

Public Prosecutor

AND

Muhammad Hardi Bin Hamidon (D1)

Mohammad Yamin Bin Yahya (D2)

Norazman Bin Abd Halim (D3)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.38 of 2021)

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge

25th April 2022

Criminal Law – Sentencing – D1 only – 1 charge under section 379 of the Penal Code, Cap 22 – theft of CCTV cameras – 2 charges under section 454 of the Penal Code, Cap 22 – housebreaking with intention to commit theft – previous convictions for offences against properties – deterrent sentence.

PO Ahmad Firdaus Bin Mohammad for Public Prosecutor.

1st Defendant appear in person and unrepresented.

Cases cited:

Daud bin Hj Zainal v Public Prosecutor (Criminal Appeal no.11 of 2004)

Abdul Aziz bin Hj Ali v Public Prosecutor (COACM No.27 of 2014)

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

S E N T E N C E

Dk Hjh Norismayanti, Judge:

Background

1. Muhammad Hardi bin Hamidon (D1/38 years old) was first brought before this court on the 22nd December 2021 with two others and D1 faced 1 charge for theft and 2 charges for housebreaking with intention to commit theft. D1 entered a plea of guilty for the theft charge and a plea of not guilty for the two housebreaking charges. Trial dates were fixed on the 18th/19th April 2022 to the 26th April 2022 and D1 was held in remand pending trial. Trial however did not proceed on the 18th April due to the absence of D2 and D3. D1 however indicated that he wanted to change his plea for the remaining charges against him. The court gave D1 until the 20th April 2022 to consider his plea and put his decision on record then.

2. On the 20th April 2022, the prosecution preferred an alternative charge against D1 and D1 confirmed that he wished to change his pleas. The remaining charges against D1 were then read and explained to D1 including the alternative 5th charge and D1 having understood the charges and penalties involved, entered a plea of guilty to the additional 3rd charge, not guilty to the additional 5th charge and guilty to the alternative charge. The additional 5th charge was subsequently withdrawn by the prosecution. It is on record that D1 understood and agreed with the amended statement of facts adduced by the prosecution and thereby the court entered a conviction against the said charges accordingly.

Charges

3. The charges against D1 are as follows:

1st Charge (against D1 only):

"That you, sometime on the 20th November 2021, at house addressed Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait, in Brunei Darussalam, did commit theft of properties to wit, six (6) CCTV cameras, in the possession of Johari @ Jahari bin Hassan, and you have thereby committed an offence punishable under Section 379 of the Penal Code, Chapter 22."

Additional 3rd (against D1 only):

"That you, on the 21st November 2021, at about 1355 hours, at house addressed Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait, in Brunei Darussalam, did commit house-breaking, by entering into the said building, in the possession of Johari @ Jahari bin Hassan, a building used as a human dwelling, in order to commit an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under Section 454 of the Penal Code, Chapter 22."

Alternative to the 5th charge 3rd Charge (against D1):

"That you, sometime between the 22nd November 2021 and 24th November 2021, at house addressed Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait, in Brunei Darussalam, did commit house-breaking, by entering into the said building, in the possession of Johari @ Jahari bin Hassan, a building used as a human dwelling, to wit by entering through a window of the said house, in order to commit an offence punishable with imprisonment, to wit, theft, and you have thereby committed an offence punishable under Section 454 of the Penal Code, Chapter 22."

Statement of Facts (SoF)

4. The first SoF dated 22nd December 2021 relates to the first charge against D1 and the facts are as summarized below:
 - (a) A complaint was lodge to the police by Lau Teck Ming (the complainant) stating that at about 1728 hours on the 20th November 2021, he saw a man climb over the gate of his neighbour's

house at house address Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait, in Brunei Darussalam (the said house). According to the complainant, a few minutes later he saw the same man leaving the vicinity of the said house with a black plastic bag. The complainant then checked his CCTV footage and saw the same man leaving from the said house with a black plastic bag. Police investigations then led to D1's arrest with another person;

- (b) Investigations then revealed that sometime around noon on the 20th November 2021, D1 and another person went out using the said other person's Nissan Sunny car with a plan to steal from the said house. The other person dropped off D1 at the vicinity of Simpang 75 at Jalan Pandan 1 and thereafter D1 walked on foot to the said house. D1 then climbed over the gate and proceeded to steal 1 CCTV camera at the gate and then leave. He then gave the CCTV camera to the said other person.
 - (c) On the same day, the other person brought D1 to his friend's house and the other person offered the CCTV camera to his friend. The other person then told D1 who was waiting in the car that his friend wanted more CCTV cameras. The other person then instructed D1 to steal more CCTV cameras from the said house.
 - (d) Together they then went back to the said house about 1728 hours the same day. D1 was dropped off and walked his way to the house. He climbed over the gate and proceeded to dismantle a total of 5 CCTV cameras using a screwdriver which he had brought with him. D1 then placed all the CCTV cameras inside a black plastic bag and left the scene. He was then picked up by the other person to whom he gave all the CCTV cameras.
 - (e) D1 admitted to stealing all the CCTV cameras on two separate occasions on the 20th November 2021 in his statement to the police. He further admitted that he gave all the CCTV cameras to the other person which he knew were then sold to the other person's friend in Kg Mumong. It is also noted that all of the stolen CCTV cameras were recovered.
5. D1 also agreed to the amended SoF dated 20th April 2022 which relates to the additional 3rd charge and the alternative 5th charge. The facts are as follows:

