

PUBLIC PROSECUTOR

VS

**MOHD SUFRIZUL BIN MOHD SUFRI
[NRIC NO: 01-046513 (YELLOW)]**

[INTERMEDIATE COURT CRIMINAL CASE NO: 8 of 2015]

**Abdullah Soefri POKSM DSP Hj Abidin, J
16th April 2015**

*Criminal Law- House breaking by night - Section 457 of the Penal Code, Cap 22- Plead
Guilty – Sentence - Section 43 Children And Young Persons Act, Cap 219.*

**DPP Hjh Emeralda Bte P.D.Hj Abas
Defendant in person**

Cases Cited:

*Chua Tiong Tiong V PP (2001) 3 SLR 425
R v Ball (1951) 35 Cr App R. 164
Public Prosecutor Vs So Weng Kei (2006) SGDC 300
R v Howells (and other appeals), (1999) 1 ALL ER 50, 54 Bingham L.C.J.
Ilham Syarif Vs Public Prosecutor (Criminal Appeal No. 3 of 2009)
Daud Bin Hj Zainal Vs Public Prosecutor (Court of Appeal)(Criminal Appeal
No: 11 of 2004)
Public Prosecutor Vs Lisua Bin Lee and Otrs (1990) JCBD 243*

Abdullah Soefri, ICJ:

SENTENCE

Mohd Sufrizul Bin Mohd Sufri, hereafter known as the Defendant was first brought before the Intermediate Court on the 9th April 2015. The Defendant is facing with a charge for an offence under section 457 of the Penal Code and unreservedly pleaded guilty to the said charge. The charge is as follows;

CHARGE

That you, on 6th April 2015 between 2200 hours and 2300 hours, at house No. 62, Spg. 13, Jalan 'C', RPN Lorong Tengah Seria, in Brunei Darussalam committed house breaking by night, by entering into the said house used as a human dwelling, belonging to Davina

Liew Mai Ling (F 24 years), in order to the commission of an offence punishable with imprisonment, to wit, theft of:

One black Acer laptop, 14 inches, SNID : 30300427876 together with the cable;

One red Asus laptop, 14 inches, SNID : DCBOCX665410518;

One gold Casio watch;

One black NIXON watch;

Coins amounting to BND \$30.00;

One ASUS laptop bag containing a laptop charger, cable and mouse belonging to the said Davina and 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
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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.
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The Defendant also admitted to the statement of facts which are as follows;

STATEMENT OF FACTS

The defendant is a Bruneian citizen and is unemployed.

On 6th April 2015 between 2200 hours and 2300 hours, the defendant was riding his bicycle in the vicinity of RPN Lorong 3 Seria and was looking for food.

At the time, he saw a terrace house, that is house No. 62, Spg. 13, Jalan 'C', RPN Lorong Tengah Seria and stopped at the back of the house. When he stopped at the back of the house, he saw that the toilet window was ajar.

He also saw a few pieces of wood outside the toilet and stepped on top of the wood and climbed to the window and subsequently, entered the house through the same window.

When he was inside the house, he took a drink that was inside the living room. He also saw a red Asus laptop and a bag containing coins, amounting to BND \$30.00 and he stole it.

The defendant then went to the first floor of the house and went inside a bed room and saw one black Acer laptop, two watches,

namely a gold Casio watch and a black Nixon watch and stole those items.

The defendant then went downstairs and exited the house through the back door and went back to his house at Barek 417, A4, Lorong 3, Selatan Seria, Brunei Darussalam.

The owner of the house only realised that her house had been broken into the next morning, 7th April 2015, when she went downstairs to the dining room and realised that her items were missing. She lodged a report at Seria Police Station on the same morning at about 0842 hours.

The stolen items have been recovered and the complainant confirms that those items belong to her.

On record, the defendant has previous convictions.

I would like to highlight that the Defendant has no previous conviction as the certificate of previous convictions shows that he was brought before a Juvenile Court and in accordance to **Section 43 of the Children And Young Persons Act, Cap 219** it provides;

"A conviction or finding of guilt of a child or young person shall be disregarded for the purposes of any written law under which any disqualification or disability is imposed upon convicted persons"

MITIGATION

In mitigation the Defendant pleads to the Court for him to be released on Court bail and promises that he will not repeat the offence again. He told the Court that he committed the offence because he has debt of \$500 to his friend and he does not have any money to pay.

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 deterring 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.

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 24 years old.
4. The 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.

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."

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 is ordering an imprisonment sentence of 2 years and 3 strokes of whipping.

COURT ORDER

1. Imprisonment of 2 years and 3 strokes of whipping to take effect from 9th April 2015.
2. All items recovered are to be returned to rightful owner.

**ABDULLAH SOEFRI, JUDGE
INTERMEDIATE COURT**