

Public Prosecutor

AND

Khairulsyazwan Bin Kadir

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 14 of 2025)**

Hazarena bte POKSJ DP Hj Hurairah, Judge

27th April 2025

*Criminal law - sentencing - guilty plea - consecutive - totality - multiple charges -
housebreaking - theft - Section 457 of the Penal Code - Section 379 of the Penal Code
- Section 511 of the Penal Code - previous convictions - habitual offender - similar
conviction - concurrent*

DPP Muhammad Qamarul Affyian Abd Rahman for Public Prosecutor.
Defendant In Person.

Cases cited:

Hasrin Bin Kalong Vs. Public Prosecutor (High Court of Brunei Darussalam) (Criminal Motion No. 5 of 2022)

Mohammad Khairol Azizan Bin Abd Karim v Public Prosecutor [Criminal Motion No. 2 of 2020]

Public Prosecutor AND Leonardo Misagal Jr [2004] 2 JCBD 85

Public Prosecutor AND Muhammad Abdul Hadi Nazirul Mubin Waie bin Mohd Zulhime (Criminal Trial No. 31 of 2013)

Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion No. 4 of 2014; unreported, 20 May 2014)

Nurul Furqan Bin Awang Morshidi Vs Public Prosecutor (High Court of Brunei Darussalam) (Criminal Appeal No. 24 of 2021)

SENTENCE

Hazarena, Judge:

Introduction

1. The defendant appeared before the Intermediate court on 25th March 2025 when he pleaded to all 6 charges brought against him. The charges are penalties are as follows:

Amended 1st Charge

That you, sometime on the night of the 21st day of February 2025, at the house addressed at a building used as a dwelling house, did commit house breaking by night,

by entering into the said building, belonging to one Md Afendi bin Abdul Minor comma, after the hour of sunset and before the hour of sunrise, to wit, by opening and entering through a sliding window of the said house, in order to commit an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 22.

Penalty under Section 457 of the Penal Code

Imprisonment for a term not exceeding 5 years and whipping. If the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

2nd Charge

That you, sometime in the night of the 21st day of February 2025, in a black Suzuki Celerio vehicle bearing registration number BAX 9644, parked at the vicinity of a house addressed at No 9D, Simpang 184, Barek Bandaran, Sg Basong, Tutong, in Brunei Darussalam Did commit theft of property, to it, one brown wallet belonging to Mohammed Affendi bin Abdullah Minor, and that you have there by committed an offence punishable under section 379 of the Penal Code, chapter 22.

Penalty under Section 379 of the Penal Code

Imprisonment for a term which may extend to three years, or with fine or with both.

3rd Charge

That you, sometime on the night of the 21st day of February 2025, at the vicinity of a house addressed at No 9C, Simpang 184, Barek Bandaran, Sg Basong, Tutong, in Brunei Darussalam Did attempt to commit theft of property, to it, 1 Toyota Hilux vehicle bearing registration number BAL 2425 belonging to one Haji Mohammad Suffaisal bin Haji Mohammad Daud, and that you have thereby committed an offence punishable under section 379 of the Penal Code, chapter 22 read with section 511 of the same.

Penalty under Section 379 of the Penal Code

Imprisonment for a term which may extend to three years, or with fine or with both.

Penalty under Section 511 of the Penal Code

Imprisonment shall not exceed one half of the longest provided of the offence.

Amended 4th Charge

That you, sometime on the night of the 20 first day of February 2025, in a blue Suzuki auto vehicle bearing registration number B a K4260, parked at the vicinity of a house addressed at No 9B, Simpang 184, Barek Bandaran, Sg Basong, Tutong, in Brunei Darussalam did commit desktop properties, to wit:

- a) one black bag brand polo; and,
- b) one black wallet,

belonging to Ya'akub bin Keria, and that you have thereby committed an offence punishable under section 379 of the Penal Code, chapter 22.

Penalty under Section 379 of the Penal Code

Imprisonment for a term which may extend to three years, or with fine or with both.

5th Charge

That you, sometime between 0100 hours and 0300 hours on the 22nd day of February 2025, at a house addressed at No 10, Simpang 184, Barek Bandaran, Sg Basong, Tutong, in Brunei Darussalam, a building used, as it dwelling house, did attempt to commit house breaking by night, by attempting to enter into the set building, belonging to one Mohammed Asha Daniel Ben Sander, after the hour of sunset and before the hour of sunrise, to wit, by opening a window of the said house and attempting to enter through the said window, in order to commit an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 457 of the Penal Code, chapter 22.

