

Public Prosecutor

AND

**Muhammad Azrye Bin Gulkasih (D1)
Mohammad Fazly Bin Asnan (D2)
Muhammad Yasmin Bin Md Yusof (D3)
Mohammad Abdul Syafi'ie Bin Abdul Latif (D4)**

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 5 of 2015)**

Abdullah Soefri, ICJ
26th February, 2015.

Criminal law – Sentence – Theft – Motor Vehicle – Deterrent sentence necessary – Consecutive sentences warranted – Totality principle.

DPP Dk Hazirah Bte Pg Mohd Yusof for Public Prosecutor.
D2 and D4 unrepresented.

Cases cited in the Sentence:

Chua Tiong Tiong v Public Prosecutor (2001) 3 SLR 425
Haris Bin Akil v Public Prosecutor (1992) BLR 291
Norfazel Bin Tamit v Public Prosecutor (Criminal Appeal no. 129 of 2002)
Public Prosecutor v Mohd Azrey Bin Hj Musa (Criminal Appeal No. 18 of 2014)
Public Prosecutor v Pg Abd Rahman Bin Pg Shahbuddin [2003] 1 JCBD 139
Public Prosecutor v Tan Eng Hok (1970 2 MLJ 15)
R v Ball (1951) 35 Cr App R. 164
Romei Bin Abd Rahman v Public Prosecutor [2010] 2 JCBD 111
Sym Chong v Public Prosecutor [Criminal Appeal No. 55 of 1999]

Abdullah Soefri, ICJ:

All the four Defendants were first brought before the Intermediate Court on the 21st February 2015. Four charges were preferred in the charge sheet.

The first charge is against D1, D2 and D3 for an offence under section 451 of the Penal Code and read with section 34 of the same.

The second, third and fourth charges are against D2 and D3 for offences under section 379 of the Penal Code.

D1, D2 and D3 claimed trial for the first charge whereas D2 and D4 entered guilty pleas for the second, third and fourth charges.

This sentence is against D2 and D4 for the charges that they had pleaded guilty to which are as follows:

CHARGES

2nd Charge (against D2 and D4 only)

That all of you, on the 28th day of January 2015 at about 12:45 p.m., in the vicinity of Ajak Moi convenience store, Kg Serasa in Brunei Darussalam, in furtherance of your common intention, did commit theft of property, to wit, one grey Suzuki Swift bearing registration number KP 6546 in the possession of one Mohd Tohin Md Akkas Mollah and both of you have thereby committed an offence punishable under section 379 Penal Code, Chapter 22 read with section 34 of the same.

Penalty

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

MR/CR/31/2015

Amended 3rd Charge (against D2 and D4 only)

That both of you, on the 31st day of January 2015 at about 11:10 p.m., in the vicinity of Rameejan convenience store, Jalan Pasir Berakas in Brunei Darussalam did commit theft of property, to wit, one black Daihatsu Sirion bearing registration number KP 4756 containing one Samsung S3 mobile phone in the possession of one Fareed Ajmal Bin Aslin and both of you have thereby committed an offence punishable under section 379 Penal Code, Chapter 22 read with section 34 of the same.

Penalty

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

BKS/CR/211/2015

Additional 4th Charge (against D2 and D4 only)

That both of you and one Hasnan bin Kaling, on 14th May 2014 at about 9:30 p.m., in the vicinity of the Scouts Building, Beribi in Brunei Darussalam, in furtherance of your common intention, did commit theft of property, to wit, one Hyundai Veloster bearing registration number BAK 783 belonging to one Akmal Zahin bin Hj Abdullah and all of you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22 read with section 34 of the same.

Penalty

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

BSB/CR/1504/2014

STATEMENT OF FACTS

The Defendants 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:

1. The second Defendant (D2) is a 22 year old Bruneian male who is currently unemployed.

2. The fourth Defendant (D4) is a 19 year old Bruneian male who is currently unemployed.

2nd Charge (against D2 and D4 only)

3. On 28th January 2015 at about 12:45 p.m., the complainant, Md Tohin Md Akkas Mollah, parked his grey Suzuki Swift bearing registration number KP 6546 in the vicinity of Ajak Moi convenience store, Kg Serasa in Brunei Darussalam. He left the car unlocked with its engine running whilst he went into the store. Not long afterwards, he went out and saw that his car had gone missing. A police report was duly made.
4. Police investigations revealed that D2 and D4 were involved in the above theft. On 28th January 2015 at about 12:30 p.m., they were dropped off in the vicinity of the above store. As they were sitting around, they noticed the complainant leaving the said Suzuki Swift with the engine still running. They walked towards the said car and got into the car. D4 sat in the driver's seat while D2 sat in the passenger seat.
5. D4 drove the car to a secluded area in the vicinity of Jalan Bedil Berakas. They asked a friend to pick them up and returned there three days later to take the car.
6. Subsequently, D4 and another person changed the car's registration number to hide it from the complainant and the car was later exchanged for drugs by both D2 and D4.
7. The police managed to recover the car using a false registration number, KH 5432. The complainant has identified the car as the one he reported missing.

