

Public Prosecutor

AND

Muhammad Amir bin Haji Johara

**(High Court of Brunei Darussalam)
(Criminal Trial No. 10 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC
31st December 2020

Criminal Law --- section 435(1)(c) Penal Code --- plead guilty --- previous convictions --- serious offence --- protect society --- imprisonment.

Cases referred to:

Chu Tiong Tiong vs PP (2001) 3 SLR 425
R v Ball (1951) 35 Criminal Appeal R. 164
PP vs Hj Ahmad bin Haji Tamin (HCCT No. 4 of 2018)
PP vs Roslan bin Yusof (HCCT No.23 of 2000)

DPP Dk Didi-Nuraza binti Pg Hj Abdul Latiff stand in for DPP Hjh Rozaimah binti Hj Abd Rahman for Public Prosecutor.
Defendant in person and unrepresented.

SENTENCE

Hj Abdullah Soefri, JC.:

Muhammad Amir bin Haji Johara, thereafter known as the Defendant was brought before this court on 24th December 2020 whereby he was preferred with the main charge under section 436 of the Penal Code, Chapter 22 which carries a penalty of imprisonment for life and an alternative charge under section 435(1)(c) of the Penal Code, Chapter 22 which carries imprisonment for a term not exceeding 15 years and whipping with not less than 6 strokes.

The Defendant on the same date pleaded not guilty to the main charge and pleaded guilty to the alternative charge.

Main Charge

That you, sometime in the evening, on the 5th day of December 2020, inside a house addressed at No.13, Simpang 147, Jalan Kecil Lampaki, Mukim Sengkurong, in Brunei Darussalam, did commit mischief by fire, to wit, by setting fire to a storeroom inside the said house, knowing it to be likely that you will thereby cause the destruction of the said house, which is a building ordinarily used as a place for human dwelling and for the custody of property, and you have thereby committed an offence punishable under section 436 of the Penal Code, Chapter 22.

Penalty under section 436 of the Penal Code, Chapter 22 Imprisonment for life.
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Alternative Charge

That you, sometime in the evening, on the 5th day of December 2020, inside a house addressed at No.13, Simpang 147, Jalan Kecil Lampaki, Mukim Sengkulong, in Brunei Darussalam, did commit mischief by fire, intending to cause damage or knowing it to be likely that you will thereby cause damage to property inside the said house, to wit, a storeroom, and you have thereby committed an offence punishable under section 435(1)(c) of the Penal Code, Chapter 22.

Penalty under section 435(1)(c) of the Penal Code, Chapter 22 Imprisonment for a term not exceeding 15 years and whipping with not less than 6 strokes.

The Defendant admitted to the Statement of Facts and his previous convictions and in his mitigation plead for a lenient sentence.

Sentencing Consideration

The court has to look into various factors in determining the appropriate sentence. In the case of ***Chu Tiong Tiong vs Public Prosecutor (2001) 3 SLR 425***, the High Court stated:

“There are four pillars of sentencing; retribution, deterrence, prevention and rehabilitation. Criminal Courts play their part by ensuring that the sentences of offenders mirror these pillars. The sentence imposed on the appellant not only served to punish him, it sought to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend against”.

In the case of ***R v Ball (1951) 35 Criminal Appeal R. 164***, Hillbery, J., laid out the guiding consideration which this court also took into consideration. Learned Hillbery, J., stated:

“In deciding the appropriate sentence, a court should always be guided by certain consideration. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It might deter others who may be tempted to try crime as seeming to offer easy money on the supposition, that if offender is caught and brought to justice, the punishment will be negligible. Such sentence may also deter the particular criminal from committing a crime again, or, induce him to turn from a criminal to an honest life”.

The Prosecution submitted the case of ***Public Prosecutor vs Hj Ahmad bin Haji Tamin (HCCT No. 4 of 2018)*** whereby Steven Chong, CJ imposed a sentence of 6 years’ imprisonment. This was upheld by the Court of Appeal in Criminal Appeal No. 15 of 2018.

In ***Public Prosecutor vs Roslan bin Yusof (HCCT No. 23 of 2000)***, Hayati, J., sentenced the Defendant to 7 years’ imprisonment and identified the general principles applicable to sentencing for arson:

1. The nature of the premises attacked whether they were known or likely to be occupied.

2. The degree of planning, if any
3. The motive for the offence, including whether any individual owners of the premises are targeted as the act of revenge,
4. Whether any meaningful steps were taken to raise the alarm,
5. The damage which might have been expected and which did in fact result,
6. The Defendant's state of mind,
7. Whether he might in time present a danger to the victim or the public.
8. The estimated cost of damages caused by the fire was \$20,000.

Statement of Facts

According to the facts, sometime in the evening of 5th December 2020, the Defendant was at his parent's house alone and the parents were both out.

The Defendant admitted and agreed to the statement of facts of the alternative charge which are as follows:-

Desperate for money, the Defendant called up his father on his mobile phone to ask for \$10. When his father refused to give him any money, the Defendant angrily ended the said telephone call.

Driven by his anger towards his father, the Defendant decided to throw a plastic bottle of rose syrup at the glass of the cabinet, causing the said glass to shatter into pieces. He then proceeded to light up a newspaper on fire and threw it into the storeroom of his parent's said house, intending to cause damage or knowing it to be likely that he will thereby cause damage to the said storeroom.

Shortly after the Defendant left his parent's house, the neighbour noticed that there was smoke coming out from the said house. The neighbour called the Fire and Rescue hotline and the Defendant's father. The Fire and Rescue Department managed successfully put out the fire.

The Fire and Rescue Department produced a report and concluded that due to the suspicious source of fire and categorized it as an "*Incendiary Incident*".

Estimated costs of damages caused by fire was \$20,000.

Antecedents

The Defendant has previous convictions for offences under the Penal Code and Misuse of Drugs Act.

For Penal Code offences, he has a previous conviction amongst others 4 convictions for mischief under section 426 and under section 427.

The Defendant was just being released from prison in September 2020 after serving for conviction under section 426, under section 427 and under section 447 of the Penal Code where he was

convicted on 11th February 2020. The other 2 convictions for other offences under section 426 was on 11th February 2019.

Conclusion

The facts of the case show that the Defendant committed the offences deliberately as he was angry with his father who did not want to give him money.

Arson is a serious offence. It will cause insecurity to the people and also can endanger life. Not only that the owner of the house had lost money due to the damage caused by the fire, it could have even caused injuries or their life if they are at home.

This is a deliberately act of arson and he did not have any intention or has taken any steps to raise any alarm but instead he ran away from the scene.

The difference between this case and *Haji Ahmad bin Hj Tamin's* case is that in *Hj Ahmad's* case, he has a clear record. In the present case, he has previous convictions and has just been released from prison in September 2020, where the present case offence was committed on 5th December 2020 which is about 3 months after being released.

The only credit to the Defendant is that he has pleaded guilty to the charge at the first instance.

Taking into account of the above especially that arson is a very serious offence and there is a need to protect the society especially his parents as I believe he is a dangerous person and pose danger to society, I am taking 12 years as a starting point.

For pleading guilty to the charge at the first instance, the court deducts 3 years from the starting point.

I, therefore, imposed an imprisonment sentence of 9 years and 6 strokes of whipping with effect from 7th December 2020 which is the date of his first remand.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner