

Public Prosecutor

AND

Kamsari Lugis (D1)

Leni Septiani (D2)

Suhaini (D3)

(Intermediate Court of Brunei Darussalam)

(Criminal Trial No. 52 of 2017)

Muhammed Faisal Bin PDJLD DSP Haji Kefli, Judge

12th August 2017

*Criminal Law – S.312 Penal Code – S.454 Penal Code – S.427 Penal Code – S.457 Penal Code
– S.380 Penal Code – S.381 Penal Code – Plea of guilty – Sentencing.*

DPP Vuina Song for Public Prosecutor.
Defendants In Person.

SENTENCE

Muhammad Faisal, Judge:

All 3 defendants are jointly trial. Their charges are as follows:-

“1st Charge (against D1 & D2 only):

That the both of you, sometime between 11 a.m. and 2 p.m. on the 29th day of June 2017, in furtherance of your common intention, did commit house breaking by entering a house at address No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam, a building used as a human dwelling, in order to commit an offence punishable with imprisonment, to wit, theft, and that both of you have thereby committed an offence punishable under Section 454 of the Penal Code, Chapter 22, read with Section 34 of the same.

Amended 2nd Charge (against D1 only):

That you, sometime between 11 a.m. and 2 p.m. on the 29th day of June 2017, at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam, did commit mischief by causing damage to the amount of B\$560, by using a hammer and crowbar to pry open a safety deposit box in the possession of one Pg Hj Manshor bin Pg Hj Jaya, and you have thereby committed an offence punishable under Section 427 of the Penal Code, Chapter 22.

3rd Charge (against D2 and D3 only):

That both of you, sometime in the month of December 2016, at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam, in furtherance of your common intention, both being servants, employed in the capacity of domestic helpers of one Pg Hj Manshor bin Pg Hj Jaya, did commit the theft of property, to wit:

- a) 2 dark blue Mermaid Luxe headscarf;*
- b) 2 white/peach Mermaid Luxe headscarves;*
- c) 1 white/brown Mermaid Luxe headscarf;*
- d) 1 yellow Mermaid Luxe headscarf;*
- e) 1 lime-green/white Mermaid Luxe headscarf;*
- f) 1 forest-green Naurah Khayla headscarf;*
- g) 1 fern coloured Naurah Khayla headscarf;*
- h) 1 snow white Naurah Khayla headscarf;*
- i) 2 dark brown Mermaid Luxe headscarves; and*
- j) 1 salmon coloured Naurah Khayla headscarf*

in the possession of the said Pg Hj Manshor bin Pg Hj Jaya, and the both of you have thereby committed an offence punishable under Section 381 of the Penal Code, Chapter 22 read with Section 34 of the same.

Amended 4th Charge (against D1 only):

That you, sometime between the months of January 2017 and July 2017, at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam in Brunei Darussalam, being a servant, employed in the capacity of a gardener of one Pg Hj Manshor bin Pg Hj Jaya, did commit theft by stealing property, to wit,:

- a) 6 pairs of Abdul Razak Holding uniforms; and*
- b) 6 pairs of Futsal uniforms*

in the possession of the said Pg Hj Manshor bin Pg Hj Jaya and you have thereby committed an offence punishable under section 381 of the Penal Code, Chapter 22.

5th Charge (against D1 only):

That you, sometime between 3rd May 2017 and 7th May 2017, at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam in Brunei Darussalam, being a servant, employed in the capacity of a gardener of one Pg Hj Manshor bin Pg Hj Jaya, did commit theft by stealing property, to wit, BND\$200.00 in the possession of the said Pg Hj Manshor bin Pg Hj Jaya and you have thereby committed an offence punishable under section 381 of the Penal Code, Chapter 22.

6th Charge (against D1 only):

That you, at about midnight, sometime in the month of June 2017, did commit housebreaking by night by entering into a house used as a human dwelling at address No.2, Spg 114, Permai Dua, Kg Kiarong in Brunei Darussalam, in order to commit an offence punishable with imprisonment, to wit, theft and that you have thereby committed an offence punishable under Section 457 of the Penal Code, Chapter 22.

