

Public Prosecutor

AND

Md Ariffin Bin Abd Rahman

**(High Court of Brunei Darussalam)
(Criminal Revision No. 1 of 2023)**

Steven Chong, C.J.
21 March 2023

Criminal law – Defective charge – Revision

PO Syazwani Jumat for the Public Prosecutor/Appellant.
Defendant In Person.

Reference:

Ratanlal and Dhirajlal, Law of Crimes (1982)

Steven Chong, C.J.:

This case was remitted by a Magistrate to the High Court to exercise its powers on revision under section 298 of the Criminal Procedure Code.

The question for determination concerns the validity of the conviction of the defendant for house trespass contrary to section 451 of the Penal Code.

On 10 December 2022 in the Magistrate's Court the defendant was charged with theft in a dwelling house contrary to section 380 of the Penal Code.

Subsequently, on 15 December 2022, the prosecution withdrew the section 380 charge and preferred two charges: house trespass contrary to section 451 of the Penal Code (1st Charge) and consumption of a Class A controlled drug, methylamphetamine, contrary to section 6(b) of the Misuse of Drugs Act (2nd Charge).

The defendant pleaded guilty to the house trespass charge and contested the drugs charge.

In charging an accused person for house trespass the prosecution must specify the offence he intended to commit in entering the dwelling: Ratanlal and Dhirajlal, Law of Crimes (1982). In the case at hand the prosecution failed to do so.

From the Statement of Facts tendered by the prosecution it was unequivocal that the defendant broke into the house intending to steal; and indeed he admitted as much in his police statement; and he was in possession of various items including cash stolen from the house when he was caught hiding in a wardrobe by the houseowner's son.

Consequently, as the Magistrate rightly recognized upon a review of the charge, the conviction is unsustainable for two reasons: (1) the charge as it stands is defective because of the omission to specify the offence the defendant intended to commit when he broke into the house; and (2) on the facts it is clear the specific offence intended to be committed was theft and a charge for house trespass with intent to commit theft falls outside the jurisdiction of the Magistrate's Court and is to be tried in the High Court.

Before me the Prosecution Officer indicated that she would be applying to withdraw the charge under section 451 and substituting a lesser charge of house trespass under section 448 of the Penal Code bringing the case within the jurisdiction of the Magistrate's Court.

This course of action proposed by the prosecution is entirely within the ambit of the Public Prosecutor who is conferred with general direction and control of criminal prosecutions pursuant to section 374 of the Criminal Procedure Code.

In the circumstances outlined above, I: (1) quash the conviction recorded on the section 451 charge; and (2) order the case to be remitted back to the Magistrate's Court to allow the prosecution to make the necessary applications as indicated.

DATO SERI PADUKA STEVEN CHONG
Chief Justice