

Public Prosecutor

and

Ujiwati binti Ishak

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 36 of 2016)**

**Pg DP Hjh Rostaina Pg Hj Duraman, J.C.
24th June, 2017**

*Criminal Law --- theft of a motor vehicle --- convicted after trial --- section 379 of the Penal Code,
Cap 22 --- appropriate sentence --- whether sentence was manifestly inadequate*

Cases referred to:

PP v Tan Eng Hoc (1970) 2 MLJ 15

Haris bin Akil vs PP (1992) JCBD 248

Norfazil bin Tamit vs PP (HCCA No.129 of 2002)

PP vs Pg Abdul Rahman bin Pg Shahbudin in (HCCA No.145 of 2002)

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

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

Romei bin Abd Rahman vs PP in (HCCA No.21 of 2010)

DPP NorAdliatul Hidayah binti Hj Mohd Zaidi and DPP Vuina Song for Public Prosecutor/
Appellant.

Respondent unrepresented and in person

JUDGMENT

Pg DP Hjh Rostaina, JC

This is an appeal by the Public Prosecutor only against the sentence passed in the first charge on D2 (the Respondent) on the ground that it was manifestly inadequate and unduly lenient.

The charges were:-

1 st Charge (against D1, D2 and D3)

That all three of you, on 22nd May 2016, sometime between 0005 hours and 0700 hours at No.1, Simpang 682, Kampong Salambigar in Brunei Darussalam did commit theft of a motor vehicle, to wit, one white Nissan Sunny bearing registration number BK 9132 in the possession of Jarv Aves Geraldo, and all of you have thereby committed an offence 2 punishable under section 379 of the Penal Code, Chapter 22 read together with section 34 of the same.

2nd Charge (against D1 and D2)

That both of you, between 18th May 2016 at about 2200 hours and on 19th May 2016 at No.3, Jalan Seri Laila Jasa, Kampong Mata-Mata in Brunei Darussalam, in furtherance of your common intention, did commit theft, to wit, one cylinder gas, in the possession of Mohd Abdul Hakimuddin bin Hj Md Ali and both of you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22 read together with section 34 of the same.

In summary, the facts were that in the Magistrate's Court before the then Chief Magistrate, Muhammed Faisal bin PDJLD DSP Hj Kefli, the Respondent who was D2 faced two counts of theft under section 379 of the Penal Code, Cap 22. On 26th May 2016, she claimed trial for the 1st charge and pleaded guilty to the 2nd charge.

On 31st October 2016, upon conviction for the 1st charge, the Chief Magistrate passed a sentence of 6 months' imprisonment after taking into account that she is a single mother. His starting point was 6 months and he did not give a reduction of sentence as she had claimed trial. For the 2nd charge he sentenced her to 2 months' imprisonment. He further stated he took into account the totality principle and ordered for the sentences to be served concurrently.

The DPP argued that the Respondent was jointly charged with two other defendants (D1 and D3). Both D1 and D3 were convicted upon their own admissions to the 1st charge and were each sentenced to serve 12 months' imprisonment. Following that they cooperated and gave evidence for the Prosecution's case by becoming prosecution witnesses. D1 was prosecution witness 6 and D3 was prosecution witness 7. That D1 (PW6) faced the same 2 charges as the Respondent. He was sentenced 12 months for the 1st charge and 3 months for the 2nd charge, to be served consecutively from 24th May 2016 resulting in a total of 15 months' imprisonment. That D3 (PW7) faced the same 1st charge as the Respondent and was sentenced to 12 months from 24th May 2016.

They testified the involvement of the Respondent. That on 22nd May 2016, she had agreed to plan to steal the car, which is similar in model to her own car in order to get spare parts for her broken car. She showed them the whereabouts of the car and gave her own car key to be used to access the stolen car.

The DPP Nor Adliatul Hidayah argued on the seriousness of the offence of car theft. That the circumstances in the Respondent's case were not so exceptional to warrant a departure from the usual sentence meted out and cited the sentences that had been passed in previous car theft cases. She submitted for the sentence against the Respondent in the 1st charge to be varied and quashed and to be substituted with an appropriate sentence of 12 months' imprisonment.

