

Public Prosecutor

AND

Ibrahim Bin Hj Raub (D1)

Muhammad Yasriazizi Bin Mohd Shahrol Amira (D2)

Junainah Binti Mustapa (D3)

Hani Noraini Binti Abdullah Changai (D4)

Hj Md Yusrahni Bin Sha'arani (D5)

(High Court of Brunei Darussalam)
(Criminal Trial No. 8 of 2022)

Hj Abdullah Soefri, JC

8th August 2023

*Criminal Law – dishonestly receive or retain stolen properties under section 411 Penal Code (D3)-
housebreaking by night under section 457 and read with section 34 of the Penal Code (D5)
-abetting housebreaking by night under section 457 and read with section 109 of the Penal
Code (D5)-guilty pleas-sentence*

DPP Nur Hidayatul Aeny Alisah Binti Hj Zullizam for Public Prosecutor.

D3 unrepresented.

D5 unrepresented.

Cases cited in the Judgment:

Mohd Azwan Bin Ibrahim and Public Prosecutor (COA Criminal Motion 37 of 2018)

Mohammad Joll bin Tumih & Another vs P.P (Criminal Appeal No.5 of 2005)

Saiful Irwan bin Haji Simpol v Public Prosecutor and Md Faisal bin Rosli v P.P (COA Criminal Appeal No. 10 of 2019) (Criminal Motion No. 36 of 2019)

Abdullah Sani bin Kifli v Public Prosecutor (COACM No. 20 of 2019)

Public Prosecutor and Jocelyn Lim Siow Fan (High Court Criminal Trial No. 4 of 2017)

Hj Abdullah Soefri, JC:

Introduction

All 5 Defendants claimed trial to the charges that they were preferred with as in P1 either individually or jointly. The hearing dates for the said trial have been fixed on the 7th, 14th, 21st,

30th and 31st of October 2023. However, D4 was still at large as the warrant of arrest has yet to be executed. On the 17th July 2023, D3 changed her plea and pleaded guilty to the Reamended 3rd charge that is under section 411 of the Penal Code. On the 22nd July 2023, D5 changed his pleas of not guilty to guilty to both charges that are preferred against him. He pleaded guilty to the 2nd charge for offence under section 457 and read with section 34 of the Penal Code and to the 5th Amended Additional charge under section 457 and read with section 109 of the Penal Code. The charges are as follows:

Against D3

Reamended 3rd Charge (Against D3 only)

That you, at about 0600hrs on the 18th day of August 2022, at a house at No. 647, Simpang 3, Kg. Kasat, in Brunei Darussalam, did dishonestly receive or retain stolen properties, to wit, two (2) brooches, one (1) silver bracelet, five (5) rings, one (1) maroon pouch, one (1) keychain, and one (1) jewelry pouch, belonging to Dk Mawarti binti Pg Ahmad (F41), knowing or having reason to believe the same to be stolen property, and you have thereby committed an offence punishable under section 411 of the Penal Code, Chapter 22.

Against D5

2nd Charge (Against D1, D2, and D5)

That all of you, in furtherance of your common intention, sometime in the early hours of the morning on the 18th day of August 2022, at a house at No. 1, Simpang 69, Jalan Kelab Golf, Pantai Mentiri, in Brunei Darussalam, in a building used as a human dwelling, by entering through the window of the said house, 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.

Amended Additional 5th Charge (Against D5)

That IBRAHIM BIN HAJI RAUB [Male, 31, D.O.B: 17/07/1991, BYIC No. 01-047466] and MUHAMMAD YASRIAZIZI BIN MOHD SHAHROL AMIRA [Male, 23 years old, D.O.B: 16/03/1999, BYIC No. 01-105894], committed the offence of housebreaking by night at a house at No. 18, Spg 64, Jalan Jerudong Baru-Tanjong Nangka, Brunei Darussalam on 11th day of August 2022, and that you at about 2300hrs on the 11th day of August 2022, in a Toyota Caldina vehicle bearing registration BAE 3607, in Brunei Darussalam, abetted the said IBRAHIM BIN HAJI RAUB and MUHAMMAD YASRIAZIZI BIN MOHD SHAHROL AMIRA, in the said commission of the said offence of housebreaking by night, which offence was committed in consequence of your abetment, to wit, by showing the said house to IBRAHIM BIN HAJI RAUB and MUHAMMAD YASRIAZIZI BIN

MOHD SHAHROL AMIRA, and that you have thereby committed an offence punishable under section 457 of the Penal Code read with Section 109 of the same.

