

Public Prosecutor

AND

Fadly Farzuan Bin Awang Muda (D1)
Abdullah Mukhlis Bin Khalid (D2)

(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 45 of 2016)

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge
3rd May 2017

Criminal Law – S.380A Penal Code – Theft in a Mosque – Plea of guilty – 1st offender.

DPP Kamaliah Binti Haji Ibrahim for Public Prosecutor
Defendants In Person.

SENTENCE

Muhammed Faisal, Judge:

This is the matter with respect to D1 only.

Background

D1, together with D2 were first charged in the Magistrate's Court on the 20th October 2016, the matter has been subsequently, remitted to the Intermediate Court for hearing, which has been set in June this year, before myself.

Whilst out on bail, pending trial, D1 has committed another offence and was arrested and brought before the Magistrate's Court. This matter in the Magistrate's Court has now been brought before this court. All in all, D1 and D2 faced 4 charges together, in total. 1st and 4th Charge against D1, 2nd charge against D2 and the 3rd Charge is a joint charge.

The charges sheet read as follows:-

“1st Charge (Against D1 only)

That you, on the 18th October 2016 between the hours of 2.00 a.m. and 3.00 a.m., at Masjid Lorong 3 Selatan, Seria, in Brunei Darussalam, did commit theft of one safe deposit box containing \$42 Brunei Dollars, from the possession of said Masjid, and you have thereby committed an offence punishable under Section 380A of the Penal Code, Chapter 22.

2nd Charge (Against D2 only)

That you, on the 18th October 2016 between the hours of 2.00 a.m. and 3.00 a.m., at Masjid Lorong 3 Selatan, Seria, in Brunei Darussalam, did voluntarily assist one Fadly Farzuan bin Awang Muda (IC: 00-305787) in making away with property which you know or have reason to believe to be stolen property, to wit one safe deposit box containing \$42 Brunei Dollars belonging to Masjid Lorong 3 Selatan Seria, and you have thereby committed an offence punishable under Section 414 of the Penal Code, Chapter 22.

3rd Charge (Against D1 and D2)

That both of you, on the 18th October 2016 at about 3:00 a.m., at Barrack 421 A8, Lorong 3 Selatan, Seria, in Brunei Darussalam, in furtherance of your common intention, did commit mischief, to wit, by causing damage to one safe deposit box belonging to Masjid Lorong 3 Selatan Seria, amounting to \$330 Brunei Dollars and both of you have thereby committed an offence punishable under Section 426 of the Penal Code, Chapter 22 read with Section 34 of the same

4th Charge (Against D1 Only)

That you, together with another person in furtherance of your common intention, on the 14th day of February 2017, sometime between 3.30 a.m. and 5.30 a.m., at No 10, Spg 43-48 STKRJ Lorong 3, Selatan Seria, in Brunei Darussalam, did commit theft of property, to wit, one tool cabinet consisting of tools, belonging to one Karim bin Tuah, 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 facts of the case are stated down as follows:-

“D1 is a 31 year old Brunei National and is currently unemployed. On the 18th October 2016 between the hours of 2.00 a.m. and 3.00 a.m., D1 rode his bicycle to Masjid Lorong 3 Selatan, Seria, in Brunei Darussalam and found the premises quiet the entrance unlocked.

D1 proceeded to enter the premises with the intention to steal and took one safe deposit box and brought it outside of the building. D1 loaded the safe deposit box onto the wheelbarrow that he found nearby and tried to bring it back home close by. However, seeing as it was too heavy, he left it there momentarily while he went back home to bring his neighbour, another person “the said another” to the Masjid for his help to carry the stolen safe deposit box. D1 went to the said another’s residence next door and asked for his help, the said another agreed to help D1 take away the stolen safe deposit box and they proceeded together back to the Masjid.

D1 came back to the Masjid with the said another and together they brought the safe deposit box on the wheelbarrow to D1's house at the Barrack 421 A8, Lorong 3 Selatan, Seria, in Brunei Darussalam and arrived there at about 3.00 a.m. Once they arrived at D1's house, D1 and the said another took turns opening the safe deposit box thereby causing damage to the safe door. They managed to pry open the door and obtained \$42 Brunei Dollars in note and coin denominations. The Defendant and the said another split the proceeds between them and spent the money for personal consumption.