She referred to Norfazil bin Tamit v PP HCCA No.129 of 2002, where DP Steven Chong, J, stated that,

“The offences committed by the appellant must be treated seriously. It is the public interest that in cases concerning theft of cars, the sentence imposed must be sufficient severity in order to have a deterrent effect”.

He upheld the Magistrate’s sentence of 12 months’ imprisonment for each count of car theft contrary to section 379 of the Penal Code and the sentences were to run consecutively bringing the total sentence of 24 months’ imprisonment.

Similarly, in *PP vs Pg Abdul Rahman bin Pg Shahbudin in Criminal Appeal No. 145 of 2002*, Dato Mohammed Saied, C. J. stated 12 months’ imprisonment as the starting point and reduced to 8 months’ imprisonment for each count of car theft and the sentences were ordered to run consecutively bringing the total imprisonment term to 48 months.

In *Romei bin Abd Rahman vs PP in HCCA No. 21 of 2010*, on appeal, a sentence of 12 months’ imprisonment was ordered for each count of car theft and the sentences were ordered to run consecutively bringing the total imprisonment term to 24 months’ imprisonment.

The Respondent informed the court that she is unemployed, aged 39 and has a 9 year old daughter. Her sister financially supports her since her husband whom she last saw six years ago does not provide for them. She pleaded for her prison term not to be increased. She expressed her remorse and promised not to repeat the offence. That she had already served her custodial sentence from 31st October 2016 and was released on 2nd March 2017 after serving only 4 months in custody. She does not want to be sent back to prison as she wants to spend the coming festive season with her daughter.

Before proceeding further, I should point out In *PP vs Pg Abdul Rahman bin Pg Shahbudin in Criminal Appeal No.145 of 2002*, Dato Mohammed Saied, C.J had stated that,

“theft of vehicle is a serious offence, it is rampant in Brunei Darussalam for the past several years. This could have cause a lot of anxiety to the owners and that the magistrate had not impose sufficient sentences to match the seriousness”.

In this case, DPP Vuina Sung informed me that the owner was deprived of the use of his car for a period of about 5 months. This inconvenienced him as he suffered transportation difficulties since his car was only returned to him after the trial concluded and judgment was delivered on 31st October, 2016.

She further submitted the offences committed by the Respondent were two separate and distinct offences and should not have been ordered to be served concurrently. The DPP submitted that the Chief Magistrate took into consideration that the Respondent is a single mother. She empathized with the Respondent’s personal circumstances and that imprisonment would unavoidably cause hardship to her family but that this is not normally taken into account for purposes of sentencing. She reiterated that in the case of her co-defendants they were passed lengthier and consecutive sentences.

I agree, returning to the facts of the case, there is no reason why the sentences against the Respondent should not be made consecutive, given that the two offences were for entirely

separate and distinct offences that took place on different dates, addresses and for different items.

I agree with the DPP that deterrence must be the foremost consideration when it comes to sentence for an offence of this nature. Unless there are exceptional circumstances, and there is none here, a sentence of 12 months' imprisonment is appropriate even for a first offender.

In *PP vs Md Zulani bin Hj Sani (HCCA 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 offence”.

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.

An offence of theft under section 379 of the Penal Code Cap 22, carries a term of imprisonment which may extend to 3 years, or with fine, or with both.

I agree with the Appellant considering all these matters, I find that the sentence passed by the Chief Magistrate was manifestly inadequate and unduly lenient and did not commensurate with the offence of car theft which is considered as a serious offence. Having regard to the fact that she was convicted after trial and looking at previous cases, the appropriate sentence for the 1st charge should have been 12 months' imprisonment.

However, since the Respondent has already served her custodial sentence from 31st October 2016 and was released after serving only 4 months in custody. I do not think it is fair to resentence her. I would therefore, dismissed the appeal.

Appeal dismissed.

PG DP HJH ROSTAINA BTE PG HAJI DURAMAN
Judicial Commissioner
4 th April 2017