

Public Prosecutor

AND

Nizam Alfian Bin Amit (D1)
Mohd Effendy Bin Haji Said (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 57 of 2017)

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge
7th September 2017

Criminal Law – S.448 Penal Code – S.451 Penal Code – Plea of Guilty – Sentencing.

DPP Raihan Nabilah Binti Haji Ahmad Ghazali for Public Prosecutor.
Defendants In Person.

SENTENCE

Muhammed Faisal, Judge:

Both defendants faced 3 joint charges. One charge under Section 448 Penal Code and two charges under Section 451 Penal Code. Their charges are as follows:-

“1st Charge (Against D1 and D2)

That the both of you, on the 3rd day of August 2017, at about 9.50pm, at Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam, in furtherance of your common intention, did commit house trespass by entering into the basement parking lot of the said building, used for the custody of property, belonging to the Government of Brunei Darussalam, with intent to annoy one Johari bin Haji Masri (M.62) and that you have thereby committed an offence punishable under Section 448 of the Penal Code, read with Section 34 of the same.

2nd Charge (Against D1 and D2)

That the both of you, sometime between 27th day of July 2017 and 31st day of July 2017, at Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam, a building used for the custody of property, in furtherance of your common intention, committed house-trespass by entering into the said building, belonging to the Government of Brunei Darussalam, in order to commit an offence, to wit, theft of one (1) Panasonic 3HP air-conditioning unit, belonging to Labour Department, Brunei

Darussalam, and both of you have thereby committed an offence punishable under Section 451 of the Penal Code, Chapter 22 read with Section 34 of the same.

3rd Charge (Against D1 and D2)

That the both of you, on the 1st day of August 2017, at about 9pm, at Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam, a building used for the custody of property, in furtherance of your common intention, committed house-trespass by entering into the said building, belonging to the Government of Brunei Darussalam, in order to commit an offence, to wit, theft of:

- i. One (1) water tank;*
- ii. One (1) air filter; and*
- iii. One (1) 1050/31 FB car battery,*

From a Mitsubishi Pajero vehicle bearing registration no. BG 3884, parked in the said building, belonging to Land Department, Brunei Darussalam, and both of you have thereby committed an offence punishable under Section 451 of the Penal Code, Chapter 22 read with Section 34 of the same.”

Both defendants have pleaded guilty to all charges. The statement of facts as listed below:-

“D1 is a 40 year old Brunei National. He is currently unemployed.

D2 is a 52 year old Brunei National. He is currently unemployed.

1st Charge (Against D1 and D2)

On 3rd August 2017, at about 9.50 pm, the Complainant, was on duty as a watchman at Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam “the said building”. The Complainant then noticed a black Honda City vehicle bearing registration number KG 749 entering the parking lot of the said building and heading towards the back of the said building. The Complainant was suspicious of the said Honda City vehicle and decided to tail the said vehicle using the Complainant’s own vehicle.

The Complainant saw the said Honda City vehicle entering the basement parking lot of the said building. The Complainant then alerted his colleagues and together went to the basement parking lot where they saw the said Honda City vehicle parked with two men in the vicinity of the said Honda City vehicle.

The Complainant’s colleague then asked one of the two men what they were doing at the said basement parking lot. The said man informed the said colleague that he was a watchman for the said building and had been working there for five years. Knowing that statement to be false, the Complainant and his colleagues then lodged a police report for the trespass at about 10.15pm on the same night. Upon police arrival at the said building at 10.36pm, both Defendants were subsequently arrested.

In their statements to the police, both Defendants admitted to committing trespass into the said building to consume drugs. D1 also admitted to misinforming one of the said men that he was a watchman in order to divert any suspicions of their presence at the said building.

2nd Charge (Against D1 and D2)

Sometime between 27th July 2017 and 31st July 2017, the Defendants went to the basement parking lot of Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam (“the said building”) in the said Honda City vehicle driven by D1. D1 then went to the 2nd floor of the said building and saw one (1) Panasonic 3HP air-conditioning unit in a room. D1 then returned to the said basement parking lot and informed D2 of the said air-conditioning unit.