7th Charge (against D1 only):

That you, sometime in the month of June 2017, at No.2, Spg 114, Permai Dua, Kg Kiarong in Brunei Darussalam, did commit theft of property, to wit:

- a) Hair accessories;*
- b) 6 silver rings;*
- c) 3 silver necklaces;*
- d) 8 silver bracelets;*
- e) 1 bronze bangle;*
- f) 2 gold bangles; and*
- g) 1 Rolex watch;*

in the possession of Siti Rashidah binti Md Hassan and you have thereby committed an offence punishable under section 380 of the Penal Code, Chapter 22.

8th Charge (against D1 only):

That you, sometime in June 2017, at a staff house for the employees of Lazat Ria Restaurant at Block A, 1st Floor, Complex Mentiri, Jalan Kota Batu, in Brunei Darussalam, did voluntarily cause your wife, Siti Khasanah (Female, 39), then being with child to miscarry, such miscarriage not being caused by you in good faith of saving the life of the said Siti Khasanah, and you have thereby committed an offence under section 312 of the Penal Code, Chapter 22.”

All defendants have pleaded guilty. The statement of facts are as follows:-

“The First Defendant [D1] is a 29 year old Indonesian National working as a gardener for Pg Hj Manshor bin Pg Hj Jaya at No.3, Qurratu’ain, Jalan Elia Fatimah, Kg Kiarong for 3 years. The Second Defendant [D2] is a 28 year old Indonesian National working as a domestic helper for Pg Hj Manshor bin Pg Hj Jaya for 10 months. The Third Defendant [D3] is a 36 year old Indonesian National working as a domestic helper for Pg Hj Manshor bin Pg Hj Jaya for 10 months.

Pg Hj Manshor bin Pg Hj Jaya (“Complainant A”) lives at No.3, Qurratu’ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam with his family and the above mentioned workers. On 29th June 2017, the Complainant lodged a police report about a theft which occurred at his house.

Police investigations led to the arrest of D1 on 30th June 2017. Upon investigating D1, this subsequently led to the discovery that D1 also committed other thefts from the same house and from a neighbouring house at No.20, Spg 114, Permai Dua, Kg Kiarong, in Brunei Darussalam. Upon further investigations, it was also revealed that D2 and D3 had also committed theft from the Complainant A.

1st Charge (against D1 and D2 only) & 2nd Charge (against D1 only):

On 29th June 2017, at about 1:30 p.m., Complainant A arrived home and went to his bedroom. He found that his room had been ransacked and a safety deposit box had been damaged but not opened. He also found some tools next to the damaged safety deposit box. A police report was subsequently lodged.

During police investigations, CCTV footage outside the said house was provided to the police. Upon reviewing the footage, at about 11:30 a.m., D1 could be seen throwing up a hammer and crowbar onto the roof and then moving to the back of the house. At about 1:30 p.m., D1 was seen again on the roof of the house.

During police investigations, D1 revealed that he and D2 were in a relationship together. He planned to steal some money that was in a safety deposit box located in the Complainant's room, when the time is right, in order to run away with D2. D2 was aware of D1's plan.

On 29th June 2017, at about 11 a.m., D1 informed D2 about his plan to steal from the said safety deposit box as the Complainant and his family were not at home at the time. D1 sought D2's advice on how to enter the Complainant's bedroom and she told him to enter through this window that was located near the bedroom door.

D1 then went to the back of the house near the water tank. He tossed some tools up on the roof and then climbed up the water tank to get onto the roof of the house. He proceeded towards the part of the roof that led to the window that D2 had told him about. However, he found that the said window was locked.

D1 then went to a different part of the roof where there was a hole underneath the roof. He climbed through this hole and navigated his way through the ceiling into Complainant A's bathroom. This bathroom is connected to Complainant A's bedroom.

