

Public Prosecutor
AND
Hj Mohammad Reduan Bin Hussin (D1)
Mohammad Arif Bin Mohd Yasop (D2)
Mohamad Arifin bin Haji Mohd. Hassan (D3)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 23 of 2022 & 24 of 2022)

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

1st August 2024

Criminal law – Sentencing – D1 only – total of 5 charges – 4 joint charges under section 457 of the Penal Code – 1 charge under section 323 of the Penal Code – plead guilty mid trial for 2 charges – repeat offender for offences against property.

DPP Mohammad Kamal Ariffin bin Ismail for Public Prosecutor.

D1 – In person and unrepresented.

Cases cited:

Chua Tiong Tiong v Public Prosecutor [2001] 3 SLR 425

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)

Ferry Pengiran v Public Prosecutor (Criminal Motion No.15 of 2020)

S E N T E N C E

Pg Hjh Norismayanti, Judge:

Introduction

1. Hj Mohammad Reduan bin Hussin (D1) is a 35-year-old Bruneian man, is single and unemployed. Initially, D1 pleaded not guilty to two joint charges with D2 and two joint charges with D3 under section 457 of the Penal Code (PC), Cap 22, as well as a separate charge against him under section 323 of the PC. The trial proceeded as scheduled, but on the 18th March 2024, D1 sought to change his plea for the 2nd and 5th charges. Subsequently, D1 was re-read the charges and entered a guilty plea. D1 agreed to the Statement of Facts (dated 18th March 2024) pertaining to the said two charges and he was convicted accordingly. Trial thereafter proceeded on the remaining three charges. On the 27th July 2024, D1 was found guilty on the 1st, 3rd and 4th charge. The Court will now deal with sentencing for all the convictions entered against D1.

Charges

2. The 5 joint charges D1 and co-accused are as follows:

1st charge (against D1 and D2)

“That both of you, sometime between 24th day of April 2022 at 1630 hours and the 27th day of April 2022 at 0728 hours, at a house addressed at No. 5, Spg 46-3, Kg Madang in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said house, in the possession of one Pg Mohammad Fadly Harfinie bin Pg Hj Mohd Kassim, a building used as a human dwelling, 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.”

2nd charge (against D1, D2 and another person at large)

“That all of you, sometime between the 2nd day of May 2022 at 1300 hours aand the 4th day of May 2022 at 0800 hours, at a house addressed at No.18, Spg 46, Kg Madang in Brunei Darussalam, in furtherance of your common intention, did commit house-trespass by entering a building in the possession of one Haji Irwan Mashadi bin Haji Mashud, used as a dwelling house, in order to the commission of the offence punishable with imprisonment, to wit, theft and that all of you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 22, read with section 34 of the same.”

Additional 3rd charge (against D1 and D3 only)

“That you and another person, on 3rd day of June 2021, sometime between 0100 hours and 0550 hours, at a house addressed at No. 7, Spg 96, Kg Madang, Mukim Berakas in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said house, in the possession of one Hj Morsidi bin Hj Abu Bakar, a building used as a human dwelling, 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.”

Additional 4th charge (against D1 and D3 only)

“That you and another person, sometime between 1730 hours on the 15th day of January 2022 and 0644 hours on the 17th day of January 2022, at Sekolah Ugama Kampung Madang in Brunei Darussalam, in furtherance of your common intention, did commit housebreaking by night, by entering into the said school, belonging to the Ministry of Religious Affairs, a building 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.”

Additional 5th charge

“That you, on the 24th day of April 2022, at approximately 0420 hours, at a house addressed at No.8, Spg 68-44, Kg Madang, in Brunei Darussalam, did voluntarily cause hurt to one Pg Haji Radiman bin Pg Hj Tengah [M.49], to wit, by shooting a pebble onto the right side of the said

person's hip using a slingshot, and you have thereby committed an offence under Section 323 of the Penal Code, Chapter 22."

Penalty

3. The penalty under section 457 of the Penal Code is 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. For section 323 of the Penal Code, the penalty is imprisonment for a term not exceeding 3 years and fine.
4. As mentioned earlier, D1 agreed to the Statement of Facts for the 2nd and 5th charge and further agreed to his Certificate of Previous Convictions issued by the Royal Brunei Police Force dated the 10th May 2022. His last appearance before the Court was in July 2014 and recorded a total of 78 months' imprisonment sentence and 3 strokes.