3rd Charge (against D2 and D4 only)

8. On 31st January 2015 at about 11:10 p.m., the complainant, Fareed Ajal bin Aslin, parked his black Daihatsu Sirion bearing registration number KP 4756 in the vicinity of Rameejan convenience store, Jalan Pasir Berakas in Brunei Darussalam. He left the car with the engine still running and doors unlocked while he went into the store. Shortly after, he walked back to his car but realized that it had gone missing. He also remembered that his Samsung S3 mobile phone was inside the said car. A police report was then lodged.
9. Police investigations revealed that D2 and D4 were involved in the above theft.
10. According to investigations, on 31st January 2015 at about 11:00 p.m., D2 and D4 went to the vicinity of the above store. Seeing that the said Daihatsu Sirion was left unattended with the engine running, D4 walked towards the car while D2 kept watch. D4 drove away with the Daihatsu Sirion and D4 tailed him from behind.

11. D4 drove the stolen car to the vicinity of Lambak Kanan Mosque where he then got into D2's car and they drove away. Before he left the stolen car, D4 took one Samsung S3 mobile phone which was kept inside the car. D4 then exchanged the stolen Samsung S3 mobile phone with D2's girlfriend's Samsung Core Duos mobile phone.
12. On the following day, on 1st February 2015, they returned to the above mosque to take the stolen car again. This time, D2 and D4 were dropped off by another person. From there, D4 drove the car whilst D2 sat on the passenger seat.
13. Subsequently, D2 and D4 changed the registration number of the car to KE 833. They used the car for about 4 to 5 days, after which they left the car in the vicinity of a flat in Beribi.
14. The stolen car has been recovered with its false registration number and has been identified by the owner.

Additional 4th Charge (against D2 and D4 only)

15. On 14th May 2014 at about 9:30 p.m., the complainant, Akmal Zahin bin Hj Abdullah, parked his Hyundai Veloster bearing registration number BAK 783 at the vicinity of the parking lot of Scouts Building, Beribi in Brunei Darussalam. He left his car unlocked with the key still in the ignition while he went to withdraw money from the BIBD ATAM nearby. When he came back to the parking lot, he realized that his car had gone missing and immediately lodged a police report.
16. On 15th May 2014 at about 7:00 p.m., the police received a report from the public that a Hyundai Veloster bearing registration number BAA 3733 was found in the vicinity of house No.14, Sg 132, Terrace House, Jalan 11, Kg Lambak Kanan in Brunei Darussalam.
17. The recovered car was identified by the complainant as his car.
18. Police investigations revealed that D2, D4 and one Hassan bin Kalong were driving in the vicinity of Kg Beribi with another person. Hasnan Bin Kalong drove them in his Skyline bearing registration number BS 7206. They stopped nearby the Scouts Building, Beribi.
19. There, they saw the complainant's car parked at the parking lot. Hasnan told D2 and D4 to take the said car. D2 and D4 got out of the car and walked towards the Hyundai Veloster. They got into the car and found that the engine was still running. D4 drove the car with D2 as his passenger to the vicinity of Pizza Hut, Sg Tilong where they met again with Hasnan and another person. They left the stolen car there.
20. On 15th May 2014 at about 1:30 p.m., D2, Hasnan bin Kalong and another person went to Pizza Hut, Sg Tilong where the car was left. There, Hasnan asked D2 and the other person to take the

car to the vicinity of the parking lot of Kg Salambigar Mosque and to meet him there. At the said place, D2 changed the registration number of the car to BAA 3733 which Hasnan gave to him.

21. After changing the registration number, D2 and the other person drove the stolen Hyundai Veloster to a terrace house in Kg Lambak Kanan. Hasnan drove his car in front of the Hyundai Veloster and led the way. Hasnan brought them to a terrace house at Kg Lambak Kanan, Jalan 11. D2 parked the car at house No.14 and they left the car there.
22. Later on the same day, D2, Hasnan and the other person returned to the car but they were people there who tried to stop them as they appeared suspicious. They then ran away from the scene.
23. On record, only D2 has previous convictions.

