

PUBLIC PROSECUTOR

AND

MOHAMAD FAIRUZ BIN AWANG [D1]

ROSLEE BIN ABD. HAMID [D2]

NOORAZLAN BIN ANUAR [D3]

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 48 of 2022)

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge

31st January 2023

Criminal Law – Sentencing – D2 only – house breaking at night with intention to commit theft - 1 joint charge with D1 under s.457 of the Penal Code, Cap 22 – plea of guilty – second offender on record – lapse of 19 years between record of conviction for same offense.

PO Firdaus Mohammad for the Public Prosecutor.

2nd Defendant, in person and unrepresented.

Cases cited:

PP v Awang Mohd Saifullah bin Hj Ahmad (Criminal trial No.1 of 2010)

PP v Rosman bin Abdullah Nyambong (Criminal Appeal No.16 of 2021)

PP v Muhammad Joll bin Tumih (Criminal Appeal No.5 of 2005)

PP v Shamsuddin bin Mohammad (Criminal Motion No.4 of 2014)

S E N T E N C I N G

Dk Hjh Norismayanti, Judge:

Introduction

1. Roslee bin Abd Hamid (D2) appeared before this court on the 24th January 2023 together with the Noorazlan bin Anuar (D3) for mention to fix dates for trial. The prosecution then informed the court that D2 wished to reconsider his plea of guilty. The 1st charge and penalty was re-read and explained to D2 in Malay. Having understood the charge and penalty, D2 entered a plea of guilty. D2 also agreed to the prosecution's Statement of Agreed Facts (SOAF). Based on D2's plea of guilty and the SOAF, the court proceeded to convict D2 on the joint charge with Mohamad Fairuz bin Awang (D1) under section 457 of the Penal Code, Cap 22. D3 pled not guilty to charge and will proceed to trial.

Charge

2. The charge against D2 jointly with D1 reads as follow:-

1st charge (against D1 and D2)

“That all of you, in furtherance of your common intention, sometime between the night of 25th July 2022 and early hours of 26th of July 2022, at house address Lot 2186, Jalan Nakhoda Manis, Seria, in Brunei Darussalam, did commit house-breaking by night, by entering through the window of the said house, in the possession of Tin Wui Min (M.65), a building used as human dwelling, after the house of sunset and before the hour of sunrise, 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, read with section 34 of the same.”

3. The penalty prescribed is an imprisonment sentence for a term which may extend to 5 years and with whipping. If the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

Statement of Agreed Facts (SOAF)

3. As mentioned in paragraph 1 above, D2 agreed to the statement of facts without qualification. D2 is a 40 year old Bruneian male, Malay, a divorcee and has 1 child. At the time of the offence, he was employed as an electrician under RYS Entertainment in Kuala Belait.
4. On the morning of 19th July 2022, Leong Feng Ching arrived at Tin Wui Min's (the complainant who was in Australia at the time) house for a visit and found that the Complainant's house were ransacked and subsequently she lodged a police report. After checking a hidden camera at the said house, a CCTV footage was found showing three people roaming around inside on the 26th July 2022 past midnight. Police investigations were carried out which led to D2's arrest.
5. It is agreed by D2 that sometime between the 25th July 2022 and 26th July 2022, D2 together with D1 and another person rode their respective bicycles to go to the complainant's house with the common intention to steal. Before entering the said house, they made sure to hide their bicycles to avoid being seen. D2, D1 and another person then climbed over the house gate and pried open a window using a screwdriver. After gaining entry, D2 and the two others went around the house to look for any items they could steal, ransacking the house. They took bags from the ground floor to store all the stolen items that they have gathered. All three of them+ then left the said house with their stolen loot and went to the other person's house at Jalan Puteri China, Seria.
6. Police investigations revealed that on the next day, D1 and D2 received \$50 from the proceeds of sale of some of the stolen items from the other person and they both continued to receive monies in the following week. D2 admitted to have received 3 mobile phones from the other said person. Police also found one Alcatel brand phone belonging to the complainant in D2's possession. Upon the complainant's return to his house, apart from finding household items were missing, he found \$30,000 in cash also missing. The complainant estimated the loss of about \$40,000 from the incident.
7. Police investigations also led to the finding of several of the complainant's belongings and they are as listing below:
 - a) 1 pair of Air Jordan Nike shoes
 - b) 1 iPhone 5

- c) 1 green coloured torch light
- d) 1 10-50mm telescope
- e) 1 "SRS" torchlight
- f) 1 pair of hand gloves
- g) 1 "Citi" small black coloured bag
- h) 1 small black coloured pouch
- i) 1 "ocean ride" pendrive
- j) 1 brown coloured wallet
- k) 1 kangaroo wallet
- l) 1 puroo telescope
- m) 1 USB Vacuum
- n) 1 lovefire torch light
- o) 1 green coloured sling bag
- p) 1 mosquito repellent
- q) 1 red coloured bag and
- r) 1 "Greenwish Polo Club" green-cream coloured bag

Previous Conviction

8. D2 also has a history of previous criminal convictions for offences against property. In March 2004, D2 was found guilty for 4 charges under section 379 of the Penal Code for committing theft and 1 charge under section 457 of the Penal Code for a housebreaking offence. For the section 457 offence, D2 was sentenced to 3 years imprisonment and 3 strokes.

