

Public Prosecutor

AND

Mohamad Azhan Bin Awang Ahmad

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 44 of 2020)**

Harnita Zelda Skinner, Judge
11th July 2020

Criminal law – guilty plea- sentence - section 392 of the Penal Code – sentence

PO Syazwani Binti Jumat for Public Prosecutor.
Defendant in person and unrepresented.

Cases cited:

PP vs Herman bin Othman (Criminal Trial No. 17 of 2005)
PP vs Ahmad Aidyl Arman bin Abdullah Yu @ Yu Chiek Say (Criminal Trial 23 of 2010)
PP vs Haji Muhammd Dhiyaulhaq Bin Haji Ariffin (Criminal Trial No. 33 of 2014)
PP vs Mahadi bin Ismail and Zainal Abidin (Criminal Trial No.4 of 2002)
PP vs Hamdee bin Haji Md Zaidi (Criminal Trial No. 4 of 2002)

SENTENCE

Harnita Zelda, Judge:

1. The defendant had pleaded guilty to a charge under section 392 of the Penal Code, Chapter 22.
2. Charge

“That you, on or about the 29th day of June 2020, at about 1745hrs, at the vicinity of Pandan 5, Kuala Belait in Brunei Darussalam committed theft of one (1) old-coloured mobile phone model samsung J2 belonging to one Nagarajan Mairiyapillai, and in order to commit theft of the said Samsung J2, voluntarily cause fear of instant hurt to the said Nagarajan Mairiyapillai, to wit, by using a knife, and you have thereby committed an offence punishable under section 392 Penal Code, Cap 22”.

3. Penalty

The penalty is punishable with imprisonment for a term not exceeding 30 years and whipping with not less than 12 strokes.

4. Background facts

On 29th May 2020 at about 1630hrs, the defendant was driving his re-coloured motor vehicle model Hyundai i10 bearing registration number BAC 5519 heading towards Panaga Beach. When the defendant reached the vicinity of Panaga School at about 1745hrs, the defendant saw one Indian national, one Nagarajan Mairiyapillai (“the Complainant”) who was waiting at F4 bus stop, located in front of Panaga Golf Club.

The Defendant then stopped his car at the said bus stop and asked the Complainant where he was headed. The Complainant replied that he wanted to go to his staff house located at the vicinity of Pandan 5, Kuala Belait. The Defendant then offered the Complainant a ride in his car to go to Pandan 5 and the Complainant agreed for a fee. Initially, the Complainant wanted to sit at the back seat, however, the Defendant insisted for the Complainant to sit on the front passenger seat. The Complainant complied.

When both of them were on the way to Pandan 5, Kuala Belait, the Complainant inquired about the fare. The Defendant answered that the Complainant had to pay him BND\$20.00. However, the Complainant replied he had no money because he was waiting for his salary. The Complainant also showed his empty wallet to the Defendant. The Defendant immediately locked all the car doors and told the Complainant that the car ride is not for free.

The Defendant then took out one small knife from a compartment on the driver’s door. While holding the said knife in front of the Complainant, the Defendant said that the Complainant must pay him, otherwise the Complainant must give his mobile phone to the Defendant. Fearing for his safety, the Complainant immediately surrendered his gold-coloured Samsung J2 to the Defendant.

When the Complainant and the Defendant had arrived at the vicinity of Pandan 5 Kuala Belait, the Defendant removed the protective cover of the said Samsung J2 and proceeded to throw the cover out of his car.

The Complainant, thinking that it was his phone which the Defendant threw out, immediately went out of the Defendant’s car in order to retrieve the said Samsung J2. When the Complainant eventually realized that the Defendant had thrown the cover of Samsung J2, the Defendant had already drove off with the Complainant’s mobile phone. Thereafter, the Defendant proceeded to throw away the sim card and deleted all data from the said Samsung J2. The Defendant then made his way to his friend’s house and sold the said Samsung J2 for BND\$30.00.

Following the incident, the Complainant proceeded to lodge a police report on 30th May 2020 at Kuala Belait Police Station at about 0952hrs. Police investigations subsequently led to the arrest of the Defendant on 22nd June 2020 at about 2213hrs at Lot 6290, Simpang 146, Jalan Kecil Sungai Bakong, Lumut, Brunei Darussalam.

Police investigations also revealed that the Defendant admitted to using a knife with the intention to scare the Complainant to pay him BND\$20.00. The Defendant also admitted to stealing the Complainant's mobile phone in order to settle the Complainant's fare debt.

During the Identification parade, the Complainant managed to positively identify the Defendant as the perpetrator. The Complainant also managed to identify the knife and car used by the Defendant in the commission of the offence.

The Samsung J2 was recovered.

On record, the Defendant has no previous convictions.

5. Mitigation

The defendant is a 35 years old local. He is single and self-employed. In mitigation, he asked for leniency so he can take care of his parents. He expressed his regret for what he did and wants to change to be a better person.

6. Authorities

In determining the appropriate aggregate sentence, reference is made to the authorities below, which involved offenders who had committed crimes using knife related offences.

I refer to the case of *Public Prosecutor vs Ahmad Aidyl Arman bin Abdullah Yu @ Yu Chick Seng* (Criminal Trial No. 23 of 2010), where the defendant robbed a shop and used a kitchen knife to threatened a shop employee to surrender money. The defendant has no previous convictions. The Chief Justice imposed a sentence of 7 years' imprisonment and 12 strokes of whipping.

Also, in *Public Prosecutor vs Herman Bin Othman* (Criminal Trial No.17 of 2005), the defendant robbed a shop and used a knife to threatened the shop assistant for money. The High Court Judge imposed a sentence of 7 years and 12 strokes of whipping.

In *Public Prosecutor vs Haji Muhammad Dhiyaulhaq Bin Haji Ariffin* (Criminal Trial No.33 of 2014), also of similar nature, the Intermediate Court Judge imposed a 9 years' imprisonment and 12 strokes of whipping after the defendant pleaded not guilty and claimed trial.

Threatening another person with a knife is a serious offence. In *Public Prosecutor vs Hamdee bin Haji Md Zaidi* (Criminal Trial No. 4 of 2002) the use of offensive weapon to intimidate the victim is a highly aggravating factor in offence of this nature. Similarly, in

Public Prosecutor vs Mahadi bin Ismail and Zainal Abidin Bin Ismail (Criminal Trial No.4 of 1993), where banishing of a knife in the course of a robbery was a serious offence.

The previous authorities above shows how the courts are increasingly sentencing knife related crime more harshly and imposing deterrent sentences.

7. Present case

There are several aggravating factors present in this case.

The defendant had randomly picked the complainant who so happened to be waiting at the bus stop. Knowingly that the complainant had no money, the defendant decided to threatened the complainant with a knife which he kept inside the car and demanded for the complainant to surrender the mobile phone. The defendant also locked the door to stop the complainant from leaving the vehicle.

It is with the use of the knife, the defendant had put the complainant in fear for his safety.

The defendant said that he wanted to scare the complainant at the time however this was hardly justification for his acts.

A deterrent sentence is called for in this instance to deter would-be offenders from committing such offence. This is to ensure that the public feels safe in a variety of situations.

8. Sentence

Having considered the penalty and aggravating factors of this case, there is a need to consider a custodial sentence so as to deter likeminded offenders.

Taking into account of the penalty and aggravating factors, the court takes a starting point of 10 years imprisonment and 12 strokes. In view of the guilty plea and no previous conviction, reduced to 7 years imprisonment and 12 strokes of whipping.

The sentence will take effect from date of his remand.

HARNITA ZELDA SKINNER
Judge, Intermediate Court