminal damage/mischief as incidental to substantive offence of housebreaking to have concurrent sentence; prosecution practice of additionally charging such offence; series of housebreaking offences and concurrent sentences; disparity of sentence for more minor offender.

Criminal Appeal No 3 of 2019 and Criminal Appeal No 4 of 2019

Appellants in person

DPP Shamshuddin bin Haji Kamaluddin and DPP Sabrina binti Haji Mahmud for Public Prosecutor

Seagroatt, JA.:

These two appellants were part of a group of four defendants who appeared before Judge Mohammed Faisal on the 8th April 2019 having pleaded guilty to a series of mainly house-breaking offences contrary to sections 454 and 457 of the Penal Code.

The first appellant Nelson Mancha (2nd defendant) was involved with another in count 8 which involved attempted house trespass with intent to steal from the house, during the night, which was next door to his own. He acted as look-out. Nothing was in fact stolen. It appears that the house was unoccupied at the time. The damage caused in trying to effect entry was the subject of an ancillary charge. This was in late January 2019.

Early in February 2019 this appellant accompanied by another, broke into an unoccupied house in the early hours of the morning and stole a number of valuable items of which only two were eventually recovered: a laptop and mobile phone. He admitted that he shared the proceeds from the sale of a gold ring which was one of the items of property stolen.

In the same month this appellant, with another, again in the early morning hours, forced entry into a private house which was unoccupied, and stole a quantity of domestic items, some of which were sold with the proceeds being shared between the two of them. A quantity of electric sockets was damaged and some cable taken and sold. On that occasion the appellant admitted that he acted as lookout but also that he assisted in the removal of the property and shared in the sale proceeds.

Finally, in the same month of February 2019 after another person had broken into an unoccupied private house, and pulled out and cut the electric cables, this appellant went to the house with the colleague at about midday and collected the electric cable whilst the other acted as look out. They then stripped the cable and sold the wiring at a scrap yard, sharing the proceeds of sale.

The second appellant Amirizal (4th defendant) was convicted of a single count of house trespass at night, with another person, in or about mid-January 2019. They stole two loudspeakers which they eventually disposed of in exchange for drugs. The other person had been observing the house for about one week and had theft of the speakers as his objective.

In his submission supporting his appeal Nelson Mancha stressed that he had brought misfortune and shame upon his family, given full cooperation to the police, was remorseful and worried about his father's health.

The submission of Amirizal bin Mohammad contains similar concerns for his family, expressions of remorse, and underlines his full cooperation. We have taken these fully into account.

These two appellants had no previous convictions and both were unemployed. The sentences imposed respectively, were as follows:

Nelson Mancha:

8th charge: attempted housebreaking – 2 years 2 strokes.

9th charge: mischief (criminal damage) – 4 months.

These two charges were part and parcel of the same criminal offence.

10th charge: housebreaking – 2 years 2 strokes.

16th charge: housebreaking – 2 years 2 strokes.

All the sentences were ordered to run concurrently except that in respect of the 9th charge the sentence was to be consecutive, making a total of 2 years and 4 months and 2 strokes. Having stated that the sentences for the substantive offences had a starting

point of 3 years and 3 strokes the judge applied a discount of one-third to arrive at the effective sentences ordered.

We find that to order the 4 months sentence for the offence in count 9 – the damage committed in order to effect entry to the house-to be a consecutive sentence is wrong in principle since it is part and parcel of the substantive offence. We therefore quash this and make an order that it be concurrent. It was unnecessary to put this in the list of charges at the outset. However there were three offences of house-breaking and the gravity of that situation is not met by making all the sentences concurrent. In respect of count 16 we therefore order that 4 months of that sentence shall run consecutively to the other sentences making a total of 2 years and 4 months and 2 strokes. To that extent the appeal is allowed but the consequence is that the length of sentence remains unchanged.

Amirizal:

4th charge: housebreaking – 2 years 2 strokes and this was the result of a 3 years sentence discounted by one-third.

This appellant was involved in only one offence. The argument on his behalf that there should be disparity in the effective sentence imposed upon him and his co-accused – they both received the same sentence of imprisonment and number of strokes-is a valid one. But that disparity is now achieved by the overall difference between his sentence and that of his co-accused to which we add a reduction of one stroke leaving his sentence of imprisonment at 2 years plus one stroke.

To that extent his appeal is allowed.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A