

Public Prosecutor

AND

Saufi Bin Seruji (D1)
Maslina Binti Haji Metusin (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 24 of 2020)

*Criminal law – Sentence- house breaking by night with intent to commit theft - section 457 of the Penal Code-theft of car- section 379 of the Penal Code-section 426 of the Penal Code-
Section 8 (c) Road Traffic Act*

Harnita Zelda Skinner, Judge
19th July 2022

PO Nur Hidayatul Aeny Alisah Hj Zullizam for Public Prosecutor.
D1 in person and unrepresented.

Cases cited:

Public Prosecutor v Tan Eng Hoc [1969] MLJ 15

Mohammad Yusrin bin Hj Mohammad v Public Prosecutor (Criminal Appeal No. 8 of 2013)

Umajah Bin Mohd Salleh (Criminal Appeal No.23 of 2018)

Mohd Azwan bin Ibrahim v Public Prosecutor (Criminal Motion No. 37 of 2018)

Norfazil Bin Tamit v Public Prosecutor (Criminal Appeal No. 129 of 2002)

Public Prosecutor vs Haji Masirman Bin Mazlan, High Court Criminal Appeal No 27 of 2016

Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138

Mohamed Abdul Malik Fazil bin Mohammad v Public Prosecutor (Criminal Appeal No.5 of 2017)

Public Prosecutor and Bahrin bin Rejab [ICCT Criminal Trial No.85 of 2017]

Public Prosecutor and Haji Hamdilah bin Haji Othman and others (ICCT No.1 of 2019)

SENTENCE

Harnita Zelda Skinner, Judge:

1. Background

Both defendants (D1) and (D2) were brought to court on 30th April 2020 and remitted to the Intermediate Court on the same day for charges to be read and plea to be recorded. D1 and D2 were jointly charged for two charges under section 457 of the Penal Code, Chapter 22 read with section 34 of the same and one charge under section 379 of the Penal Code, Chapter 22 read with section 34 of the same. D1 was charged for two other charges. On 21st October 2020, D2 has pleaded guilty to all the charges. She was convicted and sentenced on 21st October 2020.

D1, on the other hand, has pleaded not guilty to all the charges and has claimed trial. On 5th July 2022, he was found guilty and convicted.

2. Charges

1st charge (Against D1 and D2)

“That both of you on the 18th of April 2020 sometime between 0200hrs and 0300hrs, at a shop named kedai Lok-Lok addressed at Bangunan Laksamana College, Batu Satu, in Brunei Darussalam, in furtherance of your common intention, did commit house-breaking by night, by entering into the said building, in the possession of one Harun Samsudin, used as custody of property, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same”.

Amended 2nd charge (Against D1 and D2)

“That both of you on the 18th of April 2020 sometime between 0300hrs and 0500hrs, at a restaurant named MyTown addressed at Ground Floor, The Crowne Princess Complex, Lorong 1, Jalan Laksamana Abdul Razak, Bandar Seri Begawan, in Brunei Darussalam, in furtherance of your common intention, did commit house-breaking by night, by entering into the said building, in the possession of one Mohammad Danniell Wafy Bin Asmali, used as custody of property, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same”.

The penalty under section 457 is an imprisonment for a term which may extend to 5 years and with whipping, and if the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

Amended 3rd charge (Against D1 and D2)

“That both of you on the 18th of April 2020 sometime between 0300hrs and 0500 hrs at the parking area of restaurant MyTown addressed at Ground Floor, The Crowne Princess Complex, Lorong 1, Jalan Laksamana Abdul Razak, Bandar Seri Begawan, in Brunei Darussalam, in furtherance of your common intention, did commit theft of property, to wit, one (1) silver Hyundai Accent vehicle bearing registration number BAN 5151, in the possession of Mohammad Danniell Wafy Bin Asmali, and both of you thereby committed an offence punishable under section 379 of the Penal Code Chapter 22 read with section 34 of the same”.

The penalty under section 379 of the Penal Code, Chapter 22 shall be punished with imprisonment for a term which may extend to 3 years, or fine or both

Amended 4th charge: (Against D1 only)

“That you, sometime on the 18th of April 2020, in Kampong Bengkurong Sinarubai, in Brunei Darussalam, did mischief by causing wrongful damage, to wit, by spraying the front bumper of one (1) Hyundai Accent vehicle, from silver to black, bearing registration number BAN 5151, in the possession of Mohammad Danniell Wafy Bin Asmali, and that you thereby committed an offence punishable under section 426 of the Penal Code Chapter 22”.

