

Public Prosecutor
AND
Ezzeddiin Bin Haji Abdul Rahman

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 19 of 2021)

Harnita Zelda Skinner, Judge
8th July 2021

Criminal law – Sentence- theft of property- house-trespass with the intention to commit theft- section 451 of the Penal Code-pretend to hold office of a public servant-section 170 of the Penal Code-theft of property-section 379 of the Penal Code- guilty pleas- Deterrent sentence.

PO Sabrina Binti Haji Mahmud for the Public Prosecutor.
Defendant in person and unrepresented.

Cases cited:

Public Prosecutor v Tan Eng Hoc [1969] MLJ 15
Public Prosecutor v Mardhi Bin Lit & Hirman Bin Lit (Criminal Appeal No.11 of 2018)
Mohammad Bin Yusof v Public Prosecutor (Criminal Appeal No.14 of 2018)
Abdul Wakil Bin Samsun Yusra v Public Prosecutor (Criminal Motion No.35 of 2014)
Public Prosecutor v Adimodaamin bin Hj Muktal (Criminal Trial No.5 of 2010)
Public Prosecutor v Mohd Faizal bin Rosli and Saiful Irwan bin Hj Simpol (Criminal Trial No. 10 of 2018)
Md Zulfadly bin Hj Sinin v Public Prosecutor (Criminal Motion No.56 of 2018)
Norfazil bin Tamit v Public Prosecutor (HCC No.129 of 2002)

SENTENCE

Harnita Zelda Skinner, Judge:

Background

The defendant was brought to the Magistrate's court on 1st July 2021 and remitted to the Intermediate Court for charges to be read and plea to be recorded. The defendant pleaded guilty to three (3) charges under section 451 of the Penal Code, Chapter 22, section 170 of the Penal Code, Chapter 22 and section 379 of the Penal Code, Chapter 22.

1st charge

That you, sometime on the 30th day of May 2021, at Flat 'E1', Jalan Bunga Mawar, Royal Brunei Naval Base, Muara, in Brunei Darussalam, did commit house-trespass by entering into a flat in possession of Marali bin Mohd Ali, in order to the commission of the offence punishable with

imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22.

2nd charge

That you, sometime on the 30th day of May 2021, at the Royal Brunei Navy Base. Muara, in Brunei Darussalam did pretend to hold the office of a public servant, to wit, a military personnel employed under the Royal Brunei Armed Forces (RBAF), knowing that you did not hold such office, and such assumed character, used an RBAF uniform to convince one 50916 Muhammad Abdul Amin Musdi bin Sukardi to grant you entry beyond the Guard Post No.3 of the Royal Brunei Navy Base, Muara, and you have thereby committed an offence under section 170 of the Penal Code, Chapter 22.

3rd charge

That you, sometime on the 30th May 2021, at the Alpha Jetty, Royal Brunei Naval Base, Muara, in Brunei Darussalam, did commit theft of property to wit, one (1) sea boat belonging to the Royal Brunei Navy, of the Royal Brunei Armed Forces Brunei Darussalam, and you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22.

Facts

The defendant admitted to the statement of facts.

1. The Defendant is a 46-year-old Bruneian male, and is currently unemployed. He has previously served the Royal Brunei Navy as civilian boat engine mechanic for 13 years until his dismissal in 2010 after committing theft of 2 boat engines belonging to the Royal Brunei Navy of the Royal Brunei Armed Forces.
2. On 30th May 2021, a day before the Royal Brunei Armed Forces (hereinafter referred to as the "RBAF") Diamond Jubilee celebration, at around 7.00 a.m., the Defendant was at his house addressed at No. 23, Simpang 55-10, Jalan Tanjung Kudus, Mengkubau, where he then hitched a ride from an unknown person to go to Muara Beach. The Defendant was subsequently dropped off at the vicinity of a T-junction nearby Muara Beach.
3. Thereafter, the Defendant walked along the Muara Beach and entered into the Royal Brunei Naval Base of the RBAF through a fallen gate. Upon entering into the compound of the Royal Brunei Naval Base, the Defendant walked towards a barrack room addressed at Flat E1, Jalan Bunga Mawar (hereinafter referred to as "*the said barrack room*") nearby, that was in the possession of his old acquaintance named Marali. The said Marali no longer stays at the said barrack because he is in the process of retiring, however his belongings were still inside the said barrack.
4. Thereafter, the Defendant, without permission from the said acquaintance, proceeded to trespass into the said barrack by entering from the back door which had a lock combination on. The Defendant who has knowledge of the passcode to the said lock, had

used the said passcode to his advantage and entered into the said barrack. Once inside, he saw an old RBAF uniform which had a name tag written "*Marali*" from inside a wardrobe in one of the rooms inside the said barrack and formed the intention to steal. Thereafter, the Defendant changed into the said RBAF uniform and threw away the clothes that he initially wore when he had left his house earlier on.

