

Public Prosecutor

AND

Muhammad Nur Faliq Fuii Bin Abdullah Meng

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 49 of 2024)**

Pg Masni Pg Hj Bahar, Judge

Date of Sentence: 17 February 2025

Headnote: Sentence: Section 457 PC - house breaking by night with the intention to commit an offence punishable with imprisonment - multiple previous conviction - Public Interest-Deterrent Sentence - Appropriate Sentence

DPP Abdul Musawwir Bin Hj Awg Mahli for the Public Prosecutor.
Defendant In Person and Unrepresented.

Cases cited:

R v Ball (1951) 35 Cr App R. 164

Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal) (Criminal Appeal No: 11 of 2004)

Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009)

Md Ihsan Bin Haji Awang Saini (Criminal Appeal No 12 of 2013)

Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal) (Criminal Appeal No: 11 of 2004)

SENTENCE

Pg Masni, Judge:

Introduction:

1. The Defendant, Muhammad Nur Faliq Fuii Bin Abdullah Meng, is charged for two counts of housebreaking by night with the intention to commit theft. The charge was read and explained to him in Malay language as the Defendant's preferred language.
2. The charge was read and explained as follows:

Charge:

1st Charge:

That you, on the 1st day of December 2024, sometime between 0000 hours and 0300 hours, at a house addressed at No. 4, Simpang 1579-26, STKRJ Telisai, Tutong, in Brunei Darussalam, a building used as a human dwelling, did commit

house-breaking by night, by entering into the said house, in the possession of one Wali Vassco Bin Muhammad Isa Taman @ Vassco Bin Taman, to wit, by entering through a window of the said house, after the hour of sunset and before the hour of sunrise 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.

Additional 2nd Charge:

That you, on the 29th day of November 2024, sometime between 0000 hours and 0100 hours, at a house addressed at G5/16, Jalan Tengah, BSP Housing, Panaga, in Brunei Darussalam, a building used as a human dwelling, did commit house-breaking by night, by entering into the said house, in the possession of one Michelle Tay, to wit, by entering the said house through the door, having opened the door which was locked, after the hour of sunset and before the hour of sunrise 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.

Penalty:

3. The penalty under section 457 of the Penal Code carries an imprisonment sentence of 5 years and whipping. If the offence intended to be committed is theft, the sentence may be extended to 15 years.

Section 175 CPC:

4. The Defendant confirmed to the court that he understood the charges and penalties read and explained to him in Malay, and he pleaded guilty to both charges.
5. The court accepts the Defendant's guilty plea, being satisfied that he understands its nature and consequences of his guilty plea. Accordingly, Section 175 of the CPC has been duly complied with.

Statement of Facts

6. The Defendant admitted he was unemployed at the material time.
7. He admitted that on the 1st December 2024 at about 0000 hours, as he was walking to the house at No. 4, Spg 1579-26 STKRJ Kg Telisai, Tutong (the said house), he was chased by a pack of dogs. In an attempt to escape from the pack of dogs, he ran to the rear part of the said house. When the Defendant was at the rear part of the house, he dismantled one of the windows and pried open the grill attached to it. Defendant admitted that he entered into the said house from the window, as shown in the picture in Annex A.

8. Whilst inside the house and while searching for items to steal, the Defendant heard someone shouting at him telling him to leave the house. The Defendant panicked to find his way out and tried to escape through the bathroom by breaking the bathroom's exhaust fan window. However, his attempt to escape was unsuccessful. The Defendant admitted to damaging the exhaust fan in his attempt to escape from the said house. The picture of the damaged exhaust fan was shown to him as in caused by him as shown in the picture annex B. Unable to escape, the Defendant made a hole in the ceiling, climbed up using a ladder and hid in the ceiling of the said house. The Defendant admitted to remaining in the said ceiling until the police arrived and arrest him.
9. The neighbour of the said house, Awangku Hamzini (hereinafter referred to as ("the Complainant")) noticed a suspicious man being dropped off by a blue car at around 2345 hours. He verified seeing a man being chased by a pack of dogs and witnessed the said man ran to the rear part of his neighbour's house. He then saw that the man appearing to open the window of the said house which prompted him to call the police and immediately lodged a Police report.
10. When the police arrived, they found the Defendant hiding in the ceiling of the said house. Defendant was arrested and during investigation, the Defendant admitted that breaking into the said house dismantling the window and prying open the grill window. Defendant also admitted causing damage to the exhaust fan and the ceiling of the said house.
11. Defendant admitted that his act was captured in the CCTV where the footage of the CCTV was shown to him by the police, to which the Defendant positively identified himself as the person in the CCTV footage. The damage caused to the said house amounting to \$1994.05.

Additional 2nd charge:

12. Defendant admitted that on the 29th November 2024 at about 0000hrs, Defendant admitted that he brought along a screwdriver and drove to G5/16, Jalan Tengah with is friends, BSP Housing, Panaga, in Brunei Darussalam (the BSP House) using his blue Mazda Estina (the said car).
13. Defendant admitted that he entered into the BSP house and went to the verandah. Whilst at the verandah, the Defendant used the screwdriver to prick the door in the veranda and opened the window. Defendant admitted that he successfully broke into the BSP House and whilst inside the BSP House, the Defendant admitted rummaging through the whole house to look for items and monies to steal.