Additional 3rd charge:

- (a) On the 21st November 2021 at about 1352 hours, Lau Teck Ming (complainant A) saw a suspicious man walking pass his house and observed the said man attempt to climb up the gate of his neighbour's house at Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait, in Brunei Darussalam (the said house). Complainant A then later saw the same man leaving the said house carrying a gas cylinder. Based on what he observed, complainant A filed a police report.

- (b) According to police investigations, at around noon, D1 was at Person A's house together with Person A and Person B. Some time after, Person A went for a drive with D1 using Person A's Nissan Sunny car. It was during this drive that Person A instructed D1 to steal more CCTV cameras and CCTV receiver from the said house. D1 was reluctant but eventually relented to Person A's instruction. Person A then dropped off D1 at a nearby intersection at Jalan Pandan 1 and D1 then walked his way to the said house. D1 then climbed over the gate of the said house.
- (c) Once inside the compound, D1 then walked towards the back of the house and took a hanger to unlock the kitchen window of the said house. Once the window was unlocked, D1 proceeded to look for the CCTV cameras and CCTV receiver to steal. After D1 saw the CCTV cameras, he then went out of the house and used a ladder found outside the house to reach the cameras which he dismantled using a screwdriver which he had brought with him. He also stole a CCTV receiver from inside the house. D1 placed all the stolen items in a black bag and before leaving the scene, D1 contacted Person A to pick him up. Person A then instructed D1 to steal a gas cylinder from the said house. D1 then took a gas cylinder from the kitchen. Person A and Person B then came to pick up D1 from the same place where he was dropped off earlier. On the same day, D1 then gave the CCTV cameras and CCTV receiver to Person A and the gas cylinder to Person B.
- (d) Person A and Person B then sold the gas cylinder later the same day for \$70 to a buyer at Soon Lee Megamart in Seria. The sale proceeds were then divided amongst D1, Person A, Person B and another person.
- (e) The police managed to recover 2 of the CCTV cameras and a receiver from Person A's house and also managed to recover the gas cylinder from the buyer who was identified in the course of the investigation.

Alternative 5th charge:

- (f) One Johari @ Jahari bin Hassan (complainant B) went to check up on his daughter's house on the 24th November 2022 around 0940 hours at Lot 9320, Simpang 68, Jalan Pandan 1, Kuala Belait. On his arrival, he saw the small door next to the main gate was left open. Complainant B then checked inside the house and discovered that his daughter's 40" Matrix LED Television was gone from the living room. Complainant B then filed a police report at Kuala Belait Police Station which led to the arrest of D1.
- (g) D1 agrees that sometime between the 22nd and 24th November 2021, D1 was at Person A's house. Person A asked D1 what else can be found at the said house and D1 informed him there was a television. Person A then instructed D1 to steal the television. Although he was reluctant to steal, D1 relented again.

(h) D1 was later dropped off nearby the house and D1 walked towards the house. Again, he climbed over the gate and headed towards the back of the house. He entered the house using the same window he had entered before. Once inside the house, D1 dismantled the television from the wall and took the tv remote and left the house using the back door with the stolen items. D1 slid the television in between the gate and D1 himself climbed over the gate. D1 then waited for Person A to pick him up. After being picked up by Person A, they returned back to Person A's house on RPN Kg Pandan and D1 gave the television to Person A. Police investigations led to the recovery of the said television from a buyer.

6. D1 admitted to committing the above two offences on the instructions of Person A. According to D1, he reluctantly agreed to commit the offences for fear of Person A's anger as Person A did get angry with him before.

Previous criminal record

7. It is also on record that D1 has previous convictions for offences against properties.

Mitigation

8. In D1's mitigation, D1 requested for all his sentences to be served concurrently and ask for the court's leniency in fixing the sentence. He also states that he is currently raising his late sister's child but D1 further stated that the child is in the care of his mother. He asserted that he committed the offences because he was forced to commit them and he promised to not to repeat the same offences again.