The Facts

Both D3 and D5 agreed and admitted to the statements of facts which are as follows:

STATEMENT OF FACTS AGAINST D3 ONLY (AMENDED 3rd Charge)

1. D3 is a 838 year old Bruneian female. She is currently unemployed.
2. Sometime in the early hours of the morning on 18th August 2022, Person A, Person B and Person C had committed house breaking, in order to commit theft, at a house No. 1, Simpang 69, Jalan Kelab Golf, Pantai Mentiri, in Brunei Darussalam. One of the items stolen from the said house was one safe deposit box containing valuable items such as gold bars and jewelleries.
3. Upon committing the said offence, Person C drove Person A and Person B back to his house, at No. 647, Simpang 3, Kampong Kasat in Brunei Darussalam, as Person A and Person B had also staying in his house. All of them were let into the house by D3, who was also staying at Person C's house. Person C and D3 was in relationship with each other.
4. In Person's C house, Person A, Person B and Person C force opened the said safe deposit box open using an axe and a hammer. This was witnessed by D3. Person B instructed D3 to shine torch light to the safe deposit box. Upon successfully forcing open the said safe deposit box, Person A took gold bars, jewelleries and letters out from the safe deposit. D3 then went to the toilet and when she returned, Person A and Person C told D3 that she can take any of the other items such as jewelleries from the safe deposit box if she wanted to. D3 did not respond at this time, and went back to sleep.
5. At about 0600 hours, when D3 woke up, she went to the living room of Person C's house and picked the following items up namely:
 - (a) Two (2) brooches;
 - (b) One (1) silver bracelet;
 - (c) Five (5) rings;
 - (d) One (1) maroon pouch;
 - (e) One (1) keychain; and
 - (f) One (1) jewelry pouch

From the floor of the living room where the safe deposit box has been forced open. D3 then brought the said items to her bedroom and placed it inside his handbag. D3 then went back to sleep.

6. On 19th August 2022, at about 0952hours, the Complainant, one Dk Mawarti Binti Pg Ahmad was informed by her driver that her house at No. 1, Simpang 69, Jalan Kelab Golf, Pantai Mentiri was broken into. The complainant rushed to the said house and found several valuable items were stolen including one safe deposit box. At about 1030 hours, she lodged a police report.
7. On the 19th August 2022, sometime in the afternoon, D3 heard someone knocking on the door of Person A's house and D3 reacted by hiding the items in Person A's bag behind the cabinet in his room. D3 then opened the door and saw that the persons who had arrived were the police. D3 then handed over the bag containing the said items to the police, after she was asked for the items by the police. This led to the arrest of D3.
8. In the course of police investigations, D3 admitted to dishonestly receiving and retaining stolen properties, as stated in paragraph 4 above, despite knowing that the same to be stolen property.
9. All of the said items were recovered and has been positively identified by the Complainant.
10. The estimated value of the stolen items was about BND \$4000.
11. D3 has no previous criminal convictions in relation to offence against property.

STATEMENT OF FACTS AGAINST D5 ONLY

For the 2nd Charge:

1. In the early hours of the morning on the 18th August 2022, PERSON A, PERSON B and D5 were out for a car ride in PERSON A's Toyota Caldina vehicle bearing registration number BAE 3607 driven by PERSON A. During the car ride, PERSON A, PERSON B and D5 formed the intention to break into a house to commit theft. PERSON A drove to the said house addressed at No. 1, Simpang 69, Jalan Kelab Golf, Pantai Mentiri, in Brunei Darussalam, which PERSON A had seen before and targeted the said house. PERSON A instructed D5 to become their get-away driver and D5 agreed. PERSON A and PERSON B alighted the vehicle while D5 moved to the driver seat of the vehicle and drove to Soon Lee Mentiri to wait for PERSON A and PERSON B.
2. PERSON A and PERSON B proceeded to commit house-breaking, in order to commit theft, at the said house. One of the items stolen from the said house was one safe deposit box containing valuable items such as gold bars and jewelries.