The penalty under section 426 of the Penal Code, Chapter 22 is an imprisonment for a term which may extend to 2 years or with fine, or with both

5th charge: (Against D1 only)

“That you, sometime on the 18th of April 2020, at a house addressed at No. 7, Spg 138, Kampong Bengkurong Sinarubai, in Brunei Darussalam, did display on a motor vehicle, a Hyundai Accent vehicle, from silver to black, bearing registration number BAP 1059, an identification mark which closely resembles an identification mark prescribed by regulations made under Section 93(2) as to be calculated to deceive the real registration identification mark for the said motor vehicle being BAN 5151, and that you thereby committed an act contrary to section 89(c) of the Road Traffic Act, Chapter 68.

The penalty under section 89 of the Road Traffic Act, Chapter 22 is an imprisonment for 6 months and a fine of \$8000.

3. Mitigation

In mitigation, D1 asked for lenient sentence and for his sentence to run from date of remand.

4. Authorities submitted by the prosecution

The prosecution submitted several authorities for the court to consider in determining an appropriate sentence for the charges:

Section 457 of the Penal Code: *Mohammad Joll bin Tumih v Public Prosecutor* (CA No.5 of 2005); *Public Prosecutor v Rari Kaka @ Purnomo* (Criminal Trial No.7 of 2008) and *Mohd Azwan bin Ibrahim v Public Prosecutor* (Criminal Motion No.37 of 2018)

Section 379 of the Penal Code: *Norfazil bin Tamit v Public Prosecutor* (HCCS No.129 of 2002) and *Public Prosecutor v Mohammad Fadziel @ Roony bin Hj Jumat & Anor* (Intermediate Court No. 38 of 2018)

Section 426 of the Penal Code: *Mohamed Abdul Malik Fazil bin Mohammad v Public Prosecutor* (CA No.5 of 2017) and *Public Prosecutor v Md Dzulfadli bin Abdullah* (Intermediate Court No. 38 of 2018)

Section 89 (c) of the Road Traffic Act: Public Prosecutor and Bahrin bin Rejab [ICCT Criminal Trial No.85 of 2017] and *Public Prosecutor and Haji Hamdilah bin Haji Othman and others* [ICCT Criminal Trial No.1 of 2019].

5. Aggravating factors

- a) Owners of the stolen items have suffered losses and hardship.
- b) Some of the stolen items were not recovered.
- c) Committed house breaking used for the custody of property.
- d) Offences were committed within a span of few hours
- e) Previous offences in the year 2008 (section 380 PC), 2010 (section 379 PC), 2011(section 454 and 380 PC) and 2014 (three offences under section 457 and two offences under section 447 PC).

6. Sentence consideration

The court is appreciative to the prosecution for submitting the above authorities for the court to consider in determining the appropriate sentences, which involved offenders who had offences under section 457, section 426, section 379 of the Penal Code, Chapter 22 and section 89(c) of the Road Traffic Act, Chapter 68.

I refer to the case of *Public Prosecutor v Tan Eng Hoc* [1969] MLJ 15, where the HC Judge states that “*in considering the appropriate sentence the Court should always be guided by certain principles, the first and foremost of which is the public interest. The criminal law is publicly enforced, not only with the object of punishing a crime but also preventing it. In*

*fixing /wp-content/uploads/2026/08/judgment_ICCT_33_2021.pdf*sentence, the nature, the circumstances and the degree of deliberation must be taken into account”.

Considering that D1 was convicted after trial, he is not entitled to the one third discount in the sentence afforded to defendants who has pleaded guilty.

1st and 2nd charges under section 457 of the Penal Code, Chapter 22 read with section 34 of the same.

Offences of housebreaking, in general, in order to commit theft, are prevalent offences which call for a deterrent sentence in the public interest. A lenient sentence will not deter. Cases such as this caused hardship and losses to the complainants.

