

Public Prosecutor

AND

Sahrol Azren Bin Roslee

**(High Court of Brunei Darussalam)
(Criminal Trial No 2 of 2020)**

Hj Abdullah Soefri bin POKSM DSP Hj Abidin, JC.

13th August 2020

Criminal Law --- section 393, and read with section 398 of the Penal Code, Cap 22, section 448 of Cap 22 --- pleaded guilty to both charges --- robbery with deadly weapon --- previous convictions under section 457 of the Penal Code --- total imprisonment of 9 years and 12 strokes.

Cases cited:

PP v Mohd Readuan bin Maksin (HCCT No. 18 of 2005)

Md Azrian bin Hj Bungsu vs PP (CA No. 3 of 2000)

Yurawandy bin Bujang vs PP (CA No. 31 of 2014)

Muhammad Abdul Hadi Nazirul Mubin Waie bin Mohd Zulhilme vs PP (CM No. 12 of 2015)

DPP Nor Hafizah binti Ahmad for the Public Prosecutor/Appellant.

Defendant/Respondent in Person.

SENTENCE

Hj Abdullah Soefri, JC:

The defendant was preferred with two charges, the first charge under section 393 of the Penal Code and read together with section 398 of the same and the second charge is under section 448 of the Penal Code, Cap 22. The said charges are as follows; -

1st Charge:

That you, at about 0800 hours, on the 15th of January 2020, at the vicinity of Lim Kui Hong building, Kg. Sungai Liang, in Brunei Darussalam, did attempt to commit theft of property, to wit, one (1) brown sling bag, you have voluntarily caused fear of instant hurt to the said Jenggie Buma, and you have thereby committed an offence of robbery, and at the time of the commission of the robbery, you were armed with a deadly weapon, to wit, a knife, and you have thereby committed an offence punishable under Section 393 of the Penal Code, Chapter 22 read together with 398 of the same.

2nd Charge:

That you, at about 0010 hours, on 15th of January 2020, at a house addressed at No.019, Simpang 43-17, STKRJ Lorong 3 Selatan Seria, Kuala Belait, in Brunei Darussalam, committed house trespass by entering into a building, belonging to one Pg Ali Hassen @ Pg Ali Hassan Bin Pg Hj Yusof (M.62), used as a human dwelling, with the intention to annoy, and that you have thereby committed an offence punishable under section 448 of the Penal Code, Chapter 22.

The defendant pleaded guilty to both charges on 10th August 2020 after the charges and penalties were read in Malay by the Court Interpreter to him and this court is satisfied that the defendant understood the charges and penalties and section 175 CPC have been fully complied with. The court also entered the convictions based on his own plea after the statement of facts was read to the defendant who agreed and admitted to the statement of facts.

The defendant in his mitigation pleaded for lenient sentence and extended his appreciation to the court.

The prosecution submitted several cases for this court to consider for sentencing. The cases that were submitted are as follows:

- 1) *Public Prosecutor v Mohd Readuan bin Maksin* (High Court Criminal Trial No 18 of 2005)
- 2) *Md Azrian bin Hj Bungsu vs Public Prosecutor* (Criminal Appeal No 3 of 2000)
- 3) *Yurawandy bin Bujang vs Public Prosecutor* (Criminal Appeal No 31 of 2014)
- 4) *Muhammad Abdul Hadi Nazirul Mubin Waie bin Mohd Zulhilme vs Public Prosecutor* (Criminal Motion No 12 of 2015)

The defendant was arrested on 15th January 2020 and was brought to the court on the following day 16th January 2020. He was remanded since then.

The facts of the case which the defendant has agreed upon has established all the elements of the offences as charged.

1. The Defendant is a 40-year-old male Bruneian, single and currently unemployed.

For the 1st Charge:

2. On the 15th of January 2020, at around 0800 hours, the Defendant went to the vicinity of Lim Kui Hong building, Kg. Sungai Liang, in Brunei Darussalam (hereinafter referred to as 'the said premise').
3. At the material time, one Jenggie Buma (M.71) (hereinafter referred to 'Jenggie') was parking his car, one Toyota Vios bearing registration BAP 2689 at the vicinity of the said premise.