On the same day at about 4.50 a.m., members of the Subuh congregation found the safe deposit box to be missing from the Masjid, after conducting Subuh prayers, a police report was lodged. Police investigations led to the arrest of D1 on the same day at 7.32 p.m. at his house at Barrack 421 B5 Lane 3. The safe deposit box and the wheelbarrow used were recovered from D1's residence. However, the money the Defendant and the said another obtained from it have not been recovered.

The damages on the safe deposit box when recovered were found to be irreparable. The cost of damages amounted to \$330 Brunei Dollars for it to be replaced. Photographs are attached as Appendix A. In their police statements, D1 admitted to stealing the safe deposit box by bringing it out of the Masjid and putting outside on a wheelbarrow. The Defendant also admitted to taking turns causing damage to the safe deposit box and eventually managed to open the safe door and obtain \$42 Brunei Dollars in cash and coins that they split amongst each other for personal consumption. On records, the Defendant has recent previous convictions for the concealment of stolen property.

Additional 4th Charge (Against D1 Only)

On the 14th of February 2017, at about 3.30a.m., D1 and another person drove a Nissan Latio bearing registration number BAA 3314 to STKRJ Lorong 3, Selatan Seria housing area.

When they arrived at the said area, they parked their car at an empty lot nearby the said area. They then walked to a house No 10, Spg 43-48 STKRJ Lorong 3, Selatan Seria, in Brunei Darussalam, with the intention to commit theft. They both then entered the said house's compound. Once in the said house's compound, D1 then acted as a look out and waited outside the said house while the other person went to the back of the house. The other person then pulled a red colour tools cabinet with wheels which consists of tools and pushed it towards D1. D1 proceeded to help the other person pushed the said tool cabinet out of the house's compound and towards their parked car.

They attempted to put the said tool cabinet inside their car but was unsuccessful because it was too heavy. They then left the said tool cabinet at the empty lot in order to find a way to place it inside their car. Not long after, they ran into a friend and asked for his help to carry the said tool cabinet and placed it inside their car.

All three of them then when back to the said empty lot and successfully put the said tool cabinet inside their car. They then drove off with the said stolen items. On the 14th day of February 2017 at about 5.30 a.m., the complainant, Karim bin Tuah, discovered that his tool cabinet consisting the tools were missing and eventually lodged a police report. Police investigation led to the arrest of D1 and the other person. Police investigation revealed that D1 sold the said tool cabinet. Only the tools from the tool cabinet were recovered. On record, D1 has previous convictions”.

I know I shall have to consider the appropriate sentence delivery upon him. In his mitigation, the defendant has pleaded for a lenient sentence. The defendant also pleaded guilty, before trial, thus entitle to a discount in sentences. He has no previous conviction for theft, but previous conviction under section 414 Penal Code. I consider that he is a 1st offender for all of the charges against him.

I am guided by the cases of *PP v Md Afindi bin Hj Damit* and that of *Mohammad Amlu bin Hj Matayir*. The starting point for cases of similar nature as in this case is 24 months imprisonment and 3 strokes whipping.

For the offences under section 426 Penal Code, the damage to the safe box is irreparable. There would obviously need for the safe box to be replaced. The intention was to get the donation monies that were inside the safe box. For such an act, and the damages and cost, I believe that a custodial sentence is a proper sentence against the defendant.

For the 4th charge, the main aggravating factor is the fact that the defendant committed this offence, when out on bail, pending trial for the 1st and 3rd charges. To this extend, I believe that the defendant has let himself down. To have a disregard of his bail status, and committing offences, shows the defendant disregard of the law. For this, I believe that a custodial sentence is appropriate.

I also take note that, for the 1st and 4th charges, the \$42.00 and tool box were not recovered.

For the 1st charge, my starting point shall be 24 months’ imprisonment, and 3 strokes whipping.

For the 3rd charge, my starting point shall be 6 months’ imprisonment.

For the 4th charge, my starting point shall be 3 months’ imprisonment.

His sentences are thus, as follows:-

1st charge : 16 months’ imprisonment and 2 strokes whipping.

3rd charge : 4 months’ imprisonment

4th charge : 2 months’ imprisonment

Taking into account, the totality of sentence and the fact that 1st and 3rd charges are from the same transaction. I further order that the 1st and 3rd charges to run concurrently, but 4th charge to run consecutively to the 1st and 3rd charges.

Total sentence is 18 months' imprisonment and 2 strokes whipping, sentence to run with effect from 2nd May 2017.

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI
Judge, Intermediate Court