D1 climbed out of the hole in the said bathroom ceiling and made his way to Complainant A's bedroom. He proceeded towards a cabinet where the safety deposit box was kept. He dragged the safety deposit box towards the toilet and tried to pry it open using a hammer and a crowbar. In doing so, he caused wrongful damage to the said safety deposit box.

After a while, D2 saw that someone had arrived at the house. She sent an SMS to D1 and called his phone several times to warn him. D1 heard his phone ring several times and he knew it was D2's signal to warn him to get out. He looked out the window and saw a car driving into the house. He quickly left the safety deposit box,

which he did not succeed in opening, and exited through the same hole in the bathroom ceiling which he entered. He then made his way to the ground by climbing down the same water tank and eventually fled the premises.

As a result of the damage caused by D1 to the safety deposit box, the said safety deposit box cannot be repaired and had to be replaced for B\$560. In his police statement, D1 admitted to having planned the theft with D2 and carrying out the said plan. The tools D1 used to damage the safe deposit box were also found in his room.

3rd Charge (against D2 and D3 only) and 4th Charge (against D1 only):

Sometime in December 2016, Pg Hj Manshor bin Pg Hj Jaya's daughter, sought help from D2 and D3 to move a suitcase containing several headscarves into the storeroom at the back of their house.

Sometime after moving the said suitcase into the storeroom, D2 and D3 returned again to go through the contents of the said suitcase. They opened the suitcase and found several headscarves inside. They then proceeded to steal some of the headscarves.

After D1 was arrested, a search was conducted on D1's room at the said house. The following headscarves were found in D1's room:

- a) 2 dark blue Mermaid Luxe headscarf;
- b) 2 white/peach Mermaid Luxe headscarves;
- c) 1 white/brown Mermaid Luxe headscarf;
- d) 1 yellow Mermaid Luxe headscarf;
- e) 1 lime-green/white Mermaid Luxe headscarf;
- f) 1 forest-green Naurah Khayla headscarf;
- g) 1 fern coloured Naurah Khayla headscarf;
- h) 1 snow white Naurah Khayla headscarf;
- i) 2 dark brown Mermaid Luxe headscarves; and
- j) 1 salmon coloured Naurah Khayla headscarf

D2 and D3 were subsequently investigated and in their police statements, D2 and D3 admitted to committing the above mentioned theft. D2 and D3 further admitted that they passed the headscarves they stole to D1 who kept it in his room for them. The Complainant's daughter has identified these items as belonging to her and the estimated value of these items is BND\$260.

During the same search, the police also found the following items inside of D1's room:

- a) 6 pairs of Abdul Razak Holding uniforms; and
- b) 6 pairs of black/yellow Futsal shirts

The Complainant's son has identified these items as belonging to him and confirmed that D1 did not have permission to take these items.

5th Charge (against D1 only)

Sometime in the month of May 2017, at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong in Brunei Darussalam in Brunei Darussalam, D1 entered the Complainant's bedroom which was unlocked. He proceeded to open a drawer and found some cash. He took the said cash and exited the bedroom. He later counted the cash and found that it amounted to B\$200.

On 7th May 2017, the Complainant's wife noticed that the cash she kept in their bedroom drawer was missing. She last saw the cash in the drawer on 3rd May 2017. A police report was subsequently lodged. During police investigations, D1 also admitted to committing the abovementioned theft. He further admitted that he had remitted the stolen cash back to Indonesia.

