



Public Prosecutor

AND

Fakhrul Azman Bin Awang Magani

**(High Court of Brunei Darussalam)
(Criminal Trial No. 10 of 2014)**

**Steven Chong, J.
9 August 2014**

Criminal Law – Sentence – Statutory rape of underaged girl by guardian.

DPP Sharon Yeo for the Public Prosecutor.
Defendant unrepresented.

Case cited:

Annis Bin Abdullah v Public Prosecutor [2004] 2 SLR (R) 93 at 50.

Steven Chong, J.:

The defendant pleaded guilty to two counts of rape of a girl under the age of 14 contrary to section 375(e) of the Penal Code and punishable under section 376(1) of the same.

In brief the facts admitted by the defendant were that in 2004 he began a relationship with a woman named Huraizah, a mother of two daughters, one of them being Ms X. Huraizah and her daughters lived with the defendant in his house. In 2010 Huraizah and her daughters left the defendant after Huraizah met and married another man and they went to live with him.

Unfortunately, in 2013, Huraizah experienced difficulties in her marriage and she arranged for her daughters to live with the defendant. The first offence (1st Charge) occurred in March 2014 when Ms X went into the defendant's bedroom and initiated sexual intercourse with him. Although Ms X was only 11



at the time she was sexually experienced having been in an intimate relationship with a man since she was 8. The defendant and Ms X had sexual intercourse “almost every night” and the last incident (2nd Charge) took place on 24 May 2014.

The offences came to light after Huraizah read Ms X’s diary which revealed that Ms X was having a sexual affair with a man. Huraizah found out from Ms X’s sister that the man in question was the defendant and made a police report.

Upon being questioned by the police after arrest the defendant readily admitted that he committed the offences.

The defendant is aged 44 and is divorced. He works as an electrician. He has multiple prior convictions for drug and theft offences.

I give full credit to the defendant for his admission of guilt upon arrest and for pleading guilty to the charges at the first opportunity and that this is the first time he has committed offences of this nature.

However, I cannot ignore the fact that there was a serious breach of trust by the defendant who was entrusted to care for the girls by their mother. That Ms X not only consented to sex but had led the defendant into having sex with her and she was sexually experienced cannot mitigate the offences. The defendant being the adult and guardian was in a position of responsibility towards Ms X (and her sister).

The primary objective of the law is the protection of young girls who may not have the experience or the maturity to make decisions in their own best interests about their own sexuality: see *Annis Bin Abdullah v Public Prosecutor* [2004] 2 SLR (R) 93 at 50.

I think the following sentence is appropriate (with a reduction given for the guilty plea):

1st Charge: 9 years and 9 strokes reduced to 6 years and 6 strokes.

2nd Charge: 12 years and 12 strokes reduced to 8 years and 8 strokes.

Having regard to the totality principle I order the sentences of imprisonment to run concurrently and the strokes to be non-cumulative.



The sentence is therefore 8 years and 8 strokes.

DATO PADUKA STEVEN CHONG
Judge, High Court