

Public Prosecutor

AND

**Awang Jasni bin Awang Haji Salim (D1)
Dzulazhar bin Mohammad (D3)
Tamil bin Johari (D4)**

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 11 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, J.C.
15th February 2021

Criminal law – Appeal against sentence by Prosecution – house-trespass with attention to annoy – u/s 448 Penal Code – Imprisonment of 1 month – appeal allowed – imprisonment sentence enhanced to 3 months

Cases referred to:

PP vs Muhammad Shazwan bin Abdullah Jumat (ICCT No.4 of 2018)

PP vs Nizam Afian bin Amit (D1) & Mohd Effendy bin Haji Said (D2) (ICCT No.57 of 2018)

PP vs Atikah binti Mohd Junaidi (D1 & 3 Others) (MCCT No.187 of 2020)

DPP Sabrina binti Haji Mahmud for Appellant/Public Prosecutor.

All Respondents/Defendants (D1, D3 and D4) are unrepresented and in person.

RULING

Hj Abdullah Soefri, JC:

This is an appeal by the Prosecution against the sentence imposed on D1, D3 and D4 by the Court below on the 13th April 2020.

The Respondents were charged with a count under section 448 of the Penal Code, Chapter 22 as follows:-

“That you, sometimes on the 10th of February 2020 at Flat Puteri-Puteri, Puser Ulak, Bandar Seri Begawan in Brunei Darussalam, did commit house-trespass by entering into the said property belonging to HRH PAP Hjh Amal RAKIAH binti Al-Marhum Sultan Haji Omar Ali Saifuddien Sa’adul Khairi Waddien, with the intention to annoy and you have thereby committed an offence punishable under section 448 of the Penal Code, Chapter 22”.

The Respondents admitted to the statement of facts which can be summarized briefly as follows:-

“Police investigations revealed that D1, D3 and D4 have committed house-trespass by entering into the said Building and had caused annoyance to the owner of the said Building. It was further revealed that D2 had committed criminal trespass by entering into the gated compound of the said building and had caused annoyance to the owner of the said building. All of the Defendants were inside the compound of the said building without any lawful permission by the owner of the said building”.

The Appellant cited three (3) cases for this Court to consider in their application namely:-

1. *Public Prosecutor vs Muhammad Shazwan bin Abdullah Jumat* (Intermediate Court Criminal Trial No.4 of 2018);
2. *Public Prosecutor vs Nizam Afian bin Amit (D1) and Mohd Effendy bin Haji Said (D2)* (Intermediate Court Criminal Trial No.47 of 2018); and
3. *Public Prosecutor vs Atikah binti Mohd Junaidi (D1) and 3 others* (Magistrates’ Court Case No.187 of 2020).

The Appellant further submits that in taking into account the aggravating factors and overall criminality of the offences committed by the Respondents, the sentence of 1-month imprisonment for each of the Respondent is manifestly inadequate in this case. We humbly submit that a starting point of 9 months imprisonment reduced to 6 months imprisonment would be appropriate in the circumstances for the 1st and 2nd Respondent for the 3rd Respondent humbly submit that the minimum starting point of 12 months reduced to 9 months would be more appropriate.

In the Notice of Appeal, the appeal is against D1, D3 and D4.

The Respondents submitted for the appeal to be dismissed because as they had served the imprisonment sentence and has been released. Once released they have tried their best to change their life and looked after their families.

From the Notes of Proceeding, it is noted that the Prosecution did not submit the cases that were highlighted in this appeal when invited to do so by the Magistrate below. Section 237A Criminal Procedure Code provides for the opportunity for the Prosecution to do so.

Before me after having had scrutinised all the mitigating factors, aggravating factors of the case and also the cases that had been tendered by the Appellant in the case, I am satisfied that the sentence of 1-month imprisonment imposed on Awang Jasni bin Awang Haji Salim (D1), Dzulazhar bin Mohammad (D3) Tamil bin Haji Johari (D4) by the Court below are manifestly inadequate.

Section 285A of Criminal Procedure Code states as follows:-

“In an appeal as to sentence, the High Court may reduce or increase the sentence, or alter the nature of the sentence”.

I allowed the appeal and increased the sentenced of 1 month imposed by the Magistrate below to 3 months. After taking into account that they had served the imprisonment sentence of 1 month, the imprisonment sentence is 2 months. The imprisonment of 2 months will take effect from today.

The appeal is allowed and the sentence increased from 1 month to 3 months and D1, D3 and D4 is to serve 2 months' imprisonment after taking into account that they had served 1 month's imprisonment.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner