

Shambri Bin Haji Tunjul

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2022)**

Steven Chong, C.J.; Seagroatt and Woolley, JJA

Date of Hearing: 4th June, 2024.

Date of Judgment: 12th June, 2024.

Criminal law – Theft – House trespass with intent to commit theft – Sentence

Appellant In Person.

PO Nur Hidayatul Aeny Alisah Hj Zullizam for Public Prosecutor.

Cases cited:

Mohammad Yusrin Bin Haji Mohammad v Pubic Prosecutor [2013] 2 JCBD 229

Public Prosecutor v Pg Abd Rahman Bin Pg Shahbuddin [2003] 1 JCBD 138

Saiful Irwan Bin Haji Simpol and Md Faizal Bin Rosli v Public Prosecutor [Criminal Appeal No. 36 of 2019]

Steven Chong, C.J.:

Introduction

On 3 August 2022 in the Intermediate Court the appellant pleaded guilty to one charge of house trespass with intent to commit theft contrary to section 451 of the Penal Code and two charges of theft contrary to section 379 of the Penal Code.

The Judge sentenced the appellant to an aggregate sentence of 3 years 6 months' imprisonment and a fine of \$3,000 or 3 months' imprisonment in default of payment.

The appellant appeals against that sentence.

The facts

In the early hours of 6 March 2019 the appellant and another man (“D2”) drove to Kampong Kupang in a Toyota Soluna looking for unoccupied houses in order to commit theft. The appellant stopped his car in front of the house of Haji Ariffin. D2 entered the compound and stole a chainsaw.

The duo then drove to another house nearby belonging to Awg Muhammad. The appellant entered the house alone and upon seeing Awg Muhammad asleep he went out to inform D2. Whilst the appellant stayed outside D2 entered the house and stole two mobile phones and a power bank.

After that the two men stole a generator from the compound of the house. The appellant then managed to start up Awg Muhammad’s Mitsubishi van and he drove away in it. D2 used the Toyota Soluna to carry the stolen items.

The chainsaw and one of the mobile phones were recovered by the police. The Mitsubishi van and the generator were found in a “burnt state”. Police investigation of CCTV footage from Haji Ariffin’s house capturing images of the Toyota Soluna car parked in front of his house and D2 entering the compound and carrying the generator to the car led to the arrest of the two men.

The sentence

The appellant has two previous convictions, one for theft and the other for drug consumption in 2006 and 2013 respectively.

In respect of the house trespass with intent to commit theft offence the Judge was guided by the decision of this court in *Mohammad Yusrin Bin Haji Mohammad v Public Prosecutor* [2013] 2 JCBD 229.

As to the theft offences reference was made to *Public Prosecutor v Pg Abd Rahman Bin Pg Shahbuddin* [2003] 1 JCBD 138.

The Judge decided on starting point sentences of 3 years’ imprisonment for the house trespass offence and 1 ½ years’ imprisonment for each of the theft offences.

As the appellant did not plead guilty to the charges at the first reasonable opportunity but did so only at trial after thirteen prosecution witnesses had giving evidence with four remaining the Judge, relying on the decision of this court in *Saiful Irwan Bin Haji Simpol and Md Faizal Bin Rosli v Public Prosecutor* [Criminal Appeal No. 36 of 2019], decided on a 20% reduction in sentence instead of the full one third reduction for the guilty plea.

The sentence after reduction for pleading guilty was 2 years 4 months' imprisonment on the house trespass charge and one year 2 months' imprisonment on each of the theft charges.

Bearing in mind the principle of totality the Judge ordered the sentence for the offence related to Haji Ariffin to run consecutively to the concurrent sentences for the offences related to Awg Muhammad resulting in an aggregate sentence of 3 years 6 months' imprisonment.

A fine of \$3,000 or 3 months' imprisonment in default of payment was imposed because the "*property stolen was destroyed*".

The appeal

The appellant appeals for the sentences to be reduced on the ground that his family will suffer hardship.

He was aged 41 at the time of the offences and his wife, five children, elderly mother and disabled sister are dependent on him.

Decision

We, too, are anxious about the effect of the appellant's sentence on the well-being of his family. It is often the case that the imprisonment of an offender will cause hardship to his family. But it is established principle that family hardship cannot be one of the factors that can affect what would otherwise be the right sentence.

In our view the Judge took the correct approach in passing a total sentence of 3 years 6 months' imprisonment. She was entitled to conclude that the appellant's prior theft conviction was an aggravating factor warranting an uplift in the starting point sentence; he should not be accorded the full one third reduction in sentence for his guilty plea since it came late in the day; and consecutive sentences were appropriate in respect of offences involving separate victims.

However, we think the Judge erred in imposing a fine in addition to the sentence of imprisonment on the basis that the "*property stolen was destroyed*". First, although the court has a discretion under section 382 of the Criminal Procedure Code to order monetary compensation to victims of crime who have suffered physical injury or damage to property, there is no provision for the imposition of a fine in the event a stolen item is "*destroyed*".

Second, if the Judge was alluding to the stolen generator and Mitsubishi van, it was stated in the agreed Statement of Facts that these were found in a "*burnt state*" and not that they had been "*destroyed*". There was no evidence of the extent of the damage caused.

For the foregoing reasons we dismiss the appeal against the sentence of imprisonment and quash the sentence of fine imposed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.