3. About 30 minutes later, PERSON B then called D56 to come and pick PERSON A and PERSON B up. PERSON A and PERSON B exited the house through the main door.
4. PERSON A placed the said safe deposit box on the fence of the said house. PERSON A and PERSON B then wait inside the said vehicle driven by D5. PERSON A then instructed D5 to drive where the said safe deposit box was placed. PERSON A then alighted from the vehicle and loaded the said safe deposit box into the said vehicle.
5. D5 drove PERSON A and PERSON B back to his house at No. 647, Simpang 3, Kampong Kasat in Brunei Darussalam as PERSON A and PERSON B had also been staying in his house. PERSON A, PERSON B and D5 were let into the house by D3, who was also staying at D5's house. In D5's house, PERSON A, PERSON B and D5 took turns to force open the said safe deposit box by using an axe, wrench and a hammer. D3 witnessed PERSON A, PERSON B and D5 forcing the safe deposit box open.
6. Upon successfully opening the said safe deposit box, they discovered it contains several small gold bars, watches, jewelries and letters. PERSON A and D5 told D3 that she can take any of the other items such as jewelries from the safe deposit box if she wanted to. D3 did not respond at this time, and went back to sleep. In the morning of the same day, D3 woke up and took several jewelries and items that was kept near the said deposit box.
7. On 19th August 2022, at about 0953hours, the Complainant, one Dk Mawarti Binti Pg Ahmad was informed by her driver that her house at No. 1, Simpang 69, Jalan Kelab Golf, Pantai Mentiri was broken into. The complainant rushed to the said house and found several valuable items were stolen including one safe deposit box. At about 1030 hours, she lodged a police report.
8. Police investigations led to the arrest of D5.
9. In the course of police investigations D5 admitted to commit the above offence together with PERSON A and PERSON B. D5 admitted that his role was as the get-away driver and opening the said safe deposit box.
10. The said safe deposit box was recovered and positively identified by the Complainant.
11. The value of the said safe deposit box was about RM 1,750.00 and the value of the items inside the said deposit box was about BND \$4000.

Additional 5th Charge (Against D5 only)

12. Late in the evening on 11th August 2022, PERSON A invited PERSON B to go out with him on a car ride along with D5. PERSON A drove his Toyota Caldina vehicle bearing

registration number BAE 3607. During the car ride, PERSON A and PERSON B decided that they wanted to break into a house and commit theft. D5 told PERSON A and PERSON B that he knows of a place which belongs to his uncle, in Kg Tanjung Nangka. D5 told PERSON A and PERSON B that he is not certain whether the house is inhabited, but he has heard that the house is being used as a storage facility for a relative's furniture business. PERSON A and PERSON B then agreed that they would go to the said house to commit theft.

