

Public Prosecutor

AND

Fuad bin Muhd Ibrahim

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 38 of 2022)**

Harnita Zelda Skinner, Judge

Date of Sentence: 7th September 2023

Criminal law – Section 451 of the Penal Code Cap 22 read with section 34 of the same-did commit house-breaking- section 380 of the Penal Code- did commit theft- section 451 of the Penal Code-did commit house-trespass-guilty plea.

DPP Ahmad Firdaus Mohammad for Public Prosecutor.

Defendant (D1) In Person and Unrepresented.

Cases cited:

Public Prosecutor v Wahid bin Mazid (Criminal Appeal No. 9 of 2014)

Public Prosecutor v Mardhi bin Lit (D1) & Hirman bin Lit (D2) (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)

Mohammad Yusrin bin Hj Mohamamd v Public Prosecutor (COA No.8 of 2013)

Public Prosecutor v Mohd Shalan bin Samat, Mohd Azhim bin Hj Mohd Rais (High Court of Brunei Darussalam, (Criminal Appeal No.6 of 2013))

S E N T E N C I N G

Harnita Zelda Skinner, Judge:

Introduction:

1. D1 was brought to the Intermediate Court on 29th June 2022 for charges to be read and plea to be recorded. He was charged under count under section 454 of the Penal Code, Chapter 22 read with section 34 of the same, one count under section 380 of the Penal Code, Chapter 22 and one count under section 451 of the Penal Code, Chapter 22 read with section 34 of the same. He has entered a not guilty plea to all the charges and claimed trial.

2. On 6th September 2023, D1 entered a guilty plea to all the charges.

Charge:

3. The charges are as follows:

3.1. 1st Charge (Against D1 and another person)

“That you and another person, on the 28th day of January 2022 at 1157 hours, at a house addressed at No. 17, Simpang 884-25-11-8-14, Kampung Jangsak, Jalan Gadong, in Brunei Darussalam, in furtherance of your common intention, did commit house-breaking, by entering into the said house in the possession of one Iliyana, used as a human-dwelling, to wit, by forcibly pushing the front door entrance, in order to commit an offence punishable with imprisonment, to wit, theft, and both of you have thereby committed an offence punishable under Section 454 of the Penal Code, Chapter 22 read with Section 34 of the same”.

Penalty under Section 454 of the Penal Code

Imprisonment for a term not exceeding 5 years and whipping. If the offence intended to be committed is theft, shall be punished with imprisonment not exceeding 10 years.

3.2. Additional 3rd Charge (Against D1 only)

“That you, on the 11th day of October 2021 at approximately 1450 hours, at Kern Cafe, a restaurant located at Bangunan Haji Mohd Zain bin Haji Ismail, Ban 5, Mulaut in Brunei Darussalam, a building use for custody of property, did commit theft of property, to wit, cash money to the amount of BND\$10,500, belonging to one Hajah Alimah @ Halimah/Sa’adiah binti Haji Aji, and that you have thereby committed an offence punishable under Section 380 of the Penal Code, Chapter 22”

Penalty under Section 380 of the Penal Code, Chapter 22

Imprisonment for a term which may extend to 7 years and with fine

3.3. Additional 4th Charge (Against both Defendants)

“That you, and another person, sometime on the 24th day of March 2021, at a house addressed at No. 13, Spg 843-8-51-40 Jalan Mulaut, Limau Manis, Kg Parit in Brunei Darussalam, in furtherance of your common intention, did commit house-trespass by entering into the said house in the possession of one Abdul Wa’ie bin Abd. Salam, a building used as a human dwelling, in order to the commission of the offence punishable with imprisonment, to wit, theft, and that

you have thereby committed an offence punishable under Section 451 of the Penal Code, Chapter 22”.

Penalty under Section 451 of the Penal Code

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 imprisonment may extend to 10 years.

Statement of facts:

4. D1 agreed and admit to the statement of facts.

The Defendant is a 33-year-old male, Malay Bruneian National. The Defendant is married and has 2 children.

