IN THE MAGISTRATE COURT OF SUNGAI SIPUT(U)
IN THE STATE OF PERAK DARUL RIDZUAN, MALAYSIA
[CRIMINAL CASE NO 83-106-2010]

PUBLIC PROSECUTOR

v.

KHAIROL AZAR HARUN @ ABD RAHMAN

GROUNDS OF JUDGMENT

This is an appeal against the sentence that was handed out by this court against, one Khairol Azar Bin Harun @ Abd Rahman (hereby referred as 'the OKT'). The charge made out against the OKT is for the commission of an offence under **section 380 of the Penal Code.** The charge was read and explained to the OKT, after which the OKT had **pleaded guilty** and was convicted by this court and thereupon **sentenced to 40 months imprisonment** commencing from the date the OKT completes the imprisonment term for the case 83-206-2009 (High Court Appeal Case No. 41S-41-2011).

The charge against the OKT goes:

Pertuduhan

"Bahawa kamu pada 2/9/2010 jam lebih kurang 2.00 petang hingga 3.30 petang, di rumah tiada bernombor Kampong Pulau Adur Felda Lasah Sungai Siput di dalam daerah Sungai Siput Utara di dalam Negeri Perak, telah mencuri dalam

bangunan yang digunakan sebagai tempat kediaman daripada milik Nor Azizah Bt Sulaiman KPT: 630323-08-6336 iaitu matawang Egypt sebanyak 1197 pound:

1) 2 utas rantai tangan;

2) 3 pasang anting-anting;

3) 2 pasang subang;

4) 1 bentuk subang batu putih;

5) 1 bentuk subang;

6) 1 syiling peringatan "Somali Republic" Gambar Kaabah;

7) 1 bentuk loket batu warna putih.

Bernilai lebih kurang RM2,800/-. Oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 380 Kanun Keseksaan".

The OKT originally claimed trial in this case and was represented by one Mr Manjit Singh Mann. The case went to trial and the prosecution had called 6 witnesses to prove their case. After a lengthy trial (which included a *voir dire* trial), it was my decision that a *prima facie* case had been proven by the Prosecution. The OKT was then called to enter his defence. At that point in time, the Mr Manjit Singh Mann withdrew himself from representing the OKT and thus the OKT was given time to obtain legal representation. He had failed to do so and was told to defend himself. The OKT himself gave sworn evidence and had also called a second witness to testify, after which he decided to change his plea.

The OKT formally entered a guilty plea on the **16th of March 2012,** 18 months after the case was first mentioned in court. The OKT had been prompted again as to, whether he still wishes to plead guilty. He affirmed his plea of guilt and thus the court had found him guilty of committing the offence.

During mitigation, the OKT pleaded for a lesser sentence. He stated that he was the sole bread-winner of his family and has a school-going child. His wife was also pregnant at that point in time.

The learned Deputy Public Prosecutor strove for a deterrent sentence. She argued the OKT had caused much difficulty to all the parties involve as he had plead guilty only after a lengthy trial. It was also argued that the crime that was committed by the OKT was also a serious offence.

Sentencing

There are multiple considerations that I had to look into before **I** could pass sentence against the OKT. The principles of sentencing has to be applied to ensure that a suitable sentence could be meted out.

First, I shall consider the personal interest of the OKT. The OKT was 29 years old when he was first charged. He has a pregnant wife and a school-going child. Being the sole bread-winner, his wife and children would be left to fend for herself and her child, should he be imprisoned. The fact that the OKT has a family and wife to take care of, **I** find to be neither here nor there. In the case of ***PP v. Leo Say & Anor*** **[1985] 2 CLJ 155,** His Lordship Justice NH Chan (as he then was) stated:

> *"As for the plea that they have aged parents and families to look after, all I can say is that they have brought all this hardship on themselves and to their families. If they were really concerned about their plight then they should have thought of them before they embarked on this criminal enterprise. the OKT should have thought of their sake before committing such an offence."*

Indeed, the OKT had brought all this trouble on himself and his family and should have thought of the consequences of his actions before he embarked upon committing them.

Usually, a guilty plea would cause the court to allow him a lenient sentence, a 1/3 reduction of the sentence that would normally be given for such an offence. In the case of *Zaidon Shariff v. PP* [1996] 4 CLJ 441, his Lordship Augustine Paul JC (as his Lordship then was) stated:

> *"I shall now consider whether the sentence imposed by the learned Magistrate is in line with established judicial principles. He had rightly taken into account the guilty plea of the appellant.* ***A plea of guilt is a mitigating factor as it not only saves the country a great expense of a lengthy trial but also saves time and inconvenience of many, particularly the witnesses*** *(see Sau Soo Kin v. PP [1975] 2 MLJ 134)."*

However, a plea of guilt is not an automatic 'pass' for a reduction of sentence. One must also consider the circumstances of the case and also the public interest, as stated in the case of *Yit Kean Hong v. PP* [2005] 4 CLJ 592 where the Court of Appeal held:

> *"But it is not a strict rule as the court may refuse to grant any discount in cases where public interest demands a deterrent sentence (see Zaidon, supra)."*

Also, in the current case, the accused DID NOT save the court any time nor did he save the Prosecution its costs. The trial had gone on and witnesses had been called and only after the accused had called 2 witnesses in his defence, did he plead guilty. This in no way shows any form of remorse and had only serve to waste the time and costs of all parties, his own included.

In looking into the Public Interest, I must state that theft-in-building cases should be taken seriously. The members of the public must not be allowed to feel threatened in their own homes and must be made to feel that their properties are secure. Cases such as these add to the unease and fear among community members, which would later lead to disunity. A light sentence would also send a wrong message to the public, one that shows that the law does not take offences such as this seriously. A deterrent sentence, on the other hand, would effective in preventing more crimes of such sort from happening again and is a reminder that crime, however tempting the prize, does not pay.

The circumstances of the case weigh heavily against the accused. The accused

was a man known to the victim's family. He had betrayed their trust in the worst manner. The items that he had stolen had belonged to the victim's deceased son. These are the only items she has left to remember him by. She had stated repeatedly of how deeply saddened she was to lose the items. It goes to show that the accused felt little for his victims and thought only of his greed and his gain.

The accused had only taken items of value (money and jewelry) and did not touch anything else. This shows that the offence was pre-meditated and was not a crime of opportunity.

Another matter has to be taken into consideration is that the OKT, at the time of sentencing, was serving an imprisonment term. As per **section 292(1) of the Criminal Procedure Code** it is up to the court to decide whether the sentence is to run from the date of sentencing or after the current imprisonment term has ended. I chose the latter as the two offences were different altogether and also upon considering the gravity of the current offence.

It was thus that I find a deterrent sentence should be meted out against the OKT. I sentenced the OKT to 40 months imprisonment commencing from the date the OKT completes the imprisonment term for the case 83-206-2009 (High Court Appeal Case No. 41S-41-2011).

(AHMAD SHAMIL AZAD ABDUL HAMID)
MAGISTRATE,
SUNGAI SIPUT (U) MAGISTRATE COURT

DATED: 24 JUNE 2012

Counsel:

For the prosecution - Hafizah Zahidah Abdullah

For the accused - Unrepresented

Decision Date: 16 MARCH 2012