

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-guilty pleas

Harnita Zelda Skinner, Judge

21st October 2020

PO Nur Hidayatul Aeny Alisah Hj Zullizam for Public Prosecutor
D2 in person and unrepresented.

Cases cited:

Public Prosecutor v Tan Eng Hoc [1969] MLJ 15

Umajah Bin Mohd Salleh (Criminal Appeal No.23 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

SENTENCE

Harnita Zelda Skinner, Judge:

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. Both have pleaded not guilty to all charges. On 12th October 2020, D2 has pleaded guilty to the charges before the commencement of the trial.

In view of D2's guilty plea, I will now deal with the sentence

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1st charge

“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”.

2nd charge

“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 RaOctzak, 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”.

Amended 3rd charge

“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”.

Statement of facts

1. D2 is a 45 year old Bruneian female. She is a divorcee with 8 children.
2. On the 18th of April 2020 at around 0800hrs, one Harun Samsudin (hereinafter referred to as ‘the first complainant’) came to work at a shop named Kedai Lol-Lok addressed at Bangunan Laksaman College, Batu Satu, in Brunei Darussalam and found that the shop’s three (3) rice cookers and one (1) electric fan brand ‘Miyako’ were missing. He then told his employer and proceeded to lodge a police report.
3. On 18th of April 2020 at 0712 hrs, one Mohammad Danniell Wafy Bin Asmali (hereinafter referred to as the second complainant) a supervisor at a shop restaurant MyTown

addressed at Ground Floor, The Crowne Princess Complex, Lorong 1, Jalan Laksamana Abdul Razak, Bandar Seri Begawan, in Brunei Darussalam was informed by one of his workers that the shop delivery vehicle, one (1) silver Hyundai Accent vehicle bearing registration number BAN 5151,, two (2) mobile phones (brand Noklia and Xiomi), two (2) large tins of cooking oil and five (5) whole chicken were missing. The second complainant then proceeded to lodge a police report

4. Police investigations led to the involvement of D2 and another person (hereinafter referred to as 'the said other person')
5. Police investigation revealed that on the 18th of April 2020, at about 0200hrs and 0300hrs, both the said person and D2 was walking towards the said Lok-Lok shop and found no one inside the said shop. The said other person then looked through its window and realized the window was loose. The said other person then managed to lift the window out while D2 waited outside. The said other person then took the following items from the said Lok-Lok shop:
 - i. three (3) electric rice cookers; and
 - ii. one (1) electric fan

Both the said other person and D2 managed to bring the said items from the said shop and brought them to a nearby hotel, where D2 wanted to use the ladies room.

6. Meanwhile, the said other person looked around at the said MyTown restaurant which was nearby. The said other person tried and managed to open one of the sliding doors by pressing his body against it. The said other person then took with him the following items with him:
 - i. One (1) remote car key
 - ii One (1) Nokia mobile phone; and
 - iii One (1) Meizu mobile phone
7. The said other person then went to find D2 who was waiting outside the hotel. The said other person proceeded back to the said MyTown restaurant with D2 and took the following items from the kitchen area:
 - i Five (5) whole chicken
 - ii Two (2) large tins of cooking oil;
 - iii One (1) box containing 24 bottled chili sauce
8. Both the said other person and D2 managed to carry all the items outside of the said MyTown restaurant. The said other person then tried to find the vehicle for the remote car key that he stole earlier on from MyTown restaurant and found that it unlocked one (1) silver Hyundai Accent parked near the vicinity of the said MyTown restaurant. The said other person managed to start the engine and drive to D2 to carry all the items they

have stolen into the said Hyundai vehicle. They then drove towards the said person's house in Kampung Bengkurong Sinarubai, in Brunei Darussalam.

9. In the course of police investigation, D2 admitted to have committed the said offences together with the said other person in furtherance of their common intention.
10. Police only manage to recover the said items:
 - i The said silver Hyundai Accent vehicle with remote car key; and
 - ii The said Meizu mobile phone
 - iii The said stolen two (2) rice cooker
11. On record, D2 has no previous convictions.

Mitigation

In mitigation, D2 has asked for a lenient sentence as she has eight children who are dependent on her. D2 has pleaded guilty to all charges and was convicted. A guilty plea is usually considered as strong mitigating factor as it saves time and expenses. She has no previous conviction.

Aggravating factors

- i) Owners of the stolen items have suffered losses and hardship.
- ii) Some of the stolen items were not recovered
- iii) Commit house breaking by night used for the custody of property
- v) Offences were committed within a span of few hours

Sentence

In determining the appropriate aggregate sentence, reference is made to the cases below, which involved offenders who had offences under section 457 and section 379 of the Penal Code.

In considering my sentence 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 sentence, the nature, the circumstances and the degree of deliberation must be taken into account*”.

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

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.

Taking into account of the penalty and aggravating factor, the court takes a starting point of 4 years imprisonment and 2 strokes. The sentence is reduced to 2 years imprisonment 8 months and 2 strokes for D2 guilty plea and has no previous conviction.

1st charge – 2 years' 8 months' imprisonment.

2nd charge – 2 years' 8 months' imprisonment

Under section 258 of the Penal Code, in lieu of whipping, a sentence of 2 months imprisonment for each charge.

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

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 factor, the court takes a starting point of 12 months imprisonment. In view of D2's guilty plea and has no previous conviction, the court reduced to 8 months imprisonment.

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. The sentence of imprisonment shall run with effect from date of her remand, 20th April 2020.

HARNITA ZELDA SKINNER
Judge, Intermediate Court