6th Charge (against D1 only) and 7th Charge (against D1 only)

Sometime in the month of June 2017, at around midnight, D1 went to a nearby house at No.20, Spg 114, Permai Dua, Kg Kiarong, in Brunei Darussalam. He found a metal bar at the said house and used it to pry open the sliding door leading to the living room of the said house. He successfully entered the house and stole the following items:

- a) one Dell laptop,*
- b) one pink iPod touch*
- c) four mobile phones; and*
- d) one Apple iPad*
- e) cash amounting to B\$170.*

A few days later, D1 returned to the same house and entered through the same sliding door which he had broken the first time he went to the said house. He made his way to a bedroom upstairs where he stole several items, such as:

- a) Hair accessories;*
- b) 6 silver rings;*
- c) 3 silver necklaces;*
- d) 8 silver bracelets;*
- e) 1 bronze bangle;*
- f) 2 gold bangles; and*
- g) 1 Rolex watch;*

On 20th June 2017, at about 9:00 p.m., Siti Rashidah binti Md Hassan ("Complainant B") was informed by her helper that the sliding door of the living room was damaged. She inspected her house and found that several items were missing.

During police investigations, D1 admitted to committing the above mentioned housebreaking and then entering the same house again a few nights later to steal. He

further admitted that he later sold the jewelries at different goldsmith shops and made a total of about B\$670.

With D1's assistance, the police were able to recover the above mentioned jewelries from the goldsmith shops. The police also managed to recover the silver Rolex and pink iPod from D1's wife; while the iPhone 5 and iPad were recovered from an electronic store.

D1 also informed the police that sometime on 24th June 2017, he had returned the Dell laptop and mobile phones to Complainant B. All the recovered items have been identified by the Complainant.

8th Charge (against D1 only):

D1 is married to Siti Khasanah, 39, also from Indonesia, who is working as a waitress at Lazat Ria Restaurant in Kampung Mentiri. Siti Khasanah lives at the restaurant's staff house in Kampung Mentiri. They had been together for 7 years and had just officially married on 16 January 2017 in Indonesia.

Sometime in June 2017, during the middle of fasting month, Siti Khasanah contacted D1 and told him that she was 4 months pregnant. They discussed the best way to solve this problem. They agreed that they were not ready to have a child because they were both busy working in a foreign land and they do not have money to raise a child. Siti Khasanah also voiced her preference to abort the baby because she was angry with D1 for having an affair with D2.

D1 asked Siti Khasanah on the method to abort the child. Kamsari was told to buy a type of white pills that could abort a child. Siti Khasanah and D1 then went to the top floor of a shopping complex in Bandar Seri Begawan near Milimewah where he purchased the pills from a traditional medicine shop.

Siti Khasanah returned to her staff house together with the pills. She swallowed one pill later that night after D1 repeatedly contacted her to ask if she had taken the pills. She later had a miscarriage inside the toilet. Later that night D1 was at his workplace in Kiarong when he was contacted by Siti Khasanah who said she had just miscarried and told D1 to go and see her to get the child for burial.

D1 then took a pirate taxi to Mentiri. He also brought D2, the maid he was having an affair with. They reached Mentiri at about 2 am in the morning. D1 went down to see Siti Khasanah and found her in a weak state and lying down. Siti Khasanah told D1 that she had placed the child next to her. Kamsari then took the child and rushed to Kampung Kiarong where he washed and offered prayer for the deceased.

D1 then buried the child in the garden near the perimeter fence. D1 admitted in his statement to the police to cause the miscarriage of his wife who was pregnant with the child. D1 also admitted that he was not acting in good faith to save the life of the wife when he caused her to miscarry.

On 1 July 2017 the police brought D1 to his workplace at No.3, Qurratu'ain, Jalan Elia Fatimah, Kg Kiarong for further investigation. D1 led the police to the garden where he buried the child a few weeks before. The police dug up the ground and recovered a piece of white cloth in which the child was wrapped.

Examination on the cloth was conducted by Dr Telesinghe, a consultant pathologist at RIPAS Hospital. Due to the early stage of the pregnancy, there was no fully formed foetus and only a blood clot was found. Acting on D1's admission, the police arrested Siti Khasanah. She later admitted in her statement to causing the miscarriage of the child by swallowing the pill which caused the miscarriage of the child.

