



Public Prosecutor

AND

Mohd Suhaimi Bin Mohd Sufri

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 12 of 2015)**

Abdullah Soefri POKSM DSP Hj Abidin, ICJ
13th May 2015

*Criminal Law - House breaking by night - Section 457 of the Penal Code, Cap 22 –
Theft of car - Section 379 Cap 22 – Plead Guilty – Sentence.*

DPP Mohd Daniel Bin Dato Seri Paduka Hj Kifrawi for Public Prosecutor.
Defendant In Person.



Cases cited in the Sentence:

Chua Tiong Tiong v PP (2001) 3 SLR 425
Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal) (Criminal Appeal No: 11 of 2004)
Haris Bin Akil v Public Prosecutor [1992] BLR 291
Ilham Syarif Vs Public Prosecutor (Criminal Appeal No. 3 of 2009)
Public Prosecutor Vs Lisua Bin Lee and Otrs (1990) JCBD 243
Public Prosecutor Vs So Weng Kei (2006) SGDC 300
R v Ball (1951) 35 Cr App R. 164
R v Howells (and other appeals), (1999) 1 ALL ER 50, 54 Bingham L.C.J.
Romei Bin Abd Rahman v Public Prosecutor [2010] 2 JCBD 111

S E N T E N C E

Hj Abdullah Soefri, ICJ:

Mohd Suhaimi Bin Mohd Sufri, hereafter known as the Defendant was first brought before the Intermediate Court on the 6th May 2015. The Defendant is facing with two charges. The first charge is for an offence under section 457 of the Penal Code and the second charge is for an offence under Section 379 of the same. The Defendant unreservedly pleaded guilty to both charges. The charges are as follows:

CHARGES

First Charge

That you, on or about the 19th day of April 2015 at about 7.00p., after the hour of sunset and before the hour of sunrise, did commit house-breaking by night, by entering into a building, at



address No. 10, Jalan Padang, Bandar Seri Begawan, used as a human dwelling, in order to commit theft of, to wit;

Monies amounting to B\$2000.00
 One (1) TORY BURCH hand bag
 One (1) 64GB I PAD 2
 One (1) Identity Card of Lim Geok Ching No: 00-048580
 One (1) Royal Brunei Skies card of Geok Ching Lim No:100153292
 One (1) BOUSTEAD Company identification card of Lim Geok Ching
 One (1) HSBC Security Token
 Two (2) pieces of CNY 100;

in the possession of one, LIM GEOK CHING (BYIC No: 00-048580), and that you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 22.

Penalty Under Section 457 of the Penal Code, Cap. 22
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.

Second Charge

That you, on 29th of April 2015, at about 10:30 p.m., at No. 102, Kampung Orang Kaya Besar Imas, Pulaie, in Brunei Darussalam, did commit theft of one motor vehicle, to wit, a Toyota Super Kijang bearing registration number BAJ 7801 with chasis number MHF21KF5200014634, in the possession of one Indonesian national, SLAMET (BGIC NO. 51-058739) and you have thereby committed an offence punishable under section 379 Penal Code, Chapter 22.

Penalty

Imprisonment for a term which may extend to 3 years, or with fine or with both.

The Defendant admitted to all the Statement of Facts in which the particulars of the commission of offences have been set out. The admitted Statement of Facts are as follows;

STATEMENT OF FACTS

The Defendant is a 22 year old local man who is currently unemployed.

1st Charge

On or about the 19th day of April 2015, the Defendant was walking around the vicinity of Jalan Padang in Bandar Seri Begawan. After changing his mind not to eat at Taman Selera, The Defendant was walking near the St Andrew's Church and noticed a 2-storey house located nearby.

After the hour of sunset and before the hour of sunrise, at about 7.30pm, the Defendant then climbed over a green fence and entered into the premises of the said house at address No. 10, Jalan Padang, Bandar Seri Begawan, in which the Complainant, LIM GEOK CHIN, use as a human dwelling.

The Defendant then noticed that the 2nd floor sliding window of the said house was open. The Defendant then proceeded to walk towards the 1st floor window of the said house and climbed up the wall to the 2nd floor window.



Thereafter, the Defendant broke into the said Complainant's house, by entering into the 2nd floor bedroom window. While inside the said bedroom, the Defendant then took the following items;

- Monies amounting to B\$2000.00
- One (1) TORY BURCH handbag
- One (1) 64GB I PAD 2
- One (1) Identity Card of Lim Geok Ching No: 00-048580
- One (1) Royal Brunei Skies card of Geok Ching Lim
No: 100153292
- One (1) BOUSTEAD Company identification card of Lim Geok Ching
- One (1) HSBC Security Token
- Two (2) pieces of CNY 100;
which are in the possession of the said Complainant.



