

Public Prosecutor

AND

Mohammad Azhan Bin Awang Ahmad

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 10 of 2025)**

Pg Masni Pg Hj Bahar, Judge
Date of Sentence: 7 April 2025

Headnote: Multiple charges – House trespass in order to commit offence punishable with imprisonment – Offence under section 451 Penal Code- Previous Convictions- Deterrent sentence.

DPP Nurul Fitri Kiprawi for the Public Prosecutor.
Defendant In Person and Unrepresented.

Cases cited:

Public Prosecutor v Mohammad Adini bin Awang Nazri & Mohammad Khairul Nizam bin Haji Mantin (ICCT/55/2019)
Rosazli bin Hj Metassan v PP (Criminal Motion 6 of 2018),
Ahmadi bin Hj Nawli v PP (Criminal Motion 1 of 2015),
Abdul Wakil bin Samsun Yusra v PP (Criminal Motion 35 of 2014)
Mohd Zahiruddin bin Hj Junaidi v PP (Criminal Motion 38 of 2013).
Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138

SENTENCE

Pg Masni, Judge:

Background:

1. The Defendant, Mohammad Azhan bin Awang Ahmad, is facing 4 charges of house trespass with the intention to theft, an offence contrary to section 451 of the Penal Code.
2. The charges and its respective penalty were read and explained to him in Malay. Defendant informed the court that he understood the charges and its penalty. He pleaded guilty to all the charges. I accept the Defendant's guilty pleas as I am satisfied that the Defendant understood the nature and the consequences of his plea. Hence S175 CPC is duly complied with.

Charge:

3. The Defendant pleaded guilty to the following charges.

1st Charge:

That you, sometime in the early hours of 6th February 2025, inside house No. 146, Simpang 146, Jalan Kecil Sungai Bakong, Lumut, in Brunei Darussalam, did commit house-trespass by entering into the said house, in the possession of one Shiju Varghese (male, Indian national), in order to the commission of the offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22.

2nd Charge:

That you, sometime between 5th and 6th February 2025, inside house Lot No. 4122, Simpang 349, Kampong Sungai Bakong, Lumut, in Brunei Darussalam, did commit house-trespass by entering into the said house, in the possession of one Mohammad Bin Nauawi (male, Bruneian national), in order to the commission of the offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22.

3rd Charge:

That you, on 17th February 2025, sometime in the morning, inside house No. 1, Simpang 112, Jalan Pantai Lumut, in Brunei Darussalam, did commit house-trespass by entering into the said house, in the possession of Uki Hendri Irawan (male, Indonesian national), in order to the commission of the offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal.

4th Charge:

That you, on 22nd February 2025, sometime in the afternoon, inside house No. 1, Simpang 112, Jalan Pantai Lumut, in Brunei Darussalam, did commit house-trespass by entering into the said house, in the possession of one Sarbini (male, Indonesian national), in order to the commission of the offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under section 451 of the Penal Code, Chapter 22.

Statement of facts:

4. The statement of facts to the said charges were read and explained to the Defendant. Defendant informed the court that he understood and agree with the statement of facts.
5. Defendant admitted that he is unemployed and his is also known as "*Panyu*".

1st Charge: Theft at a Rental House

6. For the 1st charge, Defendant admitted committing house trespass with the intention to commit theft to house No. 146, Simpang 146, Jalan Sungai Kecil Bakong, Lumut occupied by one Shiju Varghese on the 6th February 2025. Mr Shiju Varghese rented the said house from the Defendant's father.
7. Defendant admitted that he entered into the rented house through an unsecured window and stole Cash monies and Titan Smart Watch, which he later sold to a foreign worker.
8. The theft was discovered by Shiju Varghese the morning of the 6th February 2025, when he woke up and discovered the window in the house was not secured. He then checked around the house and found Cash monies and Titan Smart Watch missing from his cupboard. He then filed a police report.
9. Police investigation led to the arrest of the Defendant. Defendant admitted to the crime. Police recovered the stolen watch.

