

Public Prosecutor

AND

Andika Febrian (D1)
Muhammad Ibrahim Bin Abdullah (D2)
Kevin (D3)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.42 of 2023)

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge

21st September 2023

Criminal Law – Sentencing – s.457 of the Penal Code, Cap 22 – House-breaking at night with intention to commit theft – s.379 of the Penal Code, Cap 22 – Theft – Pleaded guilty – First Offender

DPP Syazwani binti Jumat for the Public Prosecutor.

D1, D2 and D3 in person and unrepresented.

Cases cited:

Daud Bin Haji Zainal vs Public Prosecutor (Criminal Appeal No.11 of 2004)

Public Prosecutor v Rosman bin Abdullah Nyambong (Criminal Appeal No.16 of 2021)

Public Prosecutor v Muhammad Joll bin Tumih (Criminal Appeal No.5 of 2005)

Public Prosecutor v Mohammad Aimaduddin Bin Zefry (Criminal Appeal No. 19 of 2016)

S E N T E N C I N G

Dk Hjh Norismayanti, Judge:

Introduction

1. The defendants (D1, D2 and D3) were first brought before this court on the 23rd August 2023. D1 and D2 were jointly charged for house-breaking with the intention to commit theft under section 457 of the Penal Code and D1 is also jointly charged with D3 for one offense of committing theft under section 379 of the Penal Code.
2. D1, D2 and D3 all pleaded guilty to the respective charges brought against them.

Charges

3. The charges against D1, D2 and D3 read as follows:

1st Charge (against D1 and D2 only)

“That both of you, in furtherance of your common intention, on 6th August 2023, at about 0436 hrs, committed house-breaking by night by entering into a storage unit D1 of a warehouse addressed at Block D, Lot 71490, Sangai – Sangai Industrial Park, Kampong Masin, Mukim Pengkalan Batu in Brunei Darussalam, in the possession of one Lau Kun Hao, and used as a custody of property, after the hour of sunset and before the hour of sunrise, in order to commit an offence punishable with imprisonment, to wit, theft and both of you have thereby committed an offence punishable under section 457 of the Penal Code, Chapter 22 read with section 34 of the same.”

The penalty for section 457 is imprisonment for a term which may extend to 5 years and whipping and if the offence intended to be committed is theft, the term of imprisonment may extend to 15 years.

2nd Charge (against D1 and D3 only)

“That both of you, in furtherance of your common intention, on the 4th August 2023 at about 0140 hrs, at the vicinity of parking lot at a warehouse addressed at Unit D1 and D2, Block D, Lot 71490, Sangai-Sangai Industrial Park, Kampong Masin, Mukim Pengkalan Batu in Brunei Darussalam, did commit theft of properties, to wit, the following items:

- a) 5 boxes containing 30 packs of 2KG of Royal Canine Hair & Skin dry food; and*
- b) 5 boxes containing 30 packs of 2KG of Royal Canine Indoor dry food*

in the possession of one Lau Kun Hao and both of you have thereby committed an offence punishable under section 379 of the Penal Code, Chapter 22 read with section 34 of the same.

The penalty for an offense under section 379 is imprisonment for a term which may extend to 3 years, or with fine, or with both.

Statement of Agreed Facts (SOAF)

4. According to the SOAF, at the time of the offense, D1 was employed as a UNN technician. Prior to that he was employed as a driver at Petlink Enterprise Sdn Bhd (“Petlink”) for a 1 year. D2 was previously employed at Petlink, Batu Besurat and Kiulap Branch from 2019 until 2020. D3 was at the time, employed as a labourer at Petlink and his job scope includes examining stocks and goods delivered to Petlink and house-keeping operations of Petlink’s warehouse at Unit D1 and D2, Block D, Lot 71490, Sangai-Sangai Industrial Park, Kampong Masin, Mukim Pengkalan Batu in Brunei Darussalam (“the said warehouse”).

5. On or about 2nd August 2023, D1 received a WhatsApp text from D3 regarding a scheduled arrival and delivery of Royal Canine stocks to the said warehouse on that day. D3 also suggested for D1 to take the incoming Royal Canine stocks and D1 agreed.