Thereafter, the Defendant exited the same window, proceeded down the said house and walked away from the said premises with the said items, without the permission of the said complainant.

At about 8.00p.m, the Complainant's nephew Lim Jin Yang, went to the said bedroom to close the window when he noticed a man outside in their premises who proceeded to climb over the green fence.

At about 8.30p.m, the said Complainant noticed that someone has been in her room and discovered several missing items. She the lodged a Police report.

On the 27th of April 2015, the said complainant, LIM GEOK CHING's items were found in the Defendant's vehicle, a red Toyota Corolla bearing registration number BE 7946.

Police investigation revealed that the Defendant purchased the said car from another, using the Complainant's monies amounting to BND\$2000.00.

Police have recovered all the stolen items except for the Complainant's monies amounting to BND\$2000.00



2nd Charge

On or about the 29th day of April 2015, at about 10.30p.m, the Defendant was walking towards his friend's house located in Anggrek Desa.

13. While he was walking in the vicinity of Kampung Orang Kaya Besar Imas, Pulaie, he noticed a Toyota Super Kijang bearing registration number BAJ 7801 with chasis number MHF21KF5200014634, in the possession of one Indonesian national, SLAMET (BGIC NO. 51-058739). The said car was parked at the vicinity of a house address No. 102, Kampung Orang Kaya Besar Imas, Pulaie.

14. The Defendant then formed the intention to take the car to Seria. Thereafter, the Defendant approached the said vehicle, opened the unlocked car door and started the engine with the keys that were left inside the said car.

15. The Defendant then drove the said car away from the Said premises without the permission of the Complainant, SLAMET.

16. At the same time, the Complainant noticed that his car reversing and quickly exited the house. He then saw his car being driven away and so he and his friends quickly, in another car, chased after the Defendant but did not manage to catch him. A police report was the lodged.

17. Police recovered the stolen vehicle in Seria.

For all the offences

18. On record, the Defendant has no criminal previous conviction.

19. The Defendant is currently out on Court bail for ICCT case No. 07 of 2015 which was granted on 28th March 2015.

MITIGATION

In mitigation the Defendant pleads to the Court for his sentence commuted after the Hari Raya celebration as he wants to celebrate the Hari Raya with his family. He told the Court that he is willing to receive any sentence after November.

SENTENCING CONSIDERATIONS

The Court has to look into various factors in determining the appropriate sentence. In the case of Chua Tiong Tiong v PP (2001) 3 SLR 425, the High Court stated:

"There are four pillars of sentencing; retribution, deterrence, prevention and rehabilitation. Criminal Courts play their part by ensuring that the sentences of offenders mirror these pillars. The sentence imposed on the appellant not only served to punish him, it sought to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again."

In the case of R v Ball (1951) 35 Cr App R. 164, Hillbery J laid out the guiding consideration which this Court also took into consideration. Learned Hillbery J stated:

"In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It might deter others who may be tempted to try crime as seeming to offer easy money on the supposition, that if offender is caught and brought to justice, the punishment will be negligible. Such sentence may also deter the particular criminal from committing a crime again, or, induce him to turn from a criminal to an honest life."

It was held in the case of Public Prosecutor vs So Weng Kei (2006) SGDC 300 that

"The UK Courts in cases such as David Edwards Brewster (1980) 2 Cr App R (S) 191 and Alex Edward Brewster & Otrs (1988) 1 Cr App R (S) 181 had imposed sentences that are designed to protect the public by incapacitating offenders from committing further burglaries."

In R v Howells (and other appeals), (1999) 1 ALL ER 50, 54 Bingham L.C.J. commented that,

"Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or

detering him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system.”

In Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009) and reported in the Malayan Law Journal (2010) 5MLJ 382, the Court of Appeal held that;

“where the sanctity of a private home is invaded for the purpose of committing an offence, deterrence is an important consideration. This is specially so in Brunei due to the prevalence of such offences”

In Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal)(Criminal Appeal No: 11 of 2004), the Court of Appeal commented as follows;

“Housebreaking is a serious anti-social offence. It is even more invidious when committed at night when people are not fully awake to defend their property or perhaps themselves.”