5. Following that, using the said RBAF uniform, the Defendant, pretending to be a military personnel under the RBAF walked around the compound of the said Royal Brunei Naval Base. At around 10.32 a.m., the Defendant, falsely personating a military personnel under the RBAF proceeded to enter through the Guard Post No. 3 inside the said compound. 50916 Muhammad Abdul Amin Musdi bin Sukardi, a Royal Brunei Navy personnel on duty at the said guard post inquired from the Defendant as to where he was heading. The Defendant indicated that he was headed towards "*CQB*"; however, he subsequently proceeded towards the jetty area where the naval ships and boats have been stowed. "*CQB*" stand for "*Close-Quarter-Battle*"; a training ground inside the said Base.
6. At Alpha Jetty; a jetty inside the Royal Brunei Naval Base, the Defendant saw a few boats stowed and proceeded to check from one boat to another to see whether there was any key that he could use to ignite any of the boats. Subsequently, he saw a sea boat (hereinafter referred to as "*the said naval boat*"), and proceeded to board into the said naval boat. Based on his knowledge as a previous mechanic, the Defendant then ignited the engine of the said boat by circulation a rope he found on top of the said naval boat, around the emergency stop button and headed to the back of the said naval boat and pulled the engine rope until it was successfully ignited, without needing to have a key to ignite it.
7. At around 2.00 p.m, having successfully ignited the engine, the Defendant proceeded to drive the said naval boat around the vicinity of Pulau Muara Besar for a couple of hours.
8. At around 6.15 p.m., after roaming around using the said naval boat, the Defendant returned back to the Alpha Jetty where he was subsequently apprehended by the Royal Brunei Armed Forces personnel present. Prior to the Defendant's apprehension, 16777 Petty Officer Mohammed Hafisz Iskandar bin Haji Abd Halid who was also present at the jetty inquired from the Defendant as to what he was doing and the Defendant informed him that he had just returned from an island conducting an operation. Thereafter, a police report was duly lodged, and the Defendant was handed over to the police for investigations.
9. During police investigations, the Defendant admitted to have unlawfully trespassed into the Royal Brunei Navy compound and had committed house trespass with the intention to commit theft. The Defendant also admitted to have stolen the RBAF uniform from Marali's barrack room for his own personal use and intentionally used the RBAF uniform

to impersonate a military personnel so he can easily access the Royal Brunei Navy compound. The Defendant had also admitted that he had no permission to enter Marali's barrack room nor did he have any permission to use the said RBAF uniform.

10. Police investigations further revealed that the Defendant used an RBAF uniform to convince one 50916 Muhammad Abdul Amin Musdi bin Sukardi to grant him entry beyond the Guard Post No. 3 of the Royal Brunei Naval Base. The Defendant's action had also led the Royal Brunei Navy personnel on duty at the said Alpha Jetty, namely 52916 Laskar Mohammad Aiman Arif bin haji Rosli and 19713 Laskar Bennydik bin Tokching, to believe that the Defendant was a mechanic conducting a sea trial in respect of the said naval boat when they saw him from afar, as they had previously reported that the said naval boat was due for some repair works. However, they later discovered that no sea trial was scheduled to take place and that the said naval boat had instead been driven away by the unknown man, whom they later identified as the Defendant.
11. The Defendant also admitted to have ransacked other naval boats docked at the said Jetty to find keys to ignite any of the naval boats, however to no avail. He further admitted that had he found any keys, he would have used it to ignite the boat.
12. During police investigations inside the said Naval Base, the Defendant was also brought to show his movement inside the compound upon entering the Royal Brunei Naval Base. A map showing his movement is attached as "*Attachment 1*".
13. On record, the Defendant has a record of previous convictions in respect of offences against property.

Mitigation

Defendant is aged 46 and unemployed. He is a divorcee with two children. He had an accident which makes him unable to do heavy work. He also suffered a stroke years back. He admitted that he committed the offence because he lives alone and had not seen his family. He asked for leniency in sentencing and promised not repeat the same offences again.

Sentencing consideration

In determining the appropriate aggregate sentence, reference is made to the cases below, which involved offenders who had committed similar offences.

In considering my sentence I refer to the case of *Public Prosecutor v Tan Eng Hoc* [1969] MLJ 15, where the HC Judge states that "*in considering the appropriate sentence the Court should always be guided by certain principles, the first and foremost of which is the public interest. The criminal law is publicly enforced, not only with the object of punishing a crime but also preventing it. In fixing sentence, the nature, the circumstances and the degree of deliberation must be taken into account*".

The court takes into consideration that the defendant has a record of previous convictions for theft-related offences, section 379 of the Penal Code dated back in 1991 and section 381 of the Penal Code in 2010.

I will first deal with section 451 of the Penal Code, Chapter 22.