4. When Jenggie alighted his car, suddenly the Defendant approached him and attempted to snatch Jenggie's brown sling bag which he carried on his neck. However, the Defendant's attempt to snatch failed.
5. Subsequently, the Defendant took out a knife which he had with him and tried to hurt Jenggie with the said knife. Upon seeing this, Jenggie lifted his left arm to avoid the said knife from hurting him. The said knife, however, had caused injury to his left arm. The Defendant then pushed Jenggie until he fell to the ground. The impact from the fall had caused fracture on both Jenggie's wrists. The Defendant then ran away from the said premise.
6. At that time, one Lee Lee Choo (F.64) was organizing her items at her shop located at the vicinity of the said premise and she saw the Defendant and Jenggie was in a feud. She duly lodged a police report about the said incident.
7. Police investigations led to the arrest of the Defendant. Police investigations revealed that the Defendant had attempted to commit theft of property, to wit, one (1) brown sling bag, belonging to one Jenggie Bums (M.71) on the 15th of January 2020 at around 0800 hours, at the vicinity of Lim Kui Hung building, in Brunei Darussalam, and in attempting to carry away the said sling bag, the Defendant had voluntarily caused instant hurt to the said Jenggie Buma.
8. The defendant admits to have attempted to steal Jenggie's sling bag and armed with a knife caused fear of instant injury to the said Jenggie and in doing so has committed robbery.

For the 2nd Charge:

9. On the 15th of January 2020, at around 0000 hours, the Defendant went to the vicinity of a house addressed at No. 19, Simpang 43-17, STKRJ Lorong 3 Selatan, Seria, Kuala Belait, in Brunei Darussalam (hereinafter referred to as 'the said house').
10. When the Defendant arrived at the compound of the said house, he saw a door. The Defendant then tried to open the said door and found it to be unlocked. The Defendant proceeded to open the said door and entered into the said house. The said house does not belong to the Defendant, nor does he have permission to enter the said house.
11. At the material time, one Awangku Muhammad Adib Bin Pg Ali Hassan (hereinafter referred to as 'Adib'), an occupant to the said house, went to the ground floor to go to the kitchen. As he was walking to the kitchen, he was surprised to see the Defendant in the living room at the said house. Adib then shouted at the Defendant which made the defendant stand up. Subsequently, Adib informed his father, one Pg Ali Hassan Bin Pg Hj Yusof (M.62) (hereinafter referred to as Pg Ali Hassan') about the Defendant's presence at the said house.

12. Subsequently, both Pg Ali Hassan and Adib confronted the Defendant and asked him as to why he was at the said house, to which the Defendant replied that he was hungry. Pg Ali Hassan then released the Defendant and warned him not to come to said house ever again.
13. On the same day, at 0830 hours, a police report was duly lodged at Seria Police Station.
14. Police investigation led to the arrest of the Defendant. In the Defendant's statement to the police, he admitted to have committed house-trespass by entering into the said house addressed at No. 19, Simpang 43-17, STKRJ Lorong 3 Selatan, Seria, Kuala Belait, in Brunei Darussalam, which had caused annoyance to the tenants of the said house.

For all the Charges:

15. On record, the Defendant has previous convictions in relation to theft offences.

The facts of the case are very disturbing and reveals the following aggravating factors:-

- 1) The defendant had attempted to snatch a bag from the victim who is 71 years old.
- 2) Having had failed to snatch the bag the defendant took out a knife which he had with him and tried to hurt the victim with the said knife. The defendant used the knife and caused hurt to the victim left arm and then pushed him until he fell to the ground and caused further injuries to the victim.

As to the second charge which was committed before the first charge, the defendant entered the house at early morning without the permission of the house owner and caused annoyance to the occupants of the house.

The defendant had two previous convictions under section 457 of the Penal Code in 2011 and 2014 whereby the defendant was imprisoned for 2 years 4 months and 4 years and 4 strokes respectively.

The only mitigating factor that is in favor of the defendant is that he had pleaded guilty to both charges.

The court has always stressed that in sentencing, the factor that is paramount for the court to take into account is the interest of the public safety and well-being. It is also paramount that for the sentence to be a deterrence to others for not committing the same.

What is disturbing in this case is that the defendant targeted a victim who is 71 years of age and the defendant had brought a knife with him during the commission of the offence and used them. He also entered in the house in the second charge during early morning where all the occupants were fast asleep and is at its vulnerable time.

Taking into account of these factors and the need for the court to pass a deterrent sentence and to safeguard public safety and well-being the court will pass the follo

1st charge: A starting point of 13 years is justifiable due to the aggravating factors and his previous convictions and deduct 1/3 due to his guilty plea bearing in mind that there is a minimum sentence of 7 years. Thus, for the first charge, the court imposes a sentence of 8 years and 8 months and 12 strokes of whipping.

2nd charge: The court imposes an imprisonment sentence of 4 months.

Taking into account of the totality principle in mind, and taking into account that the offences in the first and second charges were committed in different transactions, sentencing for the first and second charges are to run consecutively with each other.

8 years and 8 months and 12 strokes of whipping for the first charge.

4 months for the second charge.

Total sentence is 9 years and 12 strokes.

The sentence is to take effect from the first day of his remand which is 16th January 2020.

All items recovered are to be returned to the rightful owner. Weapons seized to be destroyed.

HJ ABDULLAH SOEFRI BIN POKSM DSP HJ ABIDIN
Judicial Commissioner