In respect to the 1st Charge (D1 and D2 only)

6. Based on the information regarding the arrival of Royal Canine stocks, D1 then contacted D2 via WhatsApp call around 0300 hrs on 5th August 2023. At the material time, D2 was at his residential house the vicinity of STKRJ Lambak Kiri. D2 was instructed to go to D1's staff house at the vicinity of Kampong Mulaut. D2 picked up D1 at D1's staff house using a blue coloured Toyota Vios registration number KH 3304 ("the car") and headed towards the warehouse. Both D1 and D2 discussed about the plan to steal the Royal Canine stocks during their drive to the said warehouse.
7. Upon arriving at the vicinity of the said warehouse, D1 walked pass the barrier which was not locked and entered the warehouse. At the same time, D2 also left the car and proceeded to converse with the watchman guarding the entrance and exit to the said warehouse.
8. D1 then entered the storage area of the said warehouse through an open toilet window. Once inside the storage area, D1 made his way to the area near the shutter based on the instruction and information given by D3. D1 then pressed a button to open the shutter of the said warehouse and proceeded to load the following items into the said car:
 - a) 5 sacks of Royal Canine Hair & Skin (10KG);
 - b) 2 sacks of Royal Canine Persian Adult (10KG); and
 - c) 24 boxes totaling to 576 wet food pouches (85g) Royal Canine Beauty
9. Thereafter, D1 and D2 then left the said warehouse with the stolen items. D2 then dropped off D1 at his staff-house at the vicinity of Kampong Mulaut and D2 with all the stolen items, went back to his house of residence at the vicinity of STKRJ Kampong Lambak Kiri. There had been an agreement between D1 and D2 that D2 would help D1 to sell all the stolen items online via WhatsApp and Facebook. D2 would then arrange a meeting point with all interested customers at the vicinity of Kampong Meragang and Kampong Lugu and managed to sell all the stolen items.
10. D2 managed to earn BND\$650.00 from the sale of all the stolen items and proceeded to give BND\$200.00 to D1 first as per their agreement where D1 is to receive half of the proceeds of sale. D2 used some of the proceeds of sale for online gaming and food. D1 on the other hand proceeded to remit the money to his wife and 3 children in Indonesia.
11. Police investigations revealed that on 6th August 2023, one Lau Kun Hao ("the complainant") was informed by one of her workers that the Royal Canine stocks about to be delivered to others shops were found to be short in quantity and were believed to be stolen. The complainant then instructed the said Petlink's supervisor to check the CCTV footages. Upon inspection of the CCTV footages, it was discovered that D1 had been inside the said warehouse on 6th August 2023 at about 0436 hrs and

went out of the said warehouse on 0457 hrs. The *complainant* recognized D1 as her former worker who was previously employed as a driver for Petlink. The complainant then lodged a police report at Limau Manis Police Station on 8th August 2023 at 1945 hrs which subsequently led to D1, D2 and D3's arrest on 10th August 2023.

In respect to the 2nd Charge (D1 and D3 only)

12. On 3rd August 2023, at about 1618 hrs, D3 informed D1 about the arrival of the Royal Canine stocks and proceeded to send D1 photographs via WhatsApp. D1 then told D3 that he was making his way to D3 with the intention to take the Royal Canine stocks. Sometime after midnight on 4th August 2023, both D1 and D3 made their way to the said warehouse using a car belonging to D1's acquaintance with the intention to steal the Royal Canine stocks. When they arrived, D3 acted as a look out by staying in the vehicle which was parked near a security post. D1 made his way to a storage container located at the parking lot at the vicinity of the warehouse. The said storage container was not locked and D1 proceeded to open the doors of the storage container and saw the boxes of Royal Canine stocks.
13. At about 0141 hrs that night, D1 sent D3 a WhatsApp text informing him that he was only able to take the following items:
 - a) 5 boxes containing 30 packs of 2KG of Royal Canine Hair & Skin dry food; and
 - b) 5 boxes containing 30 packs of 2KG of Royal Canine Indoor dry food.
14. At the same time, D3 instructed D1 via WhatsApp to commit the theft properly (*'main rapi'*) and also warned him not to take his time as the Bengali night watchmen would do their routine patrol around the said warehouse. D1 then texted D3 that he wanted to arrange the Royal Canine stocks properly before he left the scene so no suspicion would arise. D1 then brought all the stolen items to the motor vehicle, where D3 was waiting for him. Thereafter, D1 and D3 proceeded to sell all the stolen Royal Canine stocks via Facebook application and divide the proceeds of sale equally between themselves.

In respect to all charges

15. Police investigations revealed that Petlink suffered BND\$1,642.30 loss in respect to the 1st charge and BND\$1,584.00 in respect to the 2nd charge and none of the stolen items have been recovered. The police however was able to seize BND\$408.00 found inside D2's wallet and D2 had admitted that all the money was from the proceeds of sale of the stolen items. Police investigations also revealed that D1 and D2 have committed theft of item from the said warehouse on 7 different occasions and none of the items have been recovered.

Mitigation

16. In mitigation, D1 pleaded for the court's leniency as he has 3 children and a mother to support. He told the court that the reason committed the offences was because he needed the money for his mom's surgery and his children's needs.
17. As for D2, he did not say much in his mitigation. He told the court he does not have any dependents and only ask for the most lenient sentence and for his sentence to run from the date of remand.
18. Lastly, in D3's mitigation, he begs for the court's leniency and for the sentence to run from the date of his remand.