I refer to the case of *Public Prosecutor v Mardhi Bin Lit (D1) & Hirman Bin Lit (D2)*, (Criminal Appeal No.11 of 2018), where both defendant were charged under section 451 for house-trespass in order to commit theft. The Court of Appeal took a starting point of 2 years' imprisonment.

In *Mohammad Bin Yusof v Public Prosecutor*, (Criminal Appeal No.14 of 2018), the Court of Appeal remarked that the judge's sentence of 2 years' imprisonment was not manifestly excessive.

I also refer to the case of *Abdul Wakil Bin Samsun Yusra v Public Prosecutor* (Criminal Motion No.35 of 2014). The judge took a starting point of 3 years' imprisonment reduced it to 2 years in view of his guilty plea and first offender. The Court of Appeal dismissed the appeal, where "*the sentence imposed were entirely proper ones and contemplated appeal would have no prospect of success*".

Offences of house-trespass with the intention to commit theft, are prevalent offences which call for a deterrent sentence in the public interest. In this present case, the defendant had entered into a barrack within the compound of a prohibited and restricted area for the purpose of committing theft of a uniform belonging to the Royal Brunei Arm Forces. A lenient sentence will not deter.

The penalty under section 451 of the Penal Code, Chapter 22, is an imprisonment for a term which may extend to 5 years, and shall also be liable to fine, and, if the offence intended to be committed is theft, the term of the imprisonment may extend to 10 years. Having considered the penalty, aggravating factors and seriousness of the offence, the court takes a starting point of 3 years' imprisonment. As the defendant has pleaded guilty, a deduction of one-third is given, resulting to a sentence of 2 years' imprisonment.

I now move on to the 2nd charge, section 170 of the Penal Code where the penalty is an imprisonment for a term which may extend to 7 years and with fine.

I refer to the case of *Public Prosecutor v Adimodaamin bin Hj Moktal* (Criminal Trial No.5 of 2010), where the Court of Appeal held that a sentence of 3 years' imprisonment was proper and not excessive.

I also refer to *Public Prosecutor v Mohd Faizal bin Rosli and Saiful Irwan bin Hj Simpol* (Criminal Trial No. 10 of 2018), the Hon. Judge sentenced took a starting point of 18 months' imprisonment reduced to 12 months' imprisonment.

In this present case, with the Royal Brunei Armed Forces uniform he had stolen, the defendant pretended to hold a position of a military personnel. As an ex-navy military

civilian, the defendant is aware that only authorized and uniformed personnel have the authority to enter the guard post at the Royal Naval base and that it is a restricted area.

False impersonation to hold such position with the purpose to induce another military personnel is a very serious crime. It is paramount to discourage such criminal behavior. The gravity of the offence is reflected in the penalty provided.

Having considered the penalty, aggravating factors and seriousness of the offence, the court takes a starting point of 3 years' imprisonment. As the defendant has pleaded guilty, a deduction of one-third is given, resulting to a sentence of 2 years' imprisonment.

I now move on to the last charge, section 379 of the Penal Code, Chapter 22 where the penalty carries an imprisonment for a term which may extend to 3 years, or fine, or both.

I refer to the case of *Md Zufadly bin Hj Sinin v Public Prosecutor* (Criminal Motion No.56 of 2018), where Hon Judge stated that "*Theft of vehicle are prevalent and it is necessary to pass deterrent sentences. A starting point sentence of 12 months imprisonment is appropriate in a case of an offender with a clear record*".

Further in *Norfazil bin Tamit v Public Prosecutor* (HCC No.129 of 2002) where Hon Judge, stated that "*The offences committed by the appellant must be treated seriously. It is the public interest that in cases concerning theft of cars, the sentence imposed must be sufficient severity in order to have a deterrent effect*". He upheld the Magistrate's sentence of 12 months for each count of cars theft contrary to section 379 of the Penal Code. The appellant has previous convictions.

It is clear that the defendant is a repeat offender for boat theft related offences. In 2010, the defendant was previously sentenced to 8 months' imprisonment for committing theft of two navy boat engines. In this present case, the defendant committed theft of a sea boat belonging to the Royal Brunei Armed Forces.

Having considered the penalty, aggravating factors and seriousness of the offence, the court takes a starting point of 2 years' imprisonment. As the defendant has pleaded guilty, a deduction of one-third is given, resulting to a sentence of 16 months' imprisonment.

Total sentence

1st charge – 2 years' imprisonment

2nd charge – 2 years' imprisonment

3rd charge – 16 months' imprisonment

Taking into account of the totality principle, it would be too excessive for this court to order for all 3 charges to run consecutively with each other, totaling 5 years and 4 months. I order for the sentence of section 451 of the Penal Code and section 170 of the Penal Code to run concurrently with each other but consecutively to section 379 of the Penal Code. Therefore

a total of 3 years and 4 months' imprisonment. The sentence will take effect from date of remand, 30th May 2021.

HARNITA ZELDA SKINNER
Judge, Intermediate Court