

**PUBLIC PROSECUTOR
AND
MUHAMMAD ALINOR BIN HAJI JAILANI**

**(INTERMEDIATE COURT OF BRUNEI DARUSSALAM)
(CRIMINAL TRIAL NO.18 OF 2024)**

Pg Masni Binti Pg Hj Bahar, Judge
11th May 2024.

Sentence: Offence under section 454 Penal Code- house-breaking in order to commit offence punishable with imprisonment- Section 34 Penal Code- Acts done by several persons in furtherance of common intention- Plead Guilty- Previous Conviction- Deterrence Sentence.

PO Ahmad Firdaus Mohammad & Radin Wafri bin Radin Sufri for the Public Prosecutor.
Defendant in Person and unrepresented.

Cases cited:

Ak Muhammad Nazri bin Pg Mohd Jasni vs Public Prosecutor [Criminal Motion 49 of 2019]
Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009)
R v Ball (1951) 35 Cr App R. 164
Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion No. 4 of 2014; unreported, 20 May 2014)
Azimi bin Haji Mohamed v Public Prosecutor [2016]
PP v Adil Mustofa and 4 others (Criminal Trial No 14 of 2012)
Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138.
Daud bin Hj Zainal v Public Prosecutor (Criminal Appeal no. 11 of 2004)

SENTENCING

Pg Masni, Judge:

Introduction:

1. The defendant, Muhammad Alinor bin Haji Jalani, and 2 other persons is charged for house breaking, an offence under section 454 Penal Code read with section 34 of the same.
2. The Charge provides:

Charge:

Charge (Against the Defendant and 2 other persons)

That all of you, sometime between 1800hrs on the 2nd day of May 2024 and 1740hrs on the 3rd day of May 2024, at a house addressed at No. 16, Lot 2643, Spg. 372-25, Jln. Singa Menteri, Kuala Belait KA 1931, in Brunei Darussalam, a building used for the custody of properties, did commit house-breaking, by entering into the said building, in the possession of one Chin Ai Fong, to wit, by entering through a window, in order to commit an offence punishable with imprisonment, to wit, theft, and that all of you have thereby committed an offence punishable under Section 454 of the Penal Code, Chapter 22 read with Section 34 of the same.

Penalty:

3. The penalty under section 454 Penal Code warrants for an imprisonment sentence for a term not exceeding 5 years and whipping. If the offence intended to be committed is theft, shall be punished with imprisonment not exceeding 10 years.
4. The charge and penalty were read and explained to the defendant in Malay language. Defendant informed the court that he understood the charge and penalty read and explained to him. Defendant pleaded guilty to the said charge.
5. The court accept the defendant's guilty plea as the court is satisfied that the defendant understood the nature and the consequences of his plea. S 175 CPC is duly complied with.

Statement of Facts:

6. The statement of facts was read and explained to the defendant in Malay language. Defendant informed the court that he understood and agrees with the statement of facts read and explained to him.
7. Defendant admitted to the following:
8. Defendant agrees and admitted that sometimes between 1800hrs on the 2nd day of May 2024 and 1740 hrs on the 3rd day of May 2024, at around night time, he and his two (2) other friends, A and B gathered at A's house planning to commit house-breaking and theft at a house addressed at No. 16, Lot 2643, Spg. 372-25, Jln. Singa Menteri, Kuala Belait KA 1931, (the 'said house'). The defendant agrees that in furtherance of their common intention, it was planned that B will drive him and A to the said house.
9. Defendant admitted that they arrived at the said house around midnight. Defendant admitted that they climbed over the gate and entered into the house via the window located at the side of the house. Defendant admitted that when there were inside the house they ransacked the house looking for items to steal.
10. Defendant admitted that he stole coin amounting to BND \$0.50 and assisted A to put the alcoholic drinks that he stole into a bag. The Defendant admitted that he saw B stealing a small battery-powered light and a yellow-coloured waterjet.

11. Defendant admitted that after about 40 minutes, he and his other two friends left the house through the same window and together with the stolen items.
12. According to police investigations, on the 3rd day of May 2024 at about 1740 hrs, one Chin Ai Fong (the 'Complainant') went to visit the said house where she discovered that the window located at the side of the said house was opened and that interior of the said house had appeared to have been ransacked. The Complainant then proceeded to lodge a police report which led to the arrest of the Defendant on the 7th day of May 2024 at about 1930 hrs.
13. Defendant agrees and admitted that when he was arrested, he admitted to committing the above offence with his two other friends, A and B. However, the Defendant could not ascertain what other items had been stolen from the said house by the said 2 other persons.
14. Defendant also admitted that he has used the stolen coins amounting to BND \$0.50. The said coin was not recovered.

Previous conviction:

15. Defendant admitted that he has multiple previous convictions in relation to property-related offences.
16. Defendant admitted that:
 - a. In November 1992, he was convicted for offence under Section 379 of the Penal Code (theft), where he was sentenced to a total of one (1) week imprisonment.
 - b. In November 2015, he was convicted with two (2) counts offence under Section 379 of the Penal Code (theft), where he was sentenced to a cumulative total of eighteen (18) months imprisonment.
 - c. In February 2019, he was convicted of theft under Section 379 of the Penal Code for which he was sentenced to a total imprisonment sentence of four (4) months imprisonment.
 - d. In November 2019, he was convicted with two (2) counts of house-trespass under Section 451 of the Penal Code for which he was sentenced to a total imprisonment sentence of 2 years and 6 months imprisonment.

