

**Public Prosecutor**

AND

**Mohamad Ratino Bin Abdullah Litoh**

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**(High Court of Brunei Darussalam)  
(Criminal Trial No 12 of 2014)**

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Hairol Arni Majid, J.  
**24th September 2014**

*Criminal Law – Sentence – Rape – Section 376 (1) of the Penal Code – 14-year-old victim.*

DPP Pg. Norsuzanawati Bte Pg. Haji Abas for Public Prosecutor.  
Defendant In Person.

**Hairol Arni Majid, J.:**

The Defendant pleaded guilty to a charge of rape under section 376 (1) of the Penal Code, which reads as follow:

**Charge**

*That you, on 31<sup>st</sup> August 2014 between 4a.m to 6a.m, in the vicinity of a fruit orchard near Simpang 479, Kg Kebia, Tutong in Brunei Darussalam, did commit rape on Miss X (date of birth 22<sup>nd</sup> April 2000), and that you have thereby committed an offence punishable under section 376 (1) of the Penal Code (Chapter 22).*

The statement of facts as admitted by the defendant is in the following terms:

1. The defendant is currently unemployed. He was divorced in 2005 and has three children. He now resides at a small hut behind his sister's house at No 3, Simpang 479, Kg Kebia, Jalan Lamunin, Tutong in Brunei Darussalam. His sister lives there with her husband and their five children, including Miss X (date of birth 22<sup>nd</sup> April 2000). Miss X is a Year 8 student at Sekolah Menengah RIPAS, Tutong. Please refer to Miss X's NRIC attached marked as Appendix 1.
2. On 30<sup>th</sup> August 2014 at around 10 p.m, the defendant, Miss X and Miss X's elder brother went to a fruit orchard to pick durians to sell. The fruit orchard belongs to their ancestors, and is situated in the jungle somewhere near Simpang 479, Kg Kebia, Tutong in Brunei Darussalam. They went there together in one car, and parked their car on the side of the road. They then walked into the jungle towards

the said fruit orchard and set up a tent. They stayed there until around 4a.m the next day.

3. About 4 a.m on 31<sup>st</sup> August 2014, they left their camp site and walked out towards their car in order to go back home, carrying the durians they had managed to gather during their stay. As they were approaching the car, the defendant told Miss X and her brother that the car key was missing. He then instructed his nephew to look around the remaining track leading to the car and around the vicinity of the car, whilst the defendant brought Miss X back into the jungle to look for the said key at their camp site.
4. At the camp site, the defendant and Miss X did not manage to find the said key, so they decided to go back out to the car. However, they were unable to find their way back. They continued walking around to look for a way out, and Miss X was already exhausted and afraid at this point. After a while, the defendant told Miss X that their path out of the jungle was blocked by evil spirits, and instructed Miss X to take off her clothes completely. He told Miss X that this was the advice given by the elderlies (“petua”) if one was lost in the jungle, and he insisted to Miss X that they must do this if they were to find their way out. He assured Miss X not to be embarrassed and told her he is not embarrassed to do it either. Initially, Miss X did not want to do this, however, at the defendant’s repeated insistence and when he said that if she refused to do it then they will not able to find their way home, she reluctantly took off her entire clothing and held on to it. The defendant also took off his own clothes and held on to his own clothing. The defendant then held Miss X’s hand and led the way.
5. As they continued trying to find their way out, the defendant told Miss X that the evil spirits were still following them and that they were after Miss X’s blood as she was still a virgin. The defendant then convinced Miss X that she needed to give her virginity to him in order to ward off these spirits. Miss X was shocked when she heard this, and became afraid. Her body went weak as a result, and when the defendant held her and lied her down on the ground, she was completely helpless to fight him.
6. The defendant then started fondling her body and private parts. He then tried to kiss her on her mouth, but Miss X managed to turn her head away, causing the defendant to kiss her left cheek instead. He also licked and sucked her left breast, whilst fondling her private parts with his hand. He then spread her legs apart to lick her private parts. Miss X was crying helplessly throughout. He then got on top of her, and proceeded to have sexual intercourse with her without her consent by inserting his penis into her vagina. At this point, Miss X felt extreme pain and struggled to push him away; she managed to push him and kick him off until he fell. The defendant then sat up and told her that they continue the act if she wants to see her mother again. As the defendant tried to go back to Miss X, they heard

the sound of someone approaching. The defendant then panicked and ran off, bringing his clothes with him, leaving Miss X on her own.

7. The defendant ran back into the forest, and after a while, he stopped to put his clothes back on and sat down to rest. He began thinking about what he just did to his own niece. After some time, he continued looking for a way out of the jungle.
8. After he finally made his way out of the jungle and found a road, he stopped a bus and went to Lamunin Police Station to surrender himself. At around 5.20p.m on the same day, the defendant surrendered himself to Lamunin Police Station.
9. The rape was reported to Lamunin Police Station earlier on the same day at around 7.15a.m by Miss X's mother. Miss X was found on her own in the jungle by her brother when he went back into the said jungle to look for Miss X and the defendant.
10. In his statements, the defendant confessed to committing the above offence.
11. The defendant has no record of previous offences.

Credit must be due to the defendant for his admission of guilt and for pleading guilty to the charge. In court, he did so at the first opportunity. He is a first offender and prior to this has no previous conviction for other sexual offences.

This was obviously a serious breach of trust by the defendant on the victim who is the defendant's niece. Another feature, which may not necessarily be obvious, in this case is that there are somewhat an element of force and confinement of the victim albeit even for a few hours. This is serious aggravating factor.

The victim in this case was especially vulnerable because of her young age. She was deliberately tricked into such a hostile surrounding and was forced into submitting into doing the sexual act. Her ordeal was fortuitously cut short by the arrival of her brother and I believe it would have continued had it not for the intervention. While the ordeal may only last hours, undoubtedly for young victims the trauma and psychological scar will haunt them for life.

Taking these matters into consideration and with a starting point after trial of 12 years, with the usual discount for plea of guilty, I believe a custodial sentence of 8 years and 8 strokes of whipping is appropriate in the circumstance of the case. The sentence is to take effect from the date of his remand.

**Dato Paduka Hairol Arni Majid**  
Judge, High Court