The facts of the case are very disturbing and the Court have stressed over and over again that offences against property are serious offences and the Court will deal with these types of offences seriously. The Court has also stressed repeatedly that property belonging to others must be respected and must not be taken away. It is in the public interest and to protect the public and their property that a deterrent sentence must be imposed and thus the Court believes that a custodial sentence is justifiable for the first charge.

It was held in Haris Bin Akil v Public Prosecutor [1992] BLR 291 where Roberts C.J said;

“These were serious offences and cannot be justified by the appellant’s desire to employ one of the cars to earn money. I have referred to the case of PP v Tan Eng Hok [1970]2 MLJ 15. in this case a Malaysian High Court Judge said that he was aware that in considering the appropriate sentence the Court should always be guided by certain principles, the first and foremost of which is the public interest. The criminal law is publicly enforced, not only with the object of punishing a crime but also preventing it. In fixing sentence, the nature, the circumstances and the degree of deliberation must be taken into account.

Later on, he said car theft was a fairly common offence and invariably leads to more serious crimes. In that instance, a sentence of 18 months, imprisonment was imposed for the theft of a car, although the Magistrate had originally bound over the appellant as a first offender.”

Thus, taking into account that the theft of car is a serious offence and the need to protect and safeguarding the public interest and their property and to serve as a deterrent and warning to would be offenders, the Court believes that custodial sentence is justifiable for the second charge.

The question that is needed to be address is what is the appropriate length of imprisonment?

MITIGATING FACTORS

The court takes into account the following mitigating factors;

1. The Defendant pleaded guilty at the first instance.
2. The Defendant is a first offender.
3. The Defendant’s age which is 22 years old.
4. Some of stolen items were recovered.





AGGRAVATING FACTORS

The Court takes into account the following aggravating factors;

1. The offence was committed at night
2. The Defendant blatantly committed the offence.
3. There was occupant in the house at the time when the offence was committed.
4. The Defendant did not appreciate that property belonging to others must be respected. He told the Court that he took the car so that he could use it to go back to his house.



In Public Prosecutor vs Lisua Bin Lee and Otrs (1990) JCBD 243, Roberts CJ in passing a sentence of 3 years imprisonment expressed the view with which I adopt in this case, that;

"It is usual in a case of this nature, when an offence is established under section 457 of the Penal Code to order a sentence of imprisonment of something like 2 years on a plea of guilty by a person with a clear record."

In Romei Bin Abd Rahman v Public Prosecutor [2010] 2 JCBD 111, Dato Seri Paduka Hj Kifrawi, C.J held as follows;

"The DPP referred this court the case of Public Prosecutor v Pg Abdul Rahman Bin Pg Shahbuddin [2003] 1 JCBD 139, in which the defendant was convicted for six offences of theft of cars. Saied, C.J held that a starting point of 12 months was appropriate for a person with a clear record and more than 12 months for a person with previous record, depending upon the nature of his previous convictions. In this case, the C.J Saied was given statistic showing the number of cars stolen during the year 2002 being 251, of which police recovered 133. The DPP before me, submitted that the number of vehicle theft had risen from 79 in 2007 to 84 in 2008 to 114 in 2009. in general, however, compared to the year 2002, the number of cars stole appeared to be less than in 2009. Nevertheless, I agree with the Senior Magistrate, theft of cars cannot be viewed lightly. The Courts, in the public interest, have to pass deterrent sentences."

Thus this Court after having taking into account of all the mitigating and aggravating factors of this case and following the guideline given by Roberts CJ in Lisua's case and the guideline stated by Dato Seri Paduka Hj Kifrawi, C.J in Romei Bin Abd Rahman v Public Prosecutor [2010] 2 JCBD 111, this Court imposes the following sentences;

First Charge

Imprisonment of 2 years and 3 strokes of whippings

Second Charge

Starting point of 12 months and reduced by 1/3 and final imprisonment is 8 months imprisonment.

The question now is whether to impose concurrent or consecutive sentences?

The offences that were committed at two different days and they involved two different complainants and places, this Court is satisfied that it warranted consecutive sentences and orders the sentences to run consecutively with each other.



COURT ORDER

First Charge

Imprisonment of 2 years and 3 strokes of whipping.

Second Charge

Imprisonment of 8 months.

Sentences to run consecutively with each other.

Total sentence

Imprisonment of 2 years and 8 months and 3 strokes of whippings with effect from 6th May 2015.

All items recovered are to be returned to rightful owner.

HJ ABDULLAH SOEFRI
Judge, Intermediate Court