4.1. In relation to the 1st charge (Against D1 and another person):

On 28th January 2021 at 1150 hours, the Defendant together with another person went to a house addressed at No. 17, Simpang 884-25-11-8-14, Kampung Jangsak, Jalan Gadong (the ‘said house A’), in Brunei Darussalam using the Defendant’s gray Suzuki Vitara vehicle having forward the common intention to break into the said house A and commit theft. After making several rounds around the vicinity of the neighbourhood and ascertaining that there was no one around at the time, the Defendant and the said other person climbed over the fence of the said house A, causing damage to the fence, and entered into the house compounds. The Defendant then took a broom from outside the house and tilted away a CCTV camera that was pointing towards the front door entrance in order to prevent themselves from being detected. At 1157 hours, the Defendant then managed to unlock the locks beneath the front door entrance with his fingers and both he and the said another person then pushed open the front door entrance, damaging the door lock. They then searched the ground floor of the said house A but, after finding nothing to steal, they then went to the upper floor. At the upper floor of the said house A, the Defendant and the said other person proceeded to commit theft of several items including one (1) rose gold i-Phone mobile phone; one (1) red and blue Nintendo Switch game console together with its charging cable one (1) rose gold Macbook Air 13 inch together with its brown cover bag, and one (1) golden necklace. Both of them then exited the house together with the stolen items, climbed over the fence and drove away from the area.

According to police investigations, on 28th January 2022 at about 1500 hours, one Iliyana Melissa (hereinafter referred to as the Complainant A) arrived at her house and found her front door entrance was left ajar. She then found her house was ransacked and several items were missing. She then checked the CCTV camera footage in her house and found two unknown male persons had broken into her house. She then proceeded to lodge a police report. The Complainant A also provided a quotation for the damages caused to her fence and front door lock (annexed hereto as A) which amounted to BND \$440.

Police investigations managed to identify one of the said unknowns make person in the CCTV footage as the Defendant, which further led to the Defendant's arrest.

Police investigations only led to the recovery of one (1) rose gold i-Phone 10 mobile phone; (1) rose gold Macbook Air 13 inch together with its brown cover bag, and one (1) golden necklace.

4.2. In relation to the 3rd charge (Against D1 only):

On 11th day of October 2021 at approximately 1450 hours, the Defendant went to Kern Cafe (the said cafe), a restaurant located at Bangunan Haji Mohd Zain bin Haji Ismail, Ban 5, Mulaut in Brunei Darussalam with the initial intention of buying food. Upon arrival at the back door of the said cafe, the Defendant called out to the waitress. The Defendant then entered into the kitchen of the said cafe through the back door and gave the waitress his order. The Defendant saw black-coloured backpack placed on top of a paint can inside the store room of the said cafe and looked inside a bag. Upon discovering that the backpack contained an envelope of cash money and proceeded to leave the said cafe along with the stolen cash money without waiting for his order.

According to police investigations, on the 11th day of October 2021 at approximately 1450 hours, one Indah Fajar Wati (Complainant B) was working as a waitress at the said cafe when she heard a call from the back of the said cafe. As a waitress at the said cafe when she heard a call from the back of the said cafe. As she was walking to the back of the said cafe she found a person whom she recognized as the Defendant standing inside the kitchen of the said café asking to order food. Complainant B then walked to the front of the restaurant to prepare the food but when she returned to the kitchen, she found that the Defendant had gone. She also noticed that her black backpack was opened. Upon checking the contents of the backpack, she realized that an envelope containing cash money to the amount of BND \$10,500 was missing. She then lodged a police report which led to the arrest of the Defendant.

Police investigations revealed that the said stolen cash money belongs to the owner of the said cafe (Hajah Alimah @ Halimah / Sa'adiyah binti Hj Aji) which was entrusted to Complainant B to use to pay the salaries of the workers of the said cafe and suppliers of food to the said cafe. Police investigations did not lead to the recovery of the stolen cash money amounting to BND \$10,500.

4.3. In relation to the 4th charge (Against both Defendants):

Sometime on the 24th day of March 2021, around late at night, the Defendant and Person A went to a house addressed at No. 13, Spg 843-8-51-40 Jalan Mulaut, Limau Manis, Kg. Parit in Brunei Darussalam (the said house B) having formed the common intention to commit theft at the said house. Upon arrival at the said house, they found that the said house B was dark and unoccupied and proceeded to enter into the said house B through the back door. Inside the said house B, both of them proceeded towards the upper floor where they then stole a number of items including shirt buttons and a wall lamp. They then left the house along with the said stolen items.