Sentencing considerations

9. This court has repeatedly emphasized how prevalent offences against properties are today and how the court views it as a serious crime that would warrant a deterrent sentence. In *Daud bin Hj Zainal v Public Prosecutor (Criminal Appeal no.11 of 2004)*, the Court of Appeal stated that properties belonging to others are to be protected and people are not to be robbed of their belongings or possessions. This type of offences not only affects people's sense of security but also the security of their property/belongings. The fact that D1 has a previous record for offences against properties, subsequent conviction under similar offences would naturally attract a heavier sentence.
10. In 2015, D1 received a fine of \$500 in default of 2 weeks imprisonment for an offence of theft under section 379 of the PC and in 2016, D1 received a sentence of 2 years imprisonment each for 2 trespassing offences under section 451 of the Penal Code. Only with a deterrent sentence can the public interest be protected, deter the defendant from committing further crimes and deter potential offenders from committing similar offences. D1 is a 38-year-old man who has already served some prison time in the past for trespass. Despite this, D1 continued his criminal

activities. Although he asserts that he was forced to commit these crimes, the court is not convinced that he had no choice in the matter. It is also clear that despite the length of time that has passed between his last conviction in 2016 and the present, the nature of D1's criminal activities have increased in gravity from theft to trespass and now housebreaking.

Appropriate sentence

1st charge

11. The penalty for a section 379 offence is imprisonment for a term not exceeding 3 years, fine or both. D1 stole 6 CCTV cameras, items which can be easily disposed of for financial benefit. The court however notes that the statement of facts for this charge did not reflect that D1 received any financial gain from the theft. As for the theft itself, D1 went to the extent of dismantling these CCTV cameras himself on two separate occasions on the same day from different exterior locations of the house. Fortunately, all these stolen items were eventually recovered.
12. In deciding on the appropriate sentence, the court refers to the case of *Abdul Aziz bin Hj Ali v Public Prosecutor* (COACM No.27 of 2014) where the Court of Appeal held that even for a minor theft, a sentence of 6 months after a plea of guilty would be appropriate. Considering the facts and circumstances of the case and D1's previous record for theft, the court takes a starting point of 6 months imprisonment. For entering a plea of guilty at the earliest opportunity before this court, the court affords D1 a one third discount of his sentence, reducing the sentence from 6 months to 4 months imprisonment.

Additional 3rd charge and alternative 5th charge

13. The penalty for a section 454 offence is imprisonment for a term not exceeding 5 years and whipping. If the offence intended to be committed is theft, the penalty is imprisonment for a term which may extend to 10 years. The offences of housebreaking took place on two separate occasions (21st November and between the 22nd and 24th November 2021) but targeted the same house. It is clear that D1 was familiar with how to enter into the said premises as he had earlier committed theft at the same house on the 21st November 2021. Based on the agreed statement of facts, D1 stole CCTV cameras, a CCTV receiver and a gas cylinder on the 21st November 2021 and a 40" Matrix LED television between the 22nd and 24th November 2021. These stolen items were also easily disposable.
14. As stated earlier, only a deterrent sentence will suffice in curbing the prevalent offences of housebreaking. In deciding on the appropriate sentence the court refers to the case of *Public Prosecutor v Mohammad Aimaduddin bin Zefry* (Criminal Appeal No.19 of 2016), where the Court of Appeal was of the view that "...a sentence of 3 years after trial would be at the lower end of the range of sentencing for offences contrary to section 454.". Therefore, this court is of the view that the range of sentencing would be within the range of 3 to 5 years after trial depending on the facts and circumstances of each case.

15. For the additional 3rd charge, taking into account the facts and circumstances of the case, his previous convictions on offences against properties, the court takes a starting point of 4 years imprisonment and 2 strokes. The court now turns to D1 plea of guilty. D1 changed his plea to guilty on the first day of trial. The prosecution submitted that time has been spent in preparation for the trial and witnesses have been summoned and were present waiting to be called to give evidence. As such, the court finds that D1 would not be entitled to the usual one third discount given to defendants on a plea of guilty at the earliest opportunity. In light of the late stage in entering the plea of guilty, the court gives a lesser discount of one fourth of the sentence effectively reducing the sentence from 4 years' imprisonments to 3 years and 2 strokes.
16. The court takes the same approach for the alternative 5th charge and applies a starting point of 4 years' imprisonment and 2 strokes. Applying the one fourth discount, D1's sentence is reduced to 3 years' imprisonment and 2 strokes.

Totality principle

17. The total consecutive imprisonment sentences for all the 3 charges would undoubtedly result in an excessive sentence. It is the duty of the court to ensure that the total sentence will appropriately reflect the overall gravity of the offences committed. Having regard to the facts involved in the commission of the offences, the fact that all 3 offences were committed at the same premise, the court is of a view that the sentence for the additional 3rd charge and the alternative 5th charge are to run concurrently with one another and this concurrent sentence is to be served consecutively to the 1st charge and for the total strokes to be non-cumulative.

Final Sentence

18. The final sentence is therefore 3 years and 4 months' imprisonment and 2 strokes. The sentence is to take effect from the first date of D1's remand.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court