MITIGATION

D2 is 22 years old and unemployed. He pleaded to the Court for leniency and for the sentences to run concurrently.

D4 is 19 years old and unemployed. He pleaded to the Court for lenient sentence as this is his first offence.

SENTENCING CONSIDERATIONS

The Court has to look into various factors in determining the appropriate sentence. In the case of ***Chua Tiong Tiong v Public Prosecutor (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. The public interest is indeed served, and best served, if the offender is induced to turn from criminal ways to honest living."

The maximum penalty for the offence under section 379 of Cap 22 is an imprisonment which may extend to three years or with fine or with both.

The question which this Court needs to address is what is the appropriate sentence?

The facts of the case are very disturbing. Both Defendants stole total of 3 cars. They stole two cars between 28th January 2015 and 31st January 2015 and stole another car in May 2014.

The Court has stressed over and over again that offences against property are serious offences and the Court will deal with them seriously. Property belonging to others must be respected and should not be disturbed or taken away. Public and their property must be protected and a deterrent sentence must be imposed so as to deter and warn other would be offenders from committing such offence.

It was held in ***Haris Bin Akil v Public Prosecutor [1992] BLR 291*** where Roberts, CJ 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 in this case.

What is the appropriate starting point for this case?

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

"The DPP has referred this court the case of Public Prosecutor v Pg Abd Rahman Bin Pg Shahbudin [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."

In this case D2, has a previous conviction dated on 5th July 2014 for an offence under section 379 of the Penal Code where he was sentenced to 6 months imprisonment. The additional fourth charge should have been brought together on the 5th July 2014 or much earlier whilst D2 was still serving sentence. Thus, I will not take the previous conviction into account when I deal with the fourth additional charge.

D2's previous conviction is the same type of offence that he is facing today. They are all offences against property.

With this in mind and the guideline as stated in the cases that I have cited above, the starting point for D2 is as follows:

Second Charge:	13 months
Third Charge:	13 months
Fourth Charge:	12 months

As for D4, he is a first offender, the starting point is 12 months for the second, third and fourth charges.

This Court, in deciding the discount to be given, takes into account that both Defendants pleaded guilty at the very first instance and taking into account of the totality principle, the following deductions will be made from all the starting points.

Mohammad Fazly Bin Asnan [D2]

Second Charge:	Deduction of 4 months.
Third Charge:	Deduction of 4 months.
Fourth Charge:	Deduction of 4 months.

Mohammad Abdul Syafi'ie Bin Abdul Latiff [D4]

Second Charge:	Deduction of 4 months.
Third Charge:	Deduction of 4 months.
Fourth Charge:	Deduction of 4 months.

Thus total imprisonment is as follows:

Mohammad Abdul Syafi'ie Bin Abdul Latiff [D4]

Second Charge:	8 months.
Third Charge:	8 months.
Fourth Charge:	8 months.

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

In *Public Prosecutor v Mohd Azrey Bin Hj Musa* [Criminal Appeal No. 18 of 2014], Steven Chong, J. stated as follows:

"I accept the submission made on behalf of the Public Prosecutor. The two offences in question were committed on separate days and involved two different vehicles and owners and warranted consecutive sentences. The concurrent sentences ordered by the court below resulted in an overall sentence which was unduly lenient and did not adequately reflect the gravity of the offences."

Consecutive sentences were upheld in relation to similar offences in Harris Bin Akil v Public Prosecutor [1992] JCB 248; Sym Chong v Public Prosecutor [Criminal Appeal No. 55 of 1999] and Norfazel Bin Tamit v Public Prosecutor [Criminal Appeal No. 129 of 2002].

I therefore quash the sentence of the Magistrate and I order that the sentences on all the three charges to be served consecutively."

In the present case, all the three charges were committed on separate time and involved three different cars and owners. I am satisfied that this warrant consecutive sentences.

Thus the total sentences are as follows:

Mohammad Fazly Bin Asnan [D2]

Total imprisonment: **26 months.**

Mohammad Abdul Syafi'ie Bin Abdul Latiff (D4)

Total imprisonment: **24 months.**

Imprisonment sentences are to take effect from 21 February 2015.

All items recovered are to be returned to the rightful owners.

HJ ABDULLAH SOEFRI
Intermediate Court Judge