

Public Prosecutor

AND

Md Sufrizul Bin Mohd Sufri (D1)
Mohamad Shahmur Bin Bujang (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 3 of 2017)

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge
2nd August, 2017

*Criminal Law – Theft in a place of worship – S.230A Penal Code – Mischief – S436 Penal Code
– Sentencing – Plea of Guilty.*

DPP Vuina Song for Public Prosecutor.
Defendants In Person.

SENTENCE

Muhammed Faisal, Judge:

Both defendants faced a joint charge under section 380A PC, and the second defendant one charge under section 426 Penal Code. The charges are as follows:

“Amended 1st Charge:

That both of you, sometime between the late hours of 2nd January 2017 and the early hours of 3rd January 2017, at St. Margaret Church, Seria in Brunei Darussalam, a building used as a place of worship, in furtherance of your common intention, did commit the theft, to wit, of :

- i. one (1) black JTS microphone;*
- ii. two (2) black AKG microphones;*
- iii. one (1) black cable wire;*
- iv. two (2) cable connectors;*
- v. one (1) white Acer projector;*
- vi. four (4) extension cables.*

belonging to the said St. Margaret Church and that you have thereby committed an offence punishable under Section 380A of the Penal Code, Chapter 22 read with Section 34 of the same.

2nd Charge: (against D2 only)

That you, on the sometime between the late hours of 2nd January 2017 and the early hours of 3rd January 2017, at St. Margaret Church, Seria in Brunei Darussalam, did commit mischief by using a screwdriver to pry open a hard equipment case belonging to the said St. Margaret Church and that you have thereby committed an offence punishable under Section 426 of the Penal Code, Chapter 22."

They were first brought before the Magistrate's Court on the 5th January 2017 and were remitted to the Intermediate Court on the 12th January 2017.

Plea was formally taken on the 25th January 2017, where both defendants had pleaded not guilty to the 1st charge but the 2nd defendant had pleaded guilty to the 2nd charge. Trial was set down, for hearing of the 1st charge on the 17th to 20th July 2017.

The matter was adjourned to the 31st July 2017 where both defendants have opted to plead guilty to the 1st charge.

The statement of facts are listed down as below, for both charges.

“(For 1st Charge only)

The First Defendant [D1] is a 24 year old Bruneian citizen who is currently unemployed. The Second Defendant [D2] is a 42 year old Bruneian citizen who is currently unemployed.

On 2nd January 2017, at about 11:00 p.m., D1 and D2 travelled on bicycles from the D1's house at Barek 417, A4, Barek Lorong 3 Selatan, Seria to St Margaret's Church in Seria with the intention to steal.

Once D1 and D2 arrived at the said church, they approached the church hall where D2 managed to push the sliding doors open allowing them both to enter. Whilst inside the hall, D2 went towards a large hard equipment case, which stores audio equipment, and pried it open with a screwdriver. D2 proceeded to take several microphones, an ACER projector and extension cables from the said equipment case. On the other hand, D1 went towards the kitchen to take some food items and 4 extension cables.

Shortly after, D1 and D2 left the church taking the stolen items with them. On 3rd January 2016, at about 9:05 a.m., Tan Mak Thian, the warden of St Margaret's Church in Seria, lodged a police report regarding theft of items belonging to the said church which had occurred inside the said church building.

Police investigations led to the arrest of D1 and D2. During their investigations, the police managed to recover the following items from D2's house:

- (a) 1 black JTS microphone*

- (b) 2 black AKG microphones
- (c) 1 cable wire; and
- (d) 2 cable connectors

The police also managed to recover 4 extension cables were found in D1's house. The recovered items have been identified by a member of St Margaret's Church as belonging to the church. However, the police did not manage to recover the ACER projector. On record, both D1 and D2 have previous convictions.

(For D2 only)

The Second Defendant [D2] is a 42 year old Bruneian citizen who is currently unemployed.

2nd Charge:

Sometime at about 11:00 p.m. on 2nd January 2017, D2 left his house, together with another person, to go to St. Margaret Church, Seria.

Once D2 and the other person arrived at the said church, they managed to gain entry into the said church and entered the church hall. While inside the hall, D2 saw a large hard equipment case. He then used a screwdriver to pry open the hard equipment case and in doing so, had caused wrongful damage to the said case. After a while, D2 and the other person left the said church.

On 3rd January 2017, at about 9:05 a.m., Tan Mak Thian, the warden of St Margaret church inspected the church hall and found that the large hard equipment case which usually contained electronic equipment was pried open and items were missing from it. The warden subsequently lodged a police report.

During police investigations revealed that D2 committed the above mischief. As a result of D2's actions, the said hard equipment case is no longer usable as the lock has been damaged and according to the church staff, the said hard equipment case is roughly valued at B\$2,000.

On record, D2 have previous convictions."

In their mitigation, the defendants have pleaded for lenient sentence. In considering their sentences I am guided by the cases of *PP vs Md Afindi Bin Ag Damit* (COACM/27/2015) and *PP vs Md Afindi Bin Ag Damit* (ICCT/24/2015).

Section 380A Penal Code can be viewed as an enhancement of punishment found under section 380 Penal Code. The Judge in the latter case imposed a higher sentence than that what would be merited under section 380 Penal Code. Their Lordships of the Court of Appeal, agreed with the Learned Judge.

In that case the defendant was a 1st offender and pleaded guilty. He was sentenced to 16 months and 2 strokes for theft of money donation from a mosque.

In this case, the defendants both pleaded guilty, but have previous conviction for theft related offences. However, they have no previous convictions under section 380A Penal Code. I also to take note that, they had an earlier opportunity to plead guilty, but did not do so.

The offence under section 380A Penal Code carries a maximum sentence if 10 years imprisonment and whipping. Given the seriousness of the charge, and their previous conviction for theft related offences, my starting point shall be imprisonment of 36 months and 3 strokes whipping. That value is reduced by 1/3 for a guilty plea.

With respect to the 2nd Charge, against the 2nd Defendant only, I take into account that he has no previous conviction under section 436 Penal Code. An aggravating factor is the value of the damaged 'equipment case', worth about \$2,000.00, which needs to be replaced.

The offence was committed together with the 1st Charge, which justifies an imprisonment sentence. My starting point will be imprisonment of 9 months imprisonment, reduced by 1/3 for his guilty plea.

The defendants' sentences are thus as follows:

1st Charge

D1 24 months' imprisonment and 2 strokes.

D2 24 months' imprisonment and 2 strokes.

2nd Charge

D2 6 months' imprisonment.

For the 2nd Defendant, both charges to run concurrently, to take into consideration, of the offences committed under the same transaction.

All sentences to run with effect from date of institution of proceedings, i.e. 5th January 2017.

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI
Judge, Intermediate Court