Sentencing Consideration

1st charge - Section 457 of the Penal Code (D1 and D2 only)

19. D1 is a 30-year-old Indonesian male who is married and have 3 children and D2 is a 25-year-old Bruneian male, single and unemployed. In considering the appropriate sentence, the court bears in mind that both D1 and D2 plead guilty to the charge and it is the practice that upon a guilty plea, the defendants will be afforded a one third discount on their imprisonment sentence. The court emphasizes that section 457 is a serious offence which is reflected in the penalty provided where there is an intention to commit theft, the maximum imprisonment sentence the court can impose is 15 years. The court acknowledges that D1 pleads hardship considering he has dependents back in Indonesia. However, the court views hardship is often the necessary outcome of committing a serious offense where a sentence of imprisonment is involved which is applicable for an offense of house-breaking.
20. The court reiterates that house breaking to commit theft is a serious offence. In the case of **Daud Bin Haji Zainal vs Public Prosecutor (Criminal Appeal No.11 of 2004)**, the Court of Appeal emphasized 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."
21. In determining the appropriate sentence, I am guided by the case **Public Prosecutor v Rosman bin Abdullah Nyambong (Criminal Appeal No.16 of 2021)** where it was held that a sentence of 5 years with strokes is not excessive for a single offence contrary to section 457 by an offender with a clear record.
22. Similar principle is reflected in **Public Prosecutor v Muhammad Joll bin Tumih (Criminal Appeal No.5 of 2005)** whereby the court stated that:

“...an appropriate starting point for each of these for D2 when they are not isolated offences but the convicted person is of previous good character would have been 5 years reduced to 3 years for the plea with 2 strokes on each charge.”

23. The court can see no reason to depart from the above cases in sentencing. The court has also considered that both D1 and D2 have no previous convictions as well as aggravating factors i.e. the house-breaking was premeditated, all the stolen items were sold and unrecovered and the fact that both D1 and D2 financially benefitted from the sales of the stolen goods. Based on the overall facts and circumstances, the court is satisfied that a deterrent sentence ought to be imposed.

2nd charge - Section 379 of the Penal Code (D1 and D3 only)

24. The 2nd charge involves D1 and D3 who is a single 22-year-old Indonesian male. In considering the appropriate sentence, the court bears in mind that D3 is also a first offender and together with D1, both defendants plead guilty to the offense and thus saving the court and prosecution much time from having the matter go for trial. Similar to the section 457 offence above, it also concerns an offense against people's properties and the public interest in such matters must be given the foremost consideration.
25. The court refers to the case of ***Public Prosecutor v Mohammad Aimaduddin Bin Zefry (Criminal Appeal No.19 of 2016)*** where the defendant plead guilty to stealing an air compressor and upon appeal by the Public Prosecutor, his sentence was increased to 6 months imprisonment. In deciding the matter, the Court of Appeal highlighted *“Sentences for thefts inevitably vary enormously depending on the circumstances and the nature and value of the property stolen. By way of example only, we have been referred to the case of Abdul Aziz bin Hj Ali vs Public Prosecutor C of A 27/2014 in which it was stated that even for a minor theft a sentence of 6 months after a plea of guilty would be appropriate. We agree, it is clear that a sentence of no less than 6 months imprisonment should have been passed in this case.”*
26. The court refers back to the facts involved for this particular charge. Here both D1 and D3 managed to steal a total of 10 boxes containing a total of 60 packs of Royal Canine pet food from Petlink and the latter suffered a financial loss valued at a total of BND\$1,584.00. The court also takes into account the stolen items were never recovered. The court is satisfied that a sentence of no less than 6 months ought to be imposed and considering that this was also a planned activity as evident from the SOAF, the court is of the view that higher starting point is warranted.

Sentence

27. For the first charge under section 457 of the Penal Code, the court sentences both D1 and D2 to a starting point of 5 years imprisonment and 2 strokes. Applying the one third discount, the sentence is reduced to 3 years and 4 months imprisonment and 2 strokes.

28. For the second charge under section 379 of the Penal code, the court sentences both D1 and D3 to a starting point of 18 months imprisonment. Applying the one third discount for a guilty plea, the sentence is reduced to 12 months imprisonment.
29. In relation to D1, the total sentence to be served for both offenses add up to 4 years and 4 months imprisonment. Taking into consideration the totality principle, the court must ensure that the sentences are not manifestly excessive. Considering that the offences were committed a couple of days apart from one another and there was only one complainant involved, the court orders for his sentence to run concurrently resulting in an overall sentence of 3 years and 4 months imprisonment and 2 strokes.

Final sentence

30. As such, my final sentence is as follows:

D1: 3 years imprisonment and 4 months imprisonment and 2 strokes
D2: 3 years imprisonment and 4 months imprisonment and 2 strokes
D3: 12 months imprisonment

31. The sentences for all the 3 defendants are to run from the date of their remand i.e. 12th August 2023.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court