According to police investigations, on 27th March 2021, one Abdul Wa'ie bin Abd salam (Complainant C) discovered through his father that his house addressed at said house B had been broken into and was found ransacked. At the material time, Complainant C had left the house unoccupied as he was working offshore. As such, a police report was then lodged which led to the arrest of the Defendant.

Police investigations revealed that the Complainant found the following items to be missing:

- (i) One (1) Tag Heuer brand watch;
- (ii) Several bottles of perfume;
- (iii) Several shirt buttons;
- (iv) A pair of green-coloured shoes Brand Inov;
- (v) TV cables;
- (vi) One (1) Samsung brand remote control;
- (vii) Several tools including a wall lamp;
- (viii) One (1) External Hard Drive Brand Buffalo;
- (ix) One (1) bag brand Mutant; and
- (x) One (1) pair of orange-coloured gloves.

Police investigations only led to the recovery of the aforementioned shirt buttons and wall lamp. The remaining missing items were not recovered. The Complainant estimated his loss to be approximately BND \$4,900.

4.4. In relation to all charges:

The Defendant admits to committing the above offences.

On record, the Defendant has previous convictions in relation to property related offences.

Mitigation

5. In mitigation, D1 asked for lenient sentence. He is married with three young children.

Sentencing Considerations

6. In determining the appropriate aggregate sentence, reference is made to the cases below, which involved offenders who had committed these offences.
7. For section 454 of the Penal Code, the Court consider the case of *Public Prosecutor v Wahid bin Mazid* (Criminal Appeal No. 9 of 2014), the Court of Appeal remarked that the starting point of 3 years imprisonment for each offence under section 454 of the Penal Code, reduced to 2 years for guilty plea, is correct. The Appellant in this case had no previous conviction.
8. For Section 451 of the Penal Code, the Court consider the case of *Public Prosecutor v Mardhi bin Lit (D1) & Hirman bin Lit (D2)*, (Criminal Appeal No.11 of 2018), where both defendants 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. Also, 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. The court 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*".

9. For Section 380 of the Penal Code, the submitted two cases submitted by the prosecution, *Mohammad Yusrin bin Hj Mohamad v Public Prosecutor* (COA No.8 of 2013) and *Public Prosecutor v Mohd Shalan bin Samat, Mohd Azhim bin Hj Mohd Rais* (High Court of Brunei Darussalam, (Criminal Appeal No.6 of 2013)), where a sentence of 12 months imprisonment is deemed appropriate.
10. These cases illustrate that house-breaking, theft of property and criminal trespass are serious and prevalent offences that warrant deterrent sentences in the public interest. Such offences often result in significant hardship and financial loss to victims. As observed in *Mohammad Yusrin bin Hj Mohammad v Public Prosecutor* (CA No. 8 of 2013), the Court of Appeal emphasised that "trespass and theft from dwellings are serious offences" and cause "*immense distress to homeowners whose privacy and property have been violated*."
11. In the present case, D1 has a prior conviction for a similar property-related offence in 2007, reflecting a pattern of repeated offending. Despite having previously served a sentence of imprisonment and whipping, he has not shown genuine remorse. The offences were carried out when the complainants were away from home, increasing the vulnerability of the premises and suggesting premeditation. A number of the stolen items remain unrecovered, resulting in significant losses for the complainants.

Sentence

12. Having considered the penalties, aggravating factors and seriousness of the offences, the court will sentence D1 as follows:

- 12.1. **1st charge:**

A starting point of 3 years, reduced to 2 years and 2 strokes.

- 12.2. **Additional 3rd charge:**

A starting point of 3 years reduced to 2 years

- 12.3. **Additional 4th charge:**

A starting point of 3 years reduced to 2 years

The sentences for the 1st charge, additional 3rd charge and additional 4th charge shall run consecutively, as they involve different complainants and occurred on separate dates. The total is 6 years and 2 strokes. The sentence shall take effect from date or remand, 30th May 2022.



Harnita Zelda Skinner
Judge, Intermediate Court