Penalty under Section 457 of the Penal Code

Imprisonment for a term for a term not exceeding five years and whipping. If the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

Penalty under Section 511 of the Penal Code

Imprisonment shall not exceed one half of the longest provided of the offence.

6th Charge

That you, sometime between 1740 hours on the 25th day of January 2025 and 0800 hours on the 26th of January 2025, at the house addressed at No 16C, Spg 145, Jln 11, Perumahan Negara, Kg Lambak Kanan in brunei Darussalam, a building used as a dwelling house, did commit house breaking by entering into the said building, in the possession of one Dk Maryam been Pg Haji Abdul Hamid, to wit, by entering a window of the said house, in order to commit an offence punishable with imprisonment, to wit, theft and you have thereby committed an offence punishable under section 454 of the Penal Code, chapter 22.

Penalty under Section 454 of the Penal Code

Imprisonment for a term for a term not exceeding five years and whipping. If the offence intended to be committed is theft, the term of imprisonment may extend to 10 years.

The facts.

2. The defendant is 29 years old and a Bruneian national he is single and unemployed.

3. On 21st of February 2025 defendant was driving at night with his girlfriend when the vehicle broke down in the vicinity of Kg Sg Basong. The defendant decided to walk around while his girlfriend stayed in the car.

Facts with respect to the 1st, 2nd, and 3rd Charges:

4. On the night of 21st February 2025, while in the neighbourhood of Barek Bandaran, Kg Sungai Basong, the defendant noticed that the sliding window of House No. 9D was unlocked. He climbed in through the window and stole two mobile phones. After leaving the house through the same window, he found an unlocked black Suzuki parked nearby. He opened the car door, searched inside, and took a brown wallet.
5. Next, he spotted a Toyota Hilux parked at House No. 9C. He tried to enter the vehicle but triggered the car alarm, which scared him into running away. In his haste, he dropped the two mobile phones he had stolen from House No. 9D.

Facts with respect to the 4th Charge:

6. As the defendant was escaping, he saw a blue Suzuki Alto parked at House No. 9B. He used a knife to unlock the driver's door, looked inside, and stole a black Polo bag and a wallet.

Facts with respect to the 5th Charge:

7. After leaving House No. 9B, the defendant approached a red car at House No. 10. When he found it unlocked, he searched for items but found nothing useful. He then looked for a way into the house and saw a small window he could push open. However, he couldn't climb inside and gave up. He later rested at a house across from House No. 10, where local residents found him and reported him to the police.
8. Muhammad Sufifazul, the owner of the Toyota Hilux, heard his car alarm go off and found the car door ajar. He saw two mobile phones on the ground nearby, which belonged to his neighbor, Md Affendi. Muhammad Affendi then checked for other thefts in the neighborhood and found that a blue Suzuki ALTO at House No. 9B was also tampered with. The neighbor, Ya'akub, confirmed that his bag and wallet were missing.
9. Police later discovered that the window at House No. 10 was pushed open and started an investigation. Neighbors, noticing multiple thefts, searched for the suspect and found the defendant sitting nearby. They detained him until police arrived and recovered the stolen items, with the defendant admitting to the thefts.

Facts with respect to the 6th Charge:

10. In addition to the above, the defendant admitted to stealing from House No. 16C in Kg Lambak Kanan on 25th January 2025 between the hours of 1740 and 0800 hours (the following day). After being dropped off by his girlfriend, he found an unlocked car outside that belonged to the house and stole a wallet containing \$1,000. He then opened a house window and entered, where he took a wallet with \$10,000 and two mobile phones. The owner, Dk Mariam, later reported the theft.
11. During the police investigation, the defendant confessed that he used the stolen money to buy drugs, food, and for gambling, and also traded some mobile phones for drugs. Only one phone was recovered; the others remain missing