13. PERSON A, PERSON B and D5 arrived at the said house, at No. 18, Simpang 64, Jalan Jerudong Baru-Tanjong Nangka, at around 11pm. PERSON A and PERSON B alighted from the vehicle, and D5 moved to the driver's seat of the vehicle. D5 drove to a convenience store nearby to wait for PERSON A and PERSON B. D5 then switched off the vehicle's engine and waited to be called by PERSON A and PERSON B.
14. PERSON A and PERSON B proceeded to commit house-breaking, in order to commit theft, at the said house. PERSON A and PERSON B then proceeded to gather up items such as one (1) air cooler, one (1) cash register containing BND \$200, one (1) air pump, one (1) drill, one (1) Innova car key, and one (1) CCTV, PERSON A stole one (1) Redi mobile phone belonging to a worker staying at the said house. Once they were done gathering the items, PERSON B called D5 to come and pick up PERSON A and PERSON B.
15. PERSON A and PERSON B took the gathered items out of the said house and waited for D5. While waiting for D5, PERSON A and PERSON B formed intention to commit theft of one Yamaha Motorcycle in the compound of the said house, but was unable to start the engine of the said motorcycle. PERSON B then pushed the said motorcycle down the hill in order to be able to load it into PERSONA's vehicle.
16. Once D5 arrived in PERSON A's vehicle, PERSON A and PERSON B began loading the stolen items into the vehicle. In the midst of PERSON B loading the motorcycle into PERSONA's vehicle, a man came out from the nearby house and chased after them. PERSON A, PERSON B and D5 fled the scene, leaving the said motorcycle behind.
17. A report of the incident was lodged on the 12th August 2022 by the man who had chased after PERSON A, PERSON B and D5. Investigations revealed that the said man was the owner of the house at No. 18, Simpang 64, Jalan Jerudong Baru-Tanjong Nangka.
18. Police investigation successfully led to the arrest of D5 on 27th August 2022 at his workplace in Kg Sungai Kebun.
19. In D5's statement, he admitted the he informed PERSON A and PERSON B of the existence of the said house in order that PERSON A and PERSON B could commit theft from the said

house. D5 also admitted that he showed PERSON A and PERSON B to the said house. In doing so, D5 has abetted by aiding PERSON A and PERSON B in their intention to commit theft from a house that evening. He further admitted that he exchanged his Vivo mobile phone with the said Redmi mobile phone stolen by PERSON A.

20. The estimated value of the stolen items was BND \$1,500.

21. The items not recovered are the said cash register and the said BND\$200.

For all the said charges:

22. On record, D5 previous criminal convictions.

Penalties

Penalty under Section 411 of the Penal Code, is an Imprisonment for a term which may extend to 3 years, or with fine, or with both.

Penalty under Section 457 of the Penal Code is 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.

Section 109 of the Penal Code provides:

“Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.”

Defendants’ Mitigations

D3: She pleaded for the most lenient sentence and for the sentence to be backdated from the time she was remanded in Temburong and she had informed the Court that she has been remanded at the female prison in Jerudong for 9 months already.

D5: He pleaded for most lenient sentence. He also applied for a 1/3 reduction and apply for his prison sentence for the two charges to run concurrently and for the sentence to commence from the first date of his remand at the police station. He further submitted that his previous convictions are not to be taken into account as he has served the sentences for those convictions. He also further submits for the court to give a 1/3 discount as his children and mother are all waiting for him.

Sentencing submission by the Prosecution against D5 Only

Prosecution highlighted the case of ***Mohd Azwan bin Ibrahim and Public Prosecutor (COA Criminal Motion 37 of 2018)*** where it was held that:

“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 any particularly unusual circumstances pertaining to either the offence or offender, a sentence of up to 5 years after trial would be correct.”

In **Mohammad Joll bin Tumih & Another vs P.P (Criminal Appeal No.5 of 2005)**, it was stated that:

“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 two strokes on each charge.”

Prosecution also submitted the case of **Saiful Irwan bin Haji Simpol v Public Prosecutor and Md Faisal bin Rosli v P.P (COA Criminal Appeal No. 10 of 2019) (Criminal Motion No. 36 of 2019)** where the issue of appropriate discount was highlighted.

In the case cited, it was held that in exercising the discretion for discount it must be distinguished between, *“... a defendant who pleads guilty at the earliest opportunity who deserves a full one-third discount, on the one hand, and a defendant who pleads guilty during his or her trial who deserves very little credit at all... on the other hand. Between these two extremes, adjustments should be made.”*

In the case of **Abdullah Sani bin Kifli v Public Prosecutor (COACM No. 20 of 2019)**, Dato Seri Paduka Steven Chong, the Chief Justice took a discount of 20% rather than the usual 30% to reflect the Appellant’s late pleas of guilty. The guilty pleas were only entered when the matter was prepared and ready for trial. As such, the Court of Appeal held that a reduced discount of 20% is entirely appropriate.

