

**PUBLIC PROSECUTOR
AND
ROSMIN BIN HAJI METUSSIN**

**(High Court of Brunei Darussalam)
(Criminal Motion No. 2 of 2024)**

Haji Abdullah Soefri bin POKSM DSP Haji Abidin, JC
17th August 2024

Criminal Law and procedure – theft of a motor vehicle – common intention - section 379 and read with section 34 of the Penal Code – imprisonment – Prosecution appeal against sentence – manifestly inadequate – disparity in sentence – appeal allowed – sentence enhanced

PO Syafina Hadzid for the Public Prosecutor/Appellant.
Defendant/Respondent in person and unrepresented.

Cases referred to:

Pg Abdul Rahman Bin Pg Shahbuddin, (High Court Criminal Appeal No. 145 of 2022)

Norfazil Bin Tamit v Public Prosecutor (High Court Criminal Appeal No. 129 of 2002)

Yan Saputra V Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 5 of 2009)

Ikas Sunaryo v Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 7 of 2016)

Johari Bin Jaya v Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Motion No. 14 of 2018)

RULING

Hj Abdullah Soefri, JC:

INTRODUCTION

On 15th February 2024, the Defendant was convicted and sentenced after he pleaded guilty to a charge under section 379 and to be read with section 34 of the Penal Code, Cap 22 for the theft of a motor vehicle. On the 17th February 2024, the Magistrate sentenced him to an imprisonment sentence of 12 months after taking 18 months as a starting point and reduced it to 12 months. The imprisonment sentence took effect from 13th February 2024.

THE CHARGE

That you, together with another person still at large, sometime between 2nd February 2024 at 1900 hrs and 3rd February 2024 at 0730 hrs at No. 7, Spg 106, Kg Kiulap, in furtherance of your common intention, did commit theft of property, to wit, one (1) white Toyota Corolla bearing registration number KL 7302, in possession of Samsul Muarif, and the both of you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22, read with section 34 of the same.

The penalty for an offence under section 379 of the Penal Code, is imprisonment for a term which may extend to 3 years, fine or both.

The Prosecution (Appellant) filed the notice of appeal on the 29th February 2024. The Appellant's grounds of appeal are that the sentence is manifestly inadequate considering the aggravating factors and the precedents available for the offences under section 379 of the Penal Code, Chapter 22.

The 'other person' (Reduan Bin Japar) was charged under a separate docket (MCCT/BSBS/51/2024). He pleaded guilty and was sentenced to 18 months' imprisonment after a starting point of 27 months.

The Appellant submitted several sentencing authorities to support their appeal.

In ***Pg Abdul Rahman Bin Pg Shahbuddin, (High Court Criminal Appeal No. 145 of 2022)***, the Court held that for a car theft contrary to section 379 of the Penal Code, a starting point of 12 months was appropriate for a person with a clear record and a more that 12 months for a person with previous record, depending upon the nature of his previous convictions.

In ***Norfazil Bin Tamit v Public Prosecutor (High Court Criminal Appeal No. 129 of 2002)***, it was held that:

"It is the public interest that in cases concerning theft of cars, the sentence imposed must be sufficient severity in order to have deterrent effect."

In ***Yan Saputra V Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 5 of 2009)***, the Court of Appeal held that all co-defendants should be given the same outcome in respect of their sentences. This was applied in ***Ikas Sunaryo v Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Appeal No. 7 of 2016)*** where the appeal was also heard on a later date than his co-accused.

The Appellant submitted that there is disparity in sentences between the Respondent and his co-accused Reduan. It was further submitted that although they were not charged in the same docket, the respective charge against them in respect of the theft of the Toyota Corolla car bearing registration KL 7302 is a joint charge involving one another and which arose from the same incident.