Mitigation:

17. In his mitigation, the defendant merely informed that he has medical conditions and he needs his medication.

Court's Consideration:

18. Housebreaking with the intention to commit theft has always been treated seriously due to its prevalence as an offence and the distress caused to the houseowner- **Ak Muhammad Nazri bin Pg Mohd Jasni vs Public Prosecutor [Criminal Motion 49 of 2019]**. The penalty warrants for an imprisonment sentence and whipping.
19. The defendant and two other friends of his premeditated to break into the said house when the occupants were not at home. The Court of Appeal in the case of **Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009)** and reported in the Malayan Law Journal (2010) 5MLJ 382, held that; *"where the sanctity of a private home is invaded for the purpose of committing an offence, deterrence is an important consideration. This is specially so in Brunei due to the prevalence of such offences"*.
20. In considering the appropriate sentence, I am guided by the principle laid down in the case of **R v Ball (1951) 35 Cr App R. 164** where Hillbery J stated:

"In deciding the appropriate sentence, a Court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in hope of preventing it. A proper sentence, passed in public, serves the public interest in two ways. It might deter others who may be tempted to try crime as seeming to offer easy money on the supposition, that if offender is caught and brought to justice, the punishment will be negligible. Such sentence may also deter the particular criminal from committing a crime again, or, induce him to turn from a criminal to an honest life."

Previous Conviction:

21. The defendant is not a stranger to such offence. He had strings of previous conviction on theft which goes back in 1992. His latest conviction was in November 2019, he was convicted with two (2) counts of house-trespass under Section 451 of the Penal Code. The defendant was sentenced to a total imprisonment sentence of 2 years and 6 months' imprisonment.

Penalty:

22. The penalty provides for an imprisonment sentence of not exceeding 5 years. And if the offence intended to be committed is theft, the penalty imprisonment of not exceeding 10 years and whipping.
23. The defendant stole from the said house. Therefore, the offence committed by the defendant warrants for an imprisonment sentence of not exceeding 10 years.
24. The penalty also calls for corporal punishment. The defendant is 54 years old. By virtue of s 258 (c) of the CPC, male over the age of 50 is exempted from whipping. In light of that, the defendant is exempted from whipping.

Appropriate Sentence:

25. Based on past cases, the sentencing imposed on housebreaking under section 454 PC ranges from 2 years to 5 years imprisonment after a guilty plea.
26. In the case of **Shamsuddin bin Mohammed v Public Prosecutor (Criminal Motion No. 4 of 2014; unreported, 20 May 2014)** Burrell JA was he was then, observed that (page 5) that, *"Housebreakings at night are serious crimes. In a typical case a sentence of up to 5 years' imprisonment may be upheld by the court because of the distress and potential fear caused to home owners."*
27. In the case of **Azimi bin Haji Mohamed v Public Prosecutor [2016] and PP vs Adil Mustofa and 4 others (Criminal Trial No 14 of 2012)**, the defendants in both the cases were first offender under section 454 of the Penal Code. The court took a starting point of 3 years' imprisonment and 3 strokes and was reduced to 2 years' imprisonment. On appeal, the sentence was upheld.

Appropriate Sentence:

28. Reverting back to this present case, I take into account that the items that the defendant stole. I also take into account that he assisted his other friends to steal. Although the item the defendant stole is relatively small but the act of committing house breaking cannot be taken lightly. Public property has to be respected and protected. The Court of Appeal in the case of **Daud bin Hj Zainal v Public Prosecutor (Criminal Appeal no. 11 of 2004)**, stated that properties belonging to others are to be protected and people are not to be robbed of their belongings or possessions. **Ak Muhammad Nazri bin Pg Mohd Jasni vs Public Prosecutor [Supra]**
29. Reiterating the case mentioned above **Ilham Syarif vs Public Prosecutor (Criminal Appeal No. 3 of 2009)** and reported in the Malayan Law Journal (2010) 5MLJ 382, held that; *"where the sanctity of a private home is invaded for the purpose of committing an offence, deterrence is an important consideration. This is specially so in Brunei due to the prevalence of such offences"*. The other factor is the defendant previous convictions.
30. Bearing in mind of the range of sentences imposed, the defendant does not deserve the lower threshold of starting point of 2-3 years' imprisonment. The defendant past record shows that the defendant is a recalcitrant offender. The defendant reoffends similar offence again in 2024, which is the present case.
31. In addition to that, the defendant has elevated his criminal enterprise from one of simple theft (previous offence) to one of house breaking (present offence) which is a serious offence and carries a heavier sentence. This goes to show that the defendant

is not deterred from his last offence. This evidently proves that the defendant is not remorse.

32. As a matter of deterrence and public interest, I am of the view that a higher starting point sentence is justified for an offender like the defendant- **Public Prosecutor v Pg Abd Rahman bin Pg Shahbudin [2003] BLR 138.**
33. The only mitigating factor which I find in favour of the defendant is his guilty plea. By pleading guilty, the defendant has saved the courts and prosecution time from undergoing the full trial. His guilty plea entitles him to one-third reduction from the starting point.
34. For the aforesaid reason mentioned above, I am of the view that a starting point of 4 ½ years' imprisonment.
35. On account of guilty plea, I reduced the starting point of 4 ½ year's imprisonment to 3 years' imprisonment.

Sentence:

36. The defendant is hereby sentence to 3 years' imprisonment. I also order for the sentence to run from the today's date, the 11th May 2024, the date he was first remanded by the Intermediate Court.

PG MASNI BINTI PG HJ BAHAR
Judge, Intermediate Court