The Prosecution submitted that D5 is not entitled to the usual 30% discount but instead 20% upon his guilty plea as D5’s plea was not made at the earliest opportunity. The prosecution has prepared 30 witnesses and was ready for trial.

Prosecution further submitted further aggravating factors in this case as follows:

a) Public Interest

- Offences against property are serious offences.
- These types of offences often cause emotional distress, anxiety, concern, inconveniences and fear to the public
- In committing the offences, D5 had caused intrusion to the public’s life and property. It also disrupts the harmony and peace of their home and leaving them with a long-lasting apprehension and trauma as to the safety of their private residences and properties. Prosecution submits that a severe deterrent sentence to protect the public from D5 and like-minded people should be imposed.

b) D5's culpability

D5 played an important role by being their get-away driver and took part in forcing open the stolen safe deposit box together with his co-accused for the 2nd charge.

As for the 5th charge, he aided the co-accused to commit house-breaking offence by showing them the place of incident which he knew the existence of as it belongs to his uncle.

c) Premeditation

The offences were premeditated and deliberate commission of the offence by D5 together with his co-accused.

The Prosecution submitted that the appropriate sentence is a custodial sentence with a starting point of 5 years imprisonment against D5 should be imposed and D5 should not get the full 30% discount to the said starting point. It was further submitted that the sentence for both charges ought to run consecutively with each other as the offences were committed at a different location, time and involved different victims.

Conclusion

The Court has stressed over and over again properties belonging to others must be respected and must not be taken away. The Court also stressed that privacy and safety of the house, occupants and public are paramount importance. I agree with the Prosecution's submission that offences such as these have disrupted the harmony and peace of the people at large. Intrusion to the public's life and property will leave a long-lasting apprehension and trauma and sense of insecurity.

In order to safeguard the public's safety, their properties and to ensure that the public can live their lives without the feeling of insecurity while they are out or asleep, a severe deterrent sentence is justifiable not only to deter both D3 and D5 from committing any offences again but also to deter others from committing such offences.

This Court takes into account in favour of the Defendants that they have pleaded guilty and by pleading guilty they have saved the Court and Prosecution valuable time. The Court also takes note that the guilty pleas were not entered at the earliest opportunities. This Court has taken into account in favour of D3 that she has a clean record.

JUNAINAH BINTI MUSTAPA (D3)

One of the aggravating factors in D3's case is that when she heard someone knocking on the door of Person C's house, and D3 reacted by hiding the items in Person A's bag behind a cabinet in his room.

In *Public Prosecutor and Jocelyn Lim Siow Fan (High Court Criminal Trial No. 4 of 2017)*, where the Defendant was charged with an offence under section 411 of the Penal Code, pleaded guilty at the first opportunity after representation was made and has a clear record, Pg DP Hjh Rostaina, JC imposed a starting point of 2 years imprisonment and reduced it to 1 ½ years i.e 18 months.

In the present case, D3 pleaded guilty not at the first opportunity. This Court will impose a starting point of 2 years and will not accord D3 the 1/3 discount that is normally given to those who had pleaded guilty at first instance, but instead reduce it to 20 months or 1 year and 8 months. The sentence is backdated to 21/9/2022.

HJ MOHD YUSRAHNI BIN SHA'ARANI (D5)

The aggravating factors in D5's case has been submitted by the Prosecution and I totally agree with them.

As in D3's case, in view that D5 has not pleaded guilty at the first opportunity, he is not to be accorded the normal 1/3 discount.

For 2nd charge, the Court takes 5 years or 60 months as a starting point and reduce it to 48 months and 2 strokes of whipping as this is the 2nd offence after the 5th charge.

For the 5th charge, the Court takes 4 years or 48 months as a starting point and this Court reduces it to 38 months and 2 strokes of whipping.

Taking into account of the totality principle and also that these two offences are distinct whereby they happened on different dates and times and locations, the properties belong to two different owners, this Court orders for sentence on the 2nd charge to run consecutively with the 5th charge. The total sentence is 86 months or 7 years and 2 months and 4 strokes of whippings.

The sentence is backdated to 21/9/2022.

HJ ABDULLAH SOEFRI
Judicial Commissioner