On 13 July 2017 Siti Khasanah was convicted after pleading guilty in the Magistrates' Court (MCCT/BSB/790/2017) to a charge under section 312 of the Penal Code. She was sentenced to 9 months' imprisonment with immediate effect.

For all charges:

On record, D1, D2 and D3 are first offenders."

In their mitigation, all the defendants have asked for leniency in sentence. As stated in the statement of facts, D1 is married. D2 is divorced and is a single parent. D3 is married with two children. All defendants have no previous conviction. They also have pleaded guilty, which entitled them to a discount in sentencing. For the 1st, amended 2nd, 3rd, amended 4th and 5th charges, these offences were committed by the defendants all against their employer, Pg Hj Manshor bin Pg Hj Jaya.

Such acts, must be taken as more severe compared to other ordinary acts of theft or housebreaking. This is due to the fact that as employees, they were entrusted to protect and secure the properties of their employer. This is especially so, as domestic helpers and personal gardeners. Notwithstanding the above, the actions of D1 for house breaking and theft with respect to the 6th and 7th charges, will considered just as severe.

With respect to the 8th charge and voluntarily causing his wife to miscarry, not being caused in good faith, from the statement of facts, it is my conclusion that the D1 acted selfishly, and for his own self-interest. Ultimately, he had wanted to run away with D2 and leave his wife; he needed money and also for his wife abort the pregnancy. It is thus my view that the defendants should be imposed a custodial sentence. Anything less than that, I considered as to be unduly lenient, given the circumstances and facts of this case.

Having considered all of the above, for the 1st charge, D2 and D1 starting point is 30 months' imprisonment, reduced by 1/3 for guilty plea. D1 is further sentenced to 2 strokes whipping. With regards to the 2nd charge, my starting point is 18 months' imprisonment, reduced by 1/3 for guilty plea. He is also imposed the minimum 2 strokes whipping.

An imprisonment sentence is appropriate under the circumstances of this case. The offence was no a 'spur if the moment' act. D2 and D3 must have discoursed the matter and then acted upon it. Otherwise they will not have been able to agree to return back a retrieved the head scarf from the bag.

My starting point shall be 12 months' imprisonment, reduced by 1/3 for guilty plea. With regards to D1 and the 4th and 5th charges, I impose 18 months' imprisonment, reduced by 1/3 for guilty plea, for each charge. My starting point for the 6th charge, is 24 months' imprisonment, reduced by 1/3 for guilty plea. I also impose 1 stroke whipping.

For the 7th charge against D1, my starting point is a sentence of 12 months' imprisonment, reduced by 1/3 for guilty plea. And finally, for the 8th charge, against D1, my starting point is a 12 months' imprisonment, reduced by 1/3 for a guilty plea.

The defendant's sentences in summary are thus:-

1st Charge (D1 and D2)

D1 : 20 months' imprisonment and 2 strokes.

D2 : 20 months' imprisonment.

2nd Charge (D1 Only)

D1 : 12 months imprisonment and 2 strokes.

3rd Charge (D2 and D3)

D2 : 8 months' imprisonment.

D3 : 8 months' imprisonment.

4th Charge (D1 Only)

D1 : 12 months' imprisonment.

5th Charge (D1 Only)

D1 : 12 months' imprisonment

6th Charge (D1 Only)

D1 : 18 months' imprisonment and 2 strokes.

7th Charge (D1 Only)

D1 : 8 months' imprisonment.

8th Charge (D1 Only)

D1 : 8 months' imprisonment.

To take into consideration, totality of sentence, I further order, for D1 for 1st, 2nd, 4th, 5th and 6th charges to run consecutively to 7th and 8th charges. Whipping to be concurrent.

D1 total sentence 36 months' imprisonment and 2 strokes. For D2, her sentence to run concurrently, total sentence, 20 months' imprisonment.

All sentences to run with effect from date of institution of proceedings. i.e. 1st July 2017.

All received items to be returned back to owner.

MUHAMMED FAISAL BIN PDJLD DSP HAJI KEFLI

Judge, Intermediate Court