2nd Charge: Theft at an Elderly Man's House

10. Defendant also admitted to commit house trespass with the intention to steal from one of his elderly friends by the name of Mohammad Bin Nauawi who resides at Lot No. 4122, Simpang 359, Kampong Sungai Bakong, Lumut.
11. Mohammad knew the Defendant as one of the fellow villagers whom he frequently offered food to him and his family.
12. Prior to the commission of the crime (28th January 2025), the Defendant went over to Mohammad house to look for scrap metal. Mohammad offered drinks and food to the Defendant before giving him the scrap metal.
13. The Defendant admitted that sometime between 5th and 6th February 2025, he went to visit Mohammad. When the Defendant arrived, he called out to Mohammad but there was no response and the main gate was closed. The Defendant then climbed over the gate and entered the compound. He saw that the kitchen window was not closed. The

Defendant decided to enter into Mohammad's house through the said window. When the Defendant entered into Mohammad's house, he left his slippers by the kitchen backdoor. The Defendant admitted roaming around the house, when he saw a bicycle in the living room. Defendant stole the said bicycle and left Mohammad house through kitchen backdoor barefooted. The Defendant abandoned the bicycle at a staff house at Lot 4805, Simpang 180, Kampong Sungai Bakong, Lumut.

14. On the morning of the 6th February 2025, Mohammad woke up and found his kitchen window was opened. He then saw a pair of slippers at his kitchen backdoor which he recognized it belonged to the Defendant as that was the same pair of slippers worn by the Defendant who came by his house a few days prior. Upon further inspection around his house, he discovered several of his belongings were missing including one (1) bicycle from the living room. Mohammad tried to locate the Defendant for two weeks but with no avail. Mohammad then filed police report on the 21st February 2025.

15. Investigation led to the arrest of the Defendant. Defendant admitted to the said crime.

3rd & 4th Charges: Housebreaking & Theft at a Staff House (17th & 22nd February 2025)

16. The Defendant admitted committing house trespass into a staff house at No. 1, Simpang 112, Jalan Pantai Lumut, Brunei Darussalam, on two separate occasions—the 17th and the 22nd February 2025—by entering through an unsecured window.

17. On the first occasion, Defendant admitted that he stole an Honor X8B mobile phone and a pair of shoes on the first occasion belonging to one Uki Hendri Irawan. Defendant admitted that he disposed of the said phone because it was locked.

18. On the second occasion, Defendant went back to the same place and stole a Vivo V25E mobile phone. The Defendant then went to a mobile repair shop and requested the phone to be unlock and reformat.

19. Uki Hendri Irawan filed police reports and the investigations led to the arrest of the Defendant. The Defendant admitted to both break-ins.

Antecedents:

20. Defendant admitted that he has prior convictions for theft and robbery in 2020 and he was released from Prison on the 22.2.2023. In 2024, Defendant admitted that he was sentenced to 6 months' imprisonment for theft in a dwelling house, (S 380 PC). He was released from prison on the 22.10.24.

Mitigation:

21. In his mitigation, Defendant urge this court not to take into consideration of his previous offence in considering the sentence. Defendant also pray for leniency and concurrent sentence.

Prosecution sentencing submission:

22. Prosecution urged the court to impose a deterrent sentence in light of the aggravating factors.
23. Prosecution highlighted that the Defendant is a repeated offender for theft and robbery, which shows that past sentences have failed to rehabilitate and reformed the Defendant. Prosecution submits that this is evident when the Defendant continued to commit four house trespass offences in a short period of time. The Defendant has escalated his unlawful activities, from theft to multiple acts of house trespass. For all the house trespass offence, the Defendant premeditated the offence. Prosecution also submits that the Defendant abused the kindness and trust of other. This is reflected in the 1st and the 2nd charge.
24. Prosecution submits that the case laws has shown that house trespass to commit theft is a serious offence that warrants a custodial sentence to protect public interest- ***Public Prosecutor v Mohammad Adini bin Awang Nazri & Mohammad Khairul Nizam bin Haji Mantin (ICCT/55/2019)***. In this case, the Court emphasised that repeat offenders who continue to commit housebreaking offences despite prior punishment must receive deterrent sentences, as property crimes not only cause financial loss but also undermine public confidence in the security of homes and businesses.
25. Prosecution guided the court with list of authorities which shows that the range of sentences varies from 2-4 years imprisonment for plea of guilty and after one third reduction.
26. In this present case, Prosecution urges this court to consider a starting point of 3.5 years imprisonment and a global sentence of not less than 7 years to balance the gravity of the offence and the Defendant's criminal record.