14. Defendant admitted that he found and stole, among other things, foreign currencies, bottles of wine and a blue-black bag. He then put all the items that he stole from the BSP House inside the said blue-black bag and left the premise using the said car. Defendant admitted putting the stolen items the bonnet of the said car.
15. The cleaning lady of the BSP House discover the said break-in and informed the owner of the house, Jeffrey John, on the 29th November 2024 at about 1130 hours. Jeffrey John subsequently file a police report.
16. Police investigations led to the involvement of the Defendant. The Defendant was arrested subsequently. During police investigations, Defendant admitted to breaking into the BSP House by picking the locked door at the veranda with his screwdriver and stealing the bottles of wine and foreign currencies that consisted of American Dollars, Australian Dollars, Malaysian Ringgit and Japanese Yen. The Defendant further admitted that he had brought the foreign currencies that he had stolen to a money changer in Kuala Belait town and exchanged it to Bruneian Dollars. He then used it for his personal use. The Defendant also informed the police that he had burned the other items that he had stolen from the BSP House.
17. The Defendant's action was captured by the CCTV. The footage of the CCTV was shown to the Defendant. Defendant identified himself as the person captured in the CCTV. CCTV footage at the money changer where the Defendant exchanged the foreign currencies was also shown to the Defendant, to which he had also positively identified himself.
18. The stolen items were not recovered. The estimated total loss suffered by the victim for the reported stolen items missing is about BND\$21,320.00.

Antecedent:

19. The Defendant admitted that he had previous conviction for offences against property in 1998, 2006, 2009, 2011, 2016 and 2021.

Mitigation:

20. The Defendant urges this court to impose lenient sentence and for the sentence to run concurrently.

Court's Consideration:

21. In considering the appropriate sentence, I bear in mind the guiding principle enunciated by Hillbery J in the case of *R v Ball (1951) 35 Cr App R. 164*. His Lordship states:

“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.”

22. The Defendant committed housebreaking by night with the intention to commit theft on two different occasions involving two different houses. On both the occasions the occupants were not in the house.
23. It has been highlighted by the Appellate court that cases involving house breaking with the intention to commit theft are serious in nature and it warrant for a custodial sentence. This is due to their invasion of one’s home and the distress these thieves had place upon these householders. In the case of ***Daud Bin Hj Zainal vs Public Prosecutor (Court of Appeal) (Criminal Appeal No: 11 of 2004)***, the Court of Appeal commented that:

“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. “

24. Sentences for housebreaking by night in order to commit an offence, especially the offence of theft, in Brunei is prevalence and depending on the facts of the case, the sentences usually range between 4-5 years’ imprisonment for first offender- ***Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009)***, ***Md Ihsan Bin Haji Awang Saini (Criminal Appeal No 12 of 2013)***

Aggravating factor:

25. The Defendant had previously been charged with the same offence (house breaking by night) in 2021. He was released from prison in May 2023. He was sentenced to three years and four months' imprisonment with two strokes of whipping. Upon his release in May 2023, the Defendant reoffended (present case) in November and December 2024.

26. The Defendant premeditated this present offence when he equipped himself with tools to facilitate the commission of these offences. This clearly indicates that the Defendant was not deterred by his prior conviction. His actions show a blatant disregard for others' property and the law and he will likely continue to steal whenever an opportunity arises.

Appropriate Sentence:

27. The Defendant does not deserve the lower range of starting point as outlined in [25-26] A higher starting point is justified for recalcitrant offenders like the Defendant. In the case of **Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138**, the court held that a higher starting point is warranted for offenders with prior convictions. Nevertheless, the Defendant is still entitled to a one third discount from the starting point for pleading guilty.
28. Considering the prescribed penalty - imprisonment of up to 15 years and whipping - I find that a starting point of five (5) years' imprisonment and two strokes of whipping per charge is appropriate, given that the Defendant reoffended shortly after being released from prison.
29. Taking into account of the seriousness of the offence, a starting point of five (5) years' imprisonment is appropriate for recalcitrant offender like the Defendant, who has shown no remorse for his previous convictions.
30. With that starting point, I reduced it to three (3) years and four (4) months' imprisonment with two strokes of whipping for each charge for his plea of guilty.

Sentence:

31. The Defendant is hereby sentenced as follows:

1st charge: 3 years 4 months' imprisonment and 2 strokes of whipping.

2nd charge: 3 years 4 months' imprisonment and 2 strokes of whipping

Totality Principle:

32. The Defendant committed these offences on two different occasions. I bear in mind the Defendant broke into two houses on two separate occasions. It, therefore, does not constitute offences committed in a single transaction. Given that these offences do not constitute a single transaction, a concurrent sentence is not warranted. Instead, a consecutive sentence is appropriate.
33. In deciding the appropriate sentence, the interest of the public is of utmost consideration [21]. A deterrent sentence is imperative to deter like-minded criminals, such as the Defendant, who disrespect both the law and private property.

34. I therefore order for the sentence to run consecutively with each other, which brings a global sentence of 6 years 8 months and 4 strokes of whipping.
35. I order for the sentence to run from the date the Defendant is remanded. I also order for the recovered items to return to the complainant.

PG MASNI PG HJ BAHAR
Judge, Intermediate Court