Mitigation

5. In mitigation, D1 pleaded for his sentence to start from the first date of his remand and for the sentences to run concurrently. He asked for the most lenient sentence and consideration as his mother is currently living alone. He also asked for a one-third reduction from his sentence. The Court however deduces that the defendant showed no remorse for his actions.

Sentencing consideration

6. Based on D1 criminal history, he is certainly no stranger to the penal system. His Certificate of Previous Convictions lists out convictions for offences including one (1) conviction for theft in a building under s.380 of the PC in May 2003, two theft convictions under section 379 of the PC, six (6) convictions under section 380 of the PC and two (2) offences under section 427 of the PC, all of which were recorded in August 2006. Additionally, in July 2014, he was convicted for three (3) offences of theft under section 379 of the PC, five (5) offences for housebreaking by night with the intent to commit theft under section 457 of the PC, one (1) offence for theft in a building under section 380 of the PC and one (1) offence for trespass under section 454 of the PC. Based on his history of committing offences against other people's properties, the Court, in the interest of the public, is obliged to consider it as a significant factor in imposing a deterrent sentence.
7. The Court also recognizes that the number of house break-ins and theft remain significant offences in the country and considered serious crimes. This is especially true for housebreaking, as it not only causes property damage but also likely to alarm or frighten property owners, particularly when break-ins occur in occupied houses or buildings.

Sentencing - plea of guilty

2nd charge

8. For the 2nd charge, D1 agreed to the Statement of Facts (SOF) dated 18th March 2024. According to the SOF, D1 together with D2 and his brother 'Rahman' were walking around in the vicinity of Kg Madang with the intention to commit theft sometime between 2nd May 2022 at 1300hrs and 4th day of May 2022. They came across the complainant's house at No.18, Spg 46, Kg Madang. They entered the compound of the house after D1 pried open the lock pad of the front metal gate and eventually entered the house through an unlocked sliding door. Once inside, D1 proceeded to steal two Dell laptops and one Vivo mobile phone, stashing them inside a recycle bag. D1 then

proceeded to assist Rahman and D2 to carry a safety lock box and placed it near the house gate. Thereafter D1 left the premises with the recycle bag and his stolen goods and headed back to his house to get D2's vehicle Toyota Vios registration no. BAC 2451 which they used to drive back to the complainant's house to collect the stolen safety lock box.

9. The stolen items were reported to the police by the complainant Hj Irwan Mashadi bin Hj Mashud on the 4th May 2022 at around 8.00 am. Police investigation led to the arrest of D1 and D2 whilst Rahman is still at large. During the investigation, D1 admitted to committing the housebreaking together with D2 and Rahman and that he received BND1000 from inside the safety lock box and used the cash for his daily needs. It is also noted that the police managed to recover one Dell laptop and Vivo mobile phone from D1's house at No.65, Spg 65 at Kg Madang. D1 also admitted that he sold the other Dell laptop to someone in Lambak Kanan for BND30.
10. In considering the appropriate sentence, the Court reminds itself that the purpose of sentencing extends beyond just punishing the defendant but the principal objective includes deterring potential offenders and influencing past offenders not to reoffend again (*Chua Tiong Tiong v Public Prosecutor* [2001] 3 SLR 425). As to the offence committed, the Court recognizes that for a single section 457 offence, it is accepted that a starting point of 5 years imprisonment with strokes would be appropriate for an offender with a clear record. This is a well-established stance based on numerous case authorities [*Public Prosecutor v Rosman bin Abdullah Nyambong* (Criminal Appeal No.16 of 2021) and *Public Prosecutor v Muhammad Joll bin Tumih* (Criminal Appeal No.5 of 2005) is referred].
11. However, in the present case, the defendant has a number of previous convictions for similar offences as mentioned in paragraph no.6 earlier. Further, the Court also takes into consideration D1's overall role in the theft and break-in and the financial benefit he received from selling one laptop as well as the BND1000 cash sum. In the circumstances, the Court takes a starting point of 6 years imprisonment and 3 strokes. Typically, an accused will be afforded a one third discount on the sentence upon entering a plea of guilty at the earliest opportunity. However, in the present case, D1 only plead guilty at the start of his defense case. In light of this and other mitigating circumstances, the Court will apply a lesser discount and reduces it to 4 years and 6 months imprisonment and 2 strokes.