Court's sentencing:

27. Precedent shows that a starting point of 3 years reduced to 2 years' imprisonment sentence was upheld by the Appellate Court for first offender with clear record and guilty plea for offence of house trespass contrary to offence under section 451 PC - ***Rosazli bin Hj Metassan v PP (Criminal Motion 6 of 2018)***, ***Ahmadi bin Hj Nawawi v PP***

(Criminal Motion 1 of 2015), *Abdul Wakil bin Samsun Yusra v PP* (Criminal Motion 35 of 2014) and *Mohd Zahiruddin bin Hj Junaidi v PP* (Criminal Motion 38 of 2013).

28. Bearing in mind the range of sentences upheld by the Appellate Court, each case has to be considered in its own merits.

Penalty:

29. The Defendant commits house trespass with the intention to commit theft. Theft is an offence punishable with imprisonment. Hence it falls under the 2nd limb of the penalty, which warrants for an imprisonment sentence of 10 years.

Appropriate Starting point:

30. There is not much credits that is affordable to the Defendant due to his previous convictions. Not only that the Defendant commits robbery in 2020 where he was sentenced to 6 years imprisonment, the Defendant was convicted again for theft in a dwelling house not long after his released. The Defendant commits this present offence barely less than one year after his second offence. I do, therefore, agree with the Prosecution that the Defendant failed to show any remorse or deters by his previous conviction.

31. For the said reason, the Defendant does not deserve the lower range of starting point. It was held in the case of ***Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin* [2003] BLR 138**, a higher starting point is justified for recalcitrant offenders like the Defendant.

32. Prosecution suggests a starting point of 3½ years' imprisonment is warranted to reflect the Defendant's culpability and that a global sentence of not less than 7 years' imprisonment is appropriate in this case.

33. Taking into account of the Prosecution's submission, I agree with the Prosecution that a starting point of 3½ imprisonment for each charge is appropriate to reflect the Defendant's culpability with previous convictions. From the said starting point, I deduct one-third off for the Defendant's guilty plea at first instance.

34. Therefore, for each charge, the Defendant is sentence to 2 years and 4 month's imprisonment.

Individual Sentence:

35. Therefore, for each charge, the Defendant is sentenced as follows:

1st charge: 2 years and 4 month's imprisonment.

2nd charge: 2 years and 4 month's imprisonment.

3rd charge: 2 years and 4 month's imprisonment.

4th charge: 2 years and 4 month's imprisonment.

Totality Principle:

36. Defendant commits the house trespass on 4 different occasions and it involves different owners save for the 3rd and 4th charges, where the Defendant commits the house trespass on the same house on two different occasions, which is the 17th and the 22nd February 2025.

37. This warrant for a consecutive sentence. A consecutive sentence of 9 years 4 months would be excessive. I agree with the Prosecution that a global sentence of 7 years' imprisonment is appropriate to reflect the Defendant's culpability.

38. To achieve the global sentence of 7 years' imprisonment, I order for the 1st, 2nd and 3rd charge to run consecutively with each other, which brings the total sentence of 7 years' imprisonment. With the remaining 4th charge, I order it to concurrently with the 7 years' imprisonment.

Final Sentence:

39. I hereby sentenced the Defendant to 7 years' imprisonment. I order for the sentence to run from the date the Defendant was remanded, 23rd February 2025

PG MASNI PG HJ BAHAR
Judge, Intermediate Court