Court's Considerations

12. The defendant has a troubling history of criminal behaviour, with previous convictions for theft dating from 2019 to 2023. Notably, the defendant has just recently, served an 18-month prison sentence in October 2023 for similar offenses. Despite the severity of his record, the defendant now seeks a lenient sentence and requests that the sentences be served concurrently.
13. To assess the appropriate range of sentences, it is crucial to reflect on established case law which underscores the grave nature of such crimes.
14. I refer to the case of Hasrin Bin Kalong Vs. Public Prosecutor (High Court of Brunei Darussalam) (Criminal Motion No. 5 of 2022) for offences under 379 the Penal Code where the defendant was sentenced to 12 months on each charge. The learned Chief Justice held on appeal that *"The sentences individually are not excessive and are in line with the sentences imposed for offences of this nature: Mohammad Khairol Azizan Bin Abd Karim v Public Prosecutor [Criminal Motion No. 2 of 2020]."*
15. The Court has consistently stress that housebreaking is viewed with utmost seriousness. In Public Prosecutor AND Leonardo Misagal Jr [2004] 2 JCBD 85, the learned Judge Dato Paduka Steven Chong, J said that *"Housebreaking in order to commit theft is treated very seriously by the Court and generally sentences of between 2 to 3 years have been imposed for a single offence even after a guilty plea."* In the further case of Public Prosecutor AND Muhammad Abdul Hadi Nazirul Mubin Waie bin Mohd Zulhime (Criminal Trial No. 31 of 2013), the defendant was charged with 6 charges. The 1st charge was a charge under Section 457 of the Penal Code for breaking into the shop in Seria by using a lever to pry the lock of the side door of the shop where the defendant stole a total of BND\$1,194.60 from the cash register drawer. The Defendant was sentenced 3 years and 3 strokes reduced to 2 years and 2 strokes.
16. In the further case of Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion No. 4 of 2014; unreported, 20 May 2014) the Court of Appeal commented that *"Housebreakings at night are serious crimes. In a typical case a sentence of up to 5*

years' imprisonment may be upheld by the court because of the distress and potential fear caused to home owners." The court of appeal went on to state that, "However, it is to be noted that, in the particular circumstances of that case, the starting point of 3 ½ years' imprisonment reduced to 28 months' imprisonment, for each of two offences of housebreaking at night of unoccupied premises, was "perfectly proper".

17. In determining whether the sentences should run concurrently or consecutively, the court must consider the severity of the offenses committed. Previous rulings have shown that reoffenders, especially those with multiple convictions, should face strict penalties.

18. I refer to the Case of Nurul Furqan Bin Awang Morshidi Vs Public Prosecutor (High Court of Brunei Darussalam) (Criminal Appeal No. 24 of 2021) where the Honourable Chief Justice decided that the sentence of 18 months imprisonment on each count to run concurrently after being convicted on trial i.e. theft of a car contrary to Section 379 and two counts of theft of items from a building contrary to Section 380, was "*far from being excessive erred on the side of leniency. In the Haris Bin Akil case Roberts, CJ upheld consecutive sentences imposed on two separate acts of theft of cars. Considering these three offences were committed on separate occasions I think the imposition of consecutive sentences in relation to two of the offences resulting in an aggregate sentence of 3 years' imprisonment would have been entirely appropriate.*"

19. The defendant's repeated offenses illustrate a blatant disregard for the law, and this is the second time he stands before this court. Imprisonment is imperative to safeguard society from his continued pattern of theft and home invasion. A custodial sentence is not only a response to his actions but also a necessary measure to restore a sense of security among homeowners within the community.

20. A significant prison sentence is vital—not simply as punishment but as a deterrent against similar criminal conduct. The consequences of such actions must be clear: unlawful acts will lead to swift and severe penalties. This serves as a stern warning to potential offenders that the risks associated with these crimes far outweigh any perceived rewards. Only through this approach can we hope to protect the community from the ongoing threat posed by individuals like the defendant.

Sentence

21. Upon considering the matters I have taken into consideration I therefore sentence the defendant as follows:

1st Charge: 3 years' imprisonment 3 strokes. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 2 years' imprisonment and 2 strokes.

2nd Charge: 18 months' imprisonment. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 1-year imprisonment.

3rd Charge: 15 months' imprisonment. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 10 months' imprisonment.

4th Charge: 18 months' imprisonment. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 1-year's imprisonment.

5th Charge: 33 months' imprisonment 2 strokes. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 22 months' imprisonment and 1 stroke.

6th charge: 3 years' imprisonment 3 strokes. As he pleaded guilty he is given the full discount and the sentence is therefore reduced down to 2 years' imprisonment and 2 strokes.

22. The sentence must be proportional to the overall pattern of the defendant's criminal behaviour. The Court has carefully considered the need to balance the cumulative sentence for the multiple offenses committed, ensuring that it is neither excessively harsh nor overly lenient. Consequently, the sentences for the 1st to 4th Charges will run concurrently, reflecting their interconnected nature. In contrast, the 5th and 6th Charges will run consecutively, emphasizing the severity of those particular offenses and the need for a more significant response to the defendant's escalating criminal actions.

23. **The total sentence is therefore 70 months i.e. 5 years 10 months, and 5 strokes.** The sentence is to run from the date he was remanded.

HAZARENA BTE POKSJ DP HJ HURAIRAH
Judge, Intermediate Court