5th charge

12. For the 5th charge, D1 was found guilty of causing hurt using a slingshot to shoot a pebble towards the complainant, Pg Hj Radiman bin Pg Hj Tengah, which struck his right hip. The incident took place in the early hours of 24th April 2022 at around 0420hrs. The incident happened soon after the complainant who was within the compound of his house at No.8, approached D1 who was standing about outside the front gate of house no.10, purportedly looking for a lighter for his cigarette. An argument ensued which led D1 to use his slingshot. The Court believes that D1 knew very well that the use of his slingshot with a projectile (pebble) can cause significant injury depending on the range of distance involved and the type of projectile used. However, there is no indication that the complainant suffered from long term pain as a result of D1's action.
13. During the investigation of this case, CCTV footage was obtained from a neighbouring house which showed D1 taking a shooting stance toward the complainant and D1 was also positively identified by the complainant during an ID parade.

14. In considering the appropriate sentence, the Court points out that this would be his first conviction for assault, albeit there was no physical altercation with the complainant but there was use of a weapon (slingshot). With a clear record and considering all the facts and circumstances of the case, the Court takes a starting point of 5 weeks' imprisonment. As D1 plead guilty to the charge mid trial, D1 is given a lesser discount than the usual one third, effectively reducing the sentence to 1-month imprisonment.

Convictions after trial

15. As mentioned at paragraph no.1 above, D1 was found guilty for the 1st, 3rd and 4th charge after trial. All 3 offences were for housebreaking with the intent to commit theft by night under section 457 of the PC. For the 1st charge, D1 stole a 55-inch LG television, a Lenovo laptop, one hard disk and 4 tire rims together with D2. As a result of police investigation, they managed to recover the LG television from D2's house. Other items remain unrecovered. Damages were also found on the window of the maid's room and the kitchen door resulting from the break-in. For the 3rd charge, D1 entered the house through an unlocked sliding window and stole 2 smart phones and D3 acted as a look out. The stolen items were also not recovered. For the 4th charge, D1 acted together with D3 in breaking into the Sekolah U gama Madang where D1 assisted D3 to steal 2 speakers and a DVD player from a prayer room. The stolen items were unrecovered as well. Evidence were presented to show that damages to the school door would cost \$590 to repair.
16. In considering the appropriate sentence, the Court refers back to the established sentencing principal for section 457 offences stated in paragraph no.10 above. The Court takes into consideration that the items stolen in relation to all the 3 charges are easily disposable. Cost to the owner of the house or school would have been incurred to fix damages caused. The Court again takes into account D1's role in the commission of the offences such as the break-in and stealing of mobiles phone whilst D3 acted as look out from the house gate for the 3rd charge and D1 causing damage to the school door in relation to the 4th charge.
17. Based on the above-mentioned facts and circumstances, D1's criminal record for housebreaking and similar offences as well being found guilty after trial, the Court sentences him to 6 years imprisonment and 3 strokes for each of the said charges.

Totality principal

18. In totality, D1 is looking at a sentence totaling 22 years and 7 months. This sentence is considered manifestly excessive in relation the overall criminality involved. The role of the Court is therefore to *"..consider the appropriate total sentence for the overall criminality of the all offences. His or her duty is to ensure that the total is adjusted as appropriate and not excessive."* [Mohammad Joll Bin Tumih v Public Prosecutor (Criminal Appeal No 5 of 2005) is referred]. Having regard to the overall criminality of the offenses involved, the fact that the offences were all committed during different dates, different locations and involved different complainants, the Court finds that a total sentence of 12 years and 7 months' imprisonment is appropriate.
19. In deciding the range of the overall sentence above, the Court refers to the case of *Ferry Pengiran v Public Prosecutor* (Criminal Motion No.15 of 2020) where the Court of Appeal held that *"...a higher starting point than 12 years is now warranted but that an increase to 15 years, or about 25% is excessive"*. This was decided upon review of the question on the appropriate starting point in cases of multiple housebreaking by night.

20. To achieve the proper sentence, the Court hereby orders for the sentences for the 1st, 2nd and 4th charge to run concurrently making a total of 6 years and 6 months' imprisonment and for the strokes to be non-cumulative (totaling 3 strokes). The concurrent sentences are to run consecutively to the sentences imposed for the 3rd and 5th charge and for the strokes to be cumulative.

Final sentence

21. The final sentence therefore adds up to 12 years 7 months' imprisonment and a total of 6 strokes. The sentences are to take effect from D1's first date in remand.

PG HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court