Mitigation

9. In his mitigation, D2 pleaded for a lenient sentence and for his sentence to start from the date of remand at the police station. D2 also stated that he would not reoffend.

Sentencing consideration

10. In determining the appropriate sentence, the court has to look into various factors. The foremost consideration is the public interest. The offence of housebreaking is an offence that is rampant in today's society and based on past sentences imposed by the court, there is a strong view that sentences imposed should have a deterrent effect.
11. Another factor to take into account is D2's previous criminal conviction for the same offence and 4 other common theft offences. D2 is therefore not a stranger to the legal system nor is he a stranger to serving custodial sentences which for the record his total sentence in 2004 was for 5 years imprisonment and 3 strokes. In that regard, the court takes into consideration that there has been a lapse of almost 19 years since his previous conviction. In the circumstances, although a previous record for the same offence is often treated as an aggravating factor, in the present case, the long gap of over 10 years will determine the court's approach on D2's final sentence.
12. Another factor taken into consideration is the nature of the stolen items. It is clear that the items found in D2's possession are easily disposable and he also finally benefitted from the sale proceeds of some of the stolen items. The only mitigating factor that can be taken into consideration is that items listed from (a) to (r) from the SOAF were successfully recovered.

13. The court also emphasizes that since the present case involves housebreaking at night with the intention to commit theft, the penalty carries a maximum of 15 years imprisonment and whipping. This reflects the seriousness of the offence committed.
14. The commission of offences against people's properties will inevitably have an effect on the home owners' sense of security for themselves and their properties. The serious approach taken by the court in respect of break-ins into private residence is reflected in the case of *Public Prosecutor v Awang Mohd Saifullah bin Hj Ahmad* (Criminal trial No.1 of 2010) where the court stated: -

"The residence of any occupant is private where the general public is kept out unless granted permission to enter. It offers him or her security from the throes of the world. If anyone breaks an entry into a home, that harmony and peace in the house has been breached, leaving its inhabitants a permanent indelible apprehension as to whether the place he or she calls home is safe anymore. That is one of the reasons why this court takes a serious view of offences involving house trespasses or housebreaking".
15. Based on the facts and circumstances of the present case, it is in the public interest that a deterrent sentence be imposed on the defendant especially considering that he is a second offender. A deterrent sentence should also deter likeminded individuals from committing similar offences.
16. It is also evident from SOAF that the offence was premeditated. They used bicycles that could easily be hidden upon their arrival at the complainant's house, had a screwdriver to easily pry open the house window and they already formed the common intention to steal before they headed towards the complainant's house. The court also cannot ignore that the fact that D2 financially benefited from the stolen items as admitted in the SOAF as well as the complainant's estimated \$40,000 loss resulting from the offence.
17. Considering the offence was committed for financial gain and D2 undeniably benefitted from the sale proceeds as well as the aggravating factors referred to above, the court is of the view that a custodial sentence and a higher starting point is warranted.
18. The court is guided by the case of *PP v Rosman bin Abdullah Nyambong* (Criminal Appeal No.16 of 2021) where the learned Judge stated 'it is well established that a sentence of 5 years with strokes is not excessive for a single offence contrary in s.457 by an offender with a clear record.' This was also echoed in the case of *PP v Muhammad Joll bin Tumih* (Criminal Appeal No.5 of 2005) whereby the court stated in reference to a charge under s.457 of the Penal Code that '*...an appropriate starting point for each of these for D2 when they are not isolated offences but the convicted person is of previous good character would have been 5 years reduced to 3 years for the plea with 2 strokes on each charge.*'
19. In the case of *PP v Shamsuddin bin Mohammad* (Criminal Motion No.4 of 2014), the court upheld the sentence of 3 ½ years reduced to 28 months for an offence under section 457 of the Penal Code but the court indicated that 5 years may be upheld by the court because of the distress and potential fear caused to home owners. Based on these case precedents, it appears that the starting point is in the range of 3 to 5 years where the accused has a clear record and the appropriate sentence is largely determined by the facts and circumstances on a case-to-case basis.
20. It is to be noted that the cases referred to above are cases involving a defendant with a clear record. The court however has to take into consideration that in the present case D2 has a

previous conviction albeit there has been a long gap in between and would therefore attract a heavier sentence.

Sentence

21. Based on the facts and circumstances of the case, the court takes a starting point of 6 years imprisonment and 2 strokes. In view of the mitigating circumstances and D2's guilty plea, the court reduces the sentence to 3 years and 6 months imprisonment and 2 strokes. The sentence is to take effect from the date of D2's remand.

DK HJH NORISMAYANTI BINNT PG HJ ISMAIL
Judge, Intermediate Court