Both Defendants then committed house-trespass by entering the said building and going to the 2nd floor with the common intention of stealing the said air-conditioning unit. D1 also brought with him several tools from the said Honda City vehicle for the purpose of removing the said air-conditioning unit. The Defendants then proceeded to remove the said air-conditioning unit and hid it in an adjoining room. The Defendants then left the said building.

On the following day, at about 1pm, the Defendants returned to the said building and retrieved the said air-conditioning unit. Both Defendants then sold the said air-conditioning unit to a junkyard for BND17.50 which they then split between themselves.

On 31st July 2017, a member of staff at the said building realized that one (1) Panasonic 3HP air-conditioning unit had gone missing from a 2nd floor room at the said building. A police report was subsequently lodged.

Police investigations on a case of trespass led to the Defendants’ arrest on 3rd August 2017. In their statements, to the police, the Defendants admitted to committing the above house-trespass and theft.

The said air-conditioning unit has been recovered from the said junkyard.

3rd Charge (Against D1 and D2)

On 1st August 2017, at about 9pm, the Defendants committed house-trespass by entering the basement parking lot of Bangunan Jabatan Kerajaan, Kuala Belait, in Brunei Darussalam (“the said building”) in the said Honda City vehicle driven by D1, in order to commit theft from the said building. The Defendants then noticed a Mitsubishi Pajero vehicle bearing registration no. BG3884 parked at the said basement parking lot and formed the common intention to steal car parts from the said Mitsubishi Pajero vehicle.

D2 opened the boot of the said Mitsubishi Pajero vehicle using a metal wire. D1 then obtained several tools from the said Honda City vehicle. The Defendants then

proceeded to steal one (1) water tank, one (1) air filter and one (1) 1050/31 FB car battery from the said Mitsubishi Pajero vehicle.

Both Defendants then sold the said stolen water tank and car battery to junkyards in Kuala Belait and Seria for a total of BND22. The Defendants also disposed of the said stolen air filter in the vicinity of one of the said junkyards.

Police investigations on a case of trespass led to the Defendants' arrest on 3rd August 2017. In their statements, to the police, the Defendants admitted to committing the above house-trespass and theft.

The said stolen items have been recovered.

For all offences

D1 has no previous convictions.

D2 has previous convictions for offences against property."

The 1st defendant is a 1st offender. He had pleaded for leniency and for his sentences to be consolidated. The 2nd defendant has previous conviction for offences against property. He also pleas for leniency in sentence and for his sentences to be consolidated.

He is divorced with a 13 years old daughter and a sick mother, whom he says that he is caring for. There are no extenuating circumstances in their cases in which I can consider a lenient sentence. In this, I would mean a custodial sentence.

The offences committed are serious offences. Government Buildings and Government Property are also affected and subject to the offences. These I believe, are aggravating factors, which warrant custodial sentences.

Having consider all the facts and circumstances of the case, for the 1st charge, my starting point for D1 is an imprisonment sentence of 9 months. For D2, my starting point is an imprisonment of 12 months.

For the 2nd and 3rd charges, my starting point for D1 is 12 months' imprisonment, and starting point for D2 is 18 months' imprisonment. Their individual sentences are reduced by 1/3 for a plea guilty.

Their sentences, are thus, as follows:-

1st Charge

D1 : 6 months' imprisonment
D2 : 8 months' imprisonment

2nd Charge

D1 : 8 months' imprisonment.

D2 : 12 months' imprisonment.

3rd Charge

D1 : 8 months' imprisonment.

D2 : 12 months' imprisonment.

Take into consideration totality of sentence, I order that the 1st and 2nd charges to run concurrently, but consecutively to the 3rd charge.

Total sentence:

D1 : 16 months' imprisonment.

D2 : 24 months' imprisonment.

Sentences to run with effect from 31st August 2017. I further order that all recovered items to be returned to owner.

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI
Judge, Intermediate Court