

Public Prosecutor

AND

Wu Zhongping (A1)

He Xiongbing (A2)

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2007)

Power, P; Mortimer and Davies, JJ.A.
10th November, 2007.

Sentence – 4 housebreaking and 1 retaining property – guilty pleas – 4 years not manifestly inadequate or manifestly excessive – appeals dismissed.

Suriana Bte Radin (Deputy Public Prosecutor) for the Public Prosecutor.
Defendants in person.

Cases cited in the Judgment:

Public Prosecutor v Leonardo Misagal [2004] JCBD 85.

Public Prosecutor v Lisua bin Lee and Others [1990] JCBD 220.

Redzwan Bin Roslan v Public Prosecutor [Criminal Appeal No.1 of 2006]

Davies, J.A.:

Each of the respondents pleaded guilty to four counts of housebreaking at night in order to commit theft, offences under section 457 of the Penal Code the maximum sentence for which is 15 years imprisonment with whipping. Each also pleaded guilty to one count of retaining property contrary to section 411 the maximum penalty for which is three years imprisonment.

On each of the housebreaking charges the learned sentencing judge sentenced each appellant to 3½ years imprisonment and three strokes, all sentences to be served concurrently. He then sentenced each to six months imprisonment for the offence against section 411 and ordered that sentence to be served consecutively upon the sentences for housebreaking. The total sentence imposed on each respondent was therefore one of 4 years with three strokes. This envisaged a total sentence, after trial, of 6 years.

The Public Prosecutor appeals against those sentences on the basis that the totality in each case was manifestly inadequate.

Before this court both offenders indicated, for the first time, that they wished to appeal against their sentences. This Court granted them leave to appeal and heard their appeals.

The respondents are both Chinese citizens. They entered Brunei on 14 day visitor visas. They told the Court, and the learned sentencing judge appears to have accepted, that they were looking for work but, not finding it, committed these offences.

Where an offender who has committed offences of this kind shortly after entering Brunei, especially where that entry was pursuant to a visitor visa, tells the court that he entered to look for work and committed the offences only after failing to find it, the court should be reluctant to accept such a statement without being satisfied of its accuracy. A more likely inference, in a case like this, may be that the offender entered for the specific purpose of committing the offences or offences of a similar kind. And where such inference should be drawn, a more severe sentence is warranted.

However, the offenders' statements to that effect having apparently been accepted by the learned sentencing judge in this case, this Court will not draw a contrary inference.

Perhaps unsurprisingly, neither has any previous convictions in Brunei.

The housebreaking offences occurred over a period of five days commencing six days after the offenders entered Brunei. A considerable amount of property appears to have been taken. Moreover the property the subject of the offence against section 411, as itemised, does not appear to coincide with the property said to have been taken; it appears to include property other than that apparently taken from the four residences the subject of the housebreaking charges. This discrepancy is not explained.

The Public Prosecutor relies on two cases as supporting the contention that the total sentence imposed on each respondent was manifestly inadequate. The first of these is *Public Prosecutor v Leonardo Misagal* [2004] JCBD 85 in which, after a plea of guilty, a sentence of three years and three strokes was imposed in the Supreme Court for a single offence of housebreaking in order to commit theft. In the course of delivering judgement in that case, Dato Paduka Steven Chong, J. said:

"However, housebreaking in order to commit is treated very seriously by the Court and generally sentences of between two and three years have been imposed for a single offence even after a guilty plea: see *Phang Kat Fatt and Another v Public Prosecutor* [1994] JCBD 447; *Public Prosecutor v Lisua Bin Lee and Others* [1990] JCBD 220; *Private 7297 Jamal Bin Kadir and Another v Public Prosecutor* [Criminal Appeal No. 2 of 2002]; *Public Prosecutor v Soleh Permana* [Criminal Trial No. 22 of 2003] and *Public Prosecutor v Remy Bin Mohd Ismail* [Criminal Trial No. 1 of 2004]."

The second case is *Public Prosecutor v Lisua bin Lee and Others*, referred to above, in which a sentence of three years imprisonment was imposed on each of three

offenders who each pleaded guilty to one offence of housebreaking at night in order to commit an offence of theft.

The sentences imposed in those cases, when the facts in each are compared to those in the present case tend to show that the total sentence imposed here was an appropriate one. Of some guidance also and somewhat closer to the facts of this case is *Redzwan Bin Roslan v Public Prosecutor* [Criminal Appeal No. 1 of 2006], in which this Court, in allowing an offender's appeal against sentence, substituted a sentence of four years imprisonment and three strokes upon a guilty plea for four offences of housebreaking contrary to section 454 and one of causing damage contrary to section 427 by a young man of 19, the offences having been committed with an older man. The maximum sentence under section 454 is ten years and whipping and the maximum sentence under section 427 is five years and whipping. In substituting that sentence for a higher sentence this Court said that even the sentence which it imposed was a heavy deterrent sentence in the circumstances. The appellant's youth and the influence of his older companion were mitigating factors not present in this case. On the other hand, however, he had a similar previous conviction which neither respondent has.

In the light of these cases we think that the sentences imposed and the totality of those sentences were appropriate. Accordingly, we do not think that the sentences were either manifestly inadequate or manifestly excessive.

We dismiss the appeal.

Power, P

Mortimer, J.A.

Davies, J.A.