The Appellant submitted that *“the principle established in the Yan Saputra case, which mandates consistent sentencing for the co-defendants in jointly committed offences, should be applied here. The current case reveals a significant disparity in the sentences between the Respondent and his co-accused, despite their involvement in the same incident. Given the shared nature of their crime, we urge the court to consider the need for uniformity in sentencing to uphold the principles of justices and fairness.”*

The Appellant also submitted that the Court should consider the aggravating factors as was held in ***Johari Bin Jaya v Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Motion No. 14 of 2018)*** where the Court of Appeal stated as follows:

“previous conviction is to be treated as an aggravating factor if that conviction can reasonably be so considered having regard in particular to the nature of the offence to which the conviction relates and its relevance to the current offence being considered, and the amount of time that has elapsed since that previous conviction. In those circumstances a previous conviction (or more than one if they are relevant) may be taken into account in determining the starting point for the current offence”.

In ***Zoelaliffin Bin Haji Md Zaini v Public Prosecutor (Court of Appeal of Brunei Darussalam) (Criminal Motion No. 4 of 2019)*** the Court of Appeal stated:

“a judge may properly take into account a defendant’s record of previous convictions, in the public interest, and reflect that in deciding upon the starting point for the sentence in respect of the offences with which she is dealing”.

The Appellant submitted that the Respondent has more previous convictions of theft rather than Reduan. The Appellant further submits that the respondent has just been released from prison in 2021 and reoffended within 3 years of his release which demonstrates a lack of remorse and inability to reform.

The Appellant submits further that the role of the Respondent is more significant than Reduan. The Respondent opened the car using the modified key and drove the car away while his co-accused (Reduan) acted as a look out.

The Appellant reinforces the need for an equivalent, if not higher, punishment to reflect the severity of the Respondent's actions.

RESPONDENT'S SUBMISSION

The Respondent submitted to the Court to maintain the current sentence and promised not to reoffend. The Respondent told the court that he did not plan to steal and blamed it on Reduan, who asked the Respondent to open the car. Once the car was opened, Reduan used the car. After two days of using the car, he wanted to return the car but it broke down. He further told the Court that the reason why Reduan has a higher sentence is because he has additional charges.

SENTENCE

The Magistrate in her sentencing took into account of the Defendant's mitigation and guilty plea. The Court also took into account of the Respondent's previous convictions and of the Respondent's being released from prison in April 2021. The Magistrate also cited the cases of Norfazil and Pg Abdul Rahman.

As to the disparity of sentence, the Magistrate did not have the opportunity to deal with Reduan's case as Reduan was arrested and convicted after the Respondent's case has been dealt with and Reduan's case was heard before another Magistrate.

CONCLUSION

The Magistrate has taken into account all the relevant mitigating and aggravating factors when she sentenced the Respondent. She took 18 months as a starting point and she was guided by the case of *Pg Rahman*. The question now is whether 18 months is an appropriate starting point in this case in light of his antecedents. In *Pg Rahman's* case it was stated that "*more than 12 months for a person with previous record, depending upon the nature of his previous convictions.*"

The Respondent has a long list of convictions for offences against property. In 2006, he was convicted with offence under section 380 of the Penal Code and sentenced to 6 months imprisonment. In 2014, he was convicted with 33 charges amongst them charges under section 451, 427 and 379 where he was imprisoned for 9 years and two months along with 4 strokes of caning. He was only released in April 2021 and the present offence was committed in February 2024. This begs the question again whether 18 months is the appropriate starting point? The maximum imprisonment sentence for section 379 offence is an imprisonment which may extend to 3 years. *Pg Rahman's* case did state that the appropriate starting point for a person who has previous record is more than 12 months. Taking into account of his previous conviction list and also to avoid inconsistency with the sentence imposed on Reduan and also taking into account of Appellant submission that "*Given the shared nature of the crime, we urge the court to consider*

the need for uniformity in sentencing to uphold the principles of justice and fairness.”, this Court is satisfied that the starting point that the Magistrate has chosen in this case is inadequate and this Court increases the starting point to 27 months and reduces it to 18 months so as the sentence is consistent with Reduan.

The Appeal is allowed and the sentence is increased from 12 months to 18 months' imprisonment with the same effective date as imposed by the Magistrate below.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner