

Public Prosecutor

AND

Haji Johari bin Haji Lajim

**(High Court of Brunei Darussalam)
(Criminal Appeal No.17 of 2016)**

Pg DP Hjh Rostaina bte Pg Hj Duraman, JC

28th November 2016

*Criminal Law --- theft of steel ladder --- guilty plea --- under section 379 of the Penal Code, Cap 22
--- appropriate sentence --- whether sentence was manifestly inadequate*

Cases cited:

R v Howells (1999) 1 AER 50 at 54

PP v Md Zulani bin Hj Sani (HCCA No.4 of 2005)

PP v Raddyman bin Awg Hj Radin (HCCA No.6 of 2005)

Rosdy Irwandy bin Abdullah v PP (HCCA No.13 of 2014)

DPP Dk Hazirah Pg Mohd Yusof for the Public Prosecutor/Appellant.

Respondent unrepresented and in person.

Pg DP Hjh Rostaina, JC:

This is an appeal by the Public Prosecutor against the sentence passed on the ground that it was manifestly inadequate and unduly lenient.

On 7th May, 2016 in the Magistrate's Court the respondent who was unrepresented was convicted on his own plea to one count of theft contrary to section 379 of the Penal Code. The Chief Magistrate, Muhammed Faisal bin PDJLD DSP Haji Kefli sentenced him to 3 days imprisonment with effect from 7th May 2016, after taking into account the respondent's previous two convictions, guilty plea and the stolen item was recovered.

The charge was:- *That you, sometime between March and April 2016, at the Sungai Kebun Bridge Construction Site, Bandar Seri Begawan in Brunei Darussalam, did commit theft of property, to wit, one steel ladder belonging to BNG (B) Sdn Bhd and that you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22.*

In summary, the admitted facts were that sometime in April 2016, a worker of BNG (B) Sdn Bhd, realised that a number of items including a steel ladder were missing from the Sungai Kebun Bridge's construction site. The police investigation led to the arrest of the respondent. The said steel ladder was found at his house at No.92E, Kg Setia A.

DPP Dk Hazirah Pg Mohd Yusof submitted that the sentence imposed of 3 days' imprisonment was manifestly inadequate. That a higher deterrent sentence would have been more appropriate given that the respondent had two previous convictions under the same offence.

She further submitted that it is important in the administration of justice that there should be consistency in sentencing and that there was great disparity in the sentence passed in the present

case compared to previous theft cases where the offenders did not possess clean records and the stolen items were recovered.

In *Ak Md Fadzly Shah bin Pg Zainal Abidin vs PP* (2003) 1 JCB 180, who had a clean record and pleaded guilty at first instance, DSP Mohammed Saied, C.J. held a starting point of 9 months was appropriate; in *Rosdy Irwandy bin Abdullah vs PP* (HCCA No.13 of 2014), for theft of stolen cash amounting to \$400, which was recovered, DSP Hj Kifrawi, C.J., found that a starting point of 3 months to be appropriate.

I refer to *Bingham, L.C.J. in R. v Howells* (1999) 1 AER 50, at 54, where he expressed that "*Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him, and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system*".

In *PP vs Md Zulani bin Hj Sani* (High Court, CA No.4 of 2005) and *PP vs Raddyman bin Awg Hj Radin* (HCCA No.6 of 2005) DP Steven Chong J, held that "*Disparity of sentences is undesirable. It causes a sense of grievance and gives the appearance of denial of justice when one offender is treated differently from another in respect of similar offences*".

While past cases are helpful and can assist as guidelines for the sentencing court, at the end of the day, every case which comes before the courts must be looked at its own facts. What is important is that the sentencing court has considered all the relevant factors and assessed the overall circumstances of the case in determining what the punishment should be and all the circumstances must necessarily connect to the offender.

In my view, what ought to have been given greater weight was the fact that the respondent was not a first offender. Court may incline towards leniency for first offenders, but if the offender is not deterred by the sentence he cannot be given a leniency. In this case, the respondent has two previous convictions. In 2004 he was sentenced to 1 year imprisonment and in 2013 he was sentenced to 16 months' imprisonment. In crime, higher frequency must generally attract higher punishment unless there are good reasons to the contrary. I find none here. The respondent informed the court he stole because he wanted to build a swing.

The penalty provided for theft under section 379 of the Penal Code, Cap 22, is a term of imprisonment which may extend to 3 years, or with fine or with both.

I agree with the appellant, the sentence of 3 days passed in the Court below was manifestly inadequate and unduly lenient. A deterrent sentence is necessary in the public interest. In my judgment, I consider a starting point of 9 months' imprisonment would have been proper taking into account his two previous convictions. After plea, the stolen item being recovered and returned to the company, reduced to 6 months' imprisonment.

Although the Public Prosecutor was justified in bringing the appeal, having regard to the respondent had already served his sentence, it would be unfair to resentence him. In the circumstances, the appeal is dismissed.

Appeal dismissed.

PG DP HJH ROSTAINA BINTI PG HJ DURAMAN
Judicial Commissioner