As commented by the Court of Appeal in the case of *Mohammad Yusrin bin Hj Mohammad v Public Prosecutor* (Criminal Appeal No. 8 of 2013), “*This court has said on many occasions that offences of trespass and theft from dwellings are serious. They cause immense distress to home owners who feel that their privacy and their property has been violated*”.

In *Umajah Bin Mohd Salleh* (Criminal Appeal No.23 of 2018), the Court of Appeal held that the judge was correct to take a starting point of 4 years imprisonment.

In the case of *Mohd Azwan bin Ibrahim v Public Prosecutor* (Criminal Motion No. 37 of 2018), *Court of Appeal stated “ whilst there is, inevitably, some variation in the sentences passed in these cases due to the differing circumstances and facts of each case it can be seen that for a single offence contrary to section 457, absent of any particular unusual circumstances pertaining to either the offence or the offender, a sentence of up to 5 years after trial would be correct.”*

The penalty under section 457 of the Penal Code is an imprisonment for a term which may extend to 5 years and with whipping, and if the offence intended to be committed is theft, the term of imprisonment may extend to 15 years. As reflected by the penalty, it is a serious offence.

It is observed, that offence under 457 of the Penal Code are treated by the court as serious in nature and imposing custodial sentences.

Taking into account of the penalty and aggravating factors, the court sentence D1 to 4 years imprisonment and 3 strokes for each charges.

1st charge – 4 years imprisonment and 3 strokes

2nd charge – 4 years imprisonment and 3 strokes

Amended 3rd charge under section 379 of the Penal Code, Chapter 22 read with section 34 of the same

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

Theft of cars is a serious offence. The previous authorities below shows how the courts are increasingly sentencing car related crime harshly and imposing deterrent sentences.

In the case of *Norfazil Bin Tamit v Public Prosecutor* (Criminal Appeal No. 129 of 2002), where Justice Dato Paduka Steven Chong states that *“It is in the public interest that in the case concerning the theft of cars, the sentence imposed must be sufficient severity in order to have a deterrent effect”*. *“A starting point of 12 months imprisonment is proper where the offender has a clear record, with an appropriate deduction for pleading guilty”*. The appeal was dismissed. The defendant was to serve 24 months imprisonment for two separate car theft offences.

In the case of *Public Prosecutor vs Haji Masirman Bin Mazlan*, High Court Criminal Appeal No 27 of 2016, Justice Chong states that *“theft of cars is treated very seriously by court because of the prevalence of the offence. The primary sentencing consideration must be deterrence”*.

In *Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin* [2003] BLR 138, a starting point of 12 months imprisonment is appropriate where the defendant has clear record and pleaded guilty. Judge Steven Chong further states that a higher starting point sentence is justified for an offence with previous conviction depending on the nature of the offence.

Taking into account of the penalty and aggravating factors, the court sentence to 2 years imprisonment.

Amended 4th charge under section 426 of the Penal Code, Chapter 22

In the case of *Mohamed Abdul Malik Fazil bin Mohammad v Public Prosecutor* (Criminal Appeal No.5 of 2017), the applicant charged under section 426 for mischief. The Intermediate Court Judge took a starting point of 9 months imprisonment reduced to 6 months imprisonment.

Taking into account of the penalty and aggravating factors, the court sentence D1 to 8 months imprisonment.

5th charge under section 89 (c) Road Traffic Act, Chapter 68.

The prosecution submitted two authorities for offences committed under section 89 (c) Road Traffic Act, Chapter 68. In *Public Prosecutor and Bahrin bin Rejab* [ICCT Criminal Trial No.85 of 2017] and *Public Prosecutor and Haji Hamdilah bin Haji Othman and others* (ICCT Criminal Trial No.1 of 2019) defendant(s) was convicted after trial and sentenced to 1 month's imprisonment.

Taking into account of the penalty and aggravating factors, the court sentence D1 to 2 months imprisonment.

7. Total sentence

Taking into account of the totality principle and to ensure that the sentence imposed are not manifestly excessive, 1st and 2nd charges are to be concurrent and consecutive to the amended 3rd charge, amended 4th charge and 5th charge. A total sentence of 6 years and 10 months imprisonment and 3 strokes. The sentence of imprisonment shall run with effect from date of remand, 20th April 2020.

All stolen items are to be returned to the rightful owner.

HARNITA ZELDA SKINNER
Judge, Intermediate Court