



Public Prosecutor

AND

Haji Hasnan Bin Haji Shahbudin

**(High Court of Brunei Darussalam)
(Criminal Trial No. 29 of 2013)**

**Steven Chong, J.
8 July 2014**

Criminal Law – Sentence – Rape of underaged girl by teacher.

DPP Pg Jasmine Bte PLKD Pg Haji Bahrin for Public Prosecutor.
Mohd Shazale Bin Haji Mat Salleh (M/S Mohd Shazale Salleh) for Defendant.

Cases cited:

Annis Bin Abdullah v Public Prosecutor [2004] 2 SLR (R) 93 at 50.
Haji Abu Bakar Bin Haji Bulat v Public Prosecutor [Criminal Appeal No. 7 of 2013].
Hishamuddin Bin Hj Chuchu [1997] JCBD 186.
M.S. Bin H.I. v Public Prosecutor [Criminal Appeal No. 7 of 2005].
Narawi Bin Haji Yahya v Public Prosecutor [Criminal Appeal No. 35 of 2012].
Pg. Sahri Bin Pg. Hj Omar v Public Prosecutor [Criminal Motion No. 35 of 2013].
Public Prosecutor v AOM [2011] 2 SLR 1057.
Public Prosecutor v MS Bin M [2005] 2 JCBD 233.
Public Prosecutor v U.M. [Criminal Trial No. 4 of 2005].
Ridzwan Bin Haji Mansor v Public Prosecutor [2007] 2 JCBD 172.

Steven Chong, J.:

The defendant initially claimed trial to six counts relating to sexual offences involving a girl who was under 14 years of age when four of the offences were alleged to have been committed.



At the commencement of the trial when the first witness was called, but before evidence was given, counsel for the defendant indicated to the court that there was a possibility of a change of plea. An adjournment of one day was granted to enable the defendant to consider his plea.

The charges

The defendant has now pleaded guilty to two counts of rape of a girl under the age of 14 contrary to section 276(1) of the Penal Code (2nd and 4th Charges) and one count of unlawful carnal knowledge with the same girl contrary to section 2 of the unlawful carnal knowledge Act (6th Charge).

The facts

A Statement of Facts admitted by the defendant reads as follows:

- "1. The defendant was at all times an Education Officer at Sekolah Menengah Sayiddina Othman Bukit Beruang. The defendant is married with six children. The defendant's youngest child was born in 1999.
2. In 2013, the defendant was teaching the class "*Pengetahuan Kenegaraan*", (Country Knowledge) Year 9.
3. In November 2012, the defendant got Miss X's, (Date of Birth 9th July 1999) phone number from her classmate. Miss X was a student at Sekolah Menengah Sayiddina Othman Bukit Beruang, in the same year as the defendant's youngest child.
4. At that time, the defendant and Miss X started "*Whatsapping*".
5. Sometime in November 2012, the defendant asked Miss X and her friend to come into the room. There, he showed them a pornographic video. After that, the defendant asked Miss X if she wanted "*to do as in the pornographic video*". Miss X replied that she did not want to, and straightaway deleted the message.

2nd Charge

6. The first time the defendant and Miss X had sexual intercourse, being the subject matter of the 2nd Charge, was on a day in May 2013. On that day, around 7 am, the defendant asked Miss X to come into his room that afternoon.

7. When Miss X came into the defendant's room in the afternoon, the defendant showed her a pornographic video. The defendant then kissed her, and asked Miss X to take off her trousers. Miss X tried to push him away, but the defendant was a man and stronger than Miss X. The defendant said "try one time", and at the time, although Miss X was scared she did not fight back because she was tired after a day of school and badminton practice. The defendant and Miss X then had sexual intercourse.

4th Charge

8. On the 6th July 2013, it was the defendant's birthday. The defendant and Miss X went to a new building "MIS" on the School's premises. Only the defendant had the key. The defendant and Miss X had sexual intercourse in one of the rooms there.
9. The defendant and Miss X took photos of the sexual intercourse and photos of them together on the defendant's phone. The defendant then sent these photos to Miss X's phone. Copies of the photos are marked as "Appendix 1".
10. Photographs of the scene of the offence are marked as "Appendix 2".

6th Charge

11. On 27th August 2013, Miss X went to the defendant's room before school started at 7 am. They then went to the new building "MIS" on the School's premises and had sexual intercourse.

For all charges

12. Each time the defendant and Miss X had sex, the defendant did not use a condom. The defendant instead ejaculated onto tissue or a towel.
13. Each time the defendant and Miss X had sex, Miss X was not forced, and the defendant did not threaten her in any way. The defendant and Miss X had sexual intercourse being the subject matter of all 3 charges on a consensual basis.
14. The defendant did give Miss X 2 sports shirts, 4m of material, chocolate and top up for her B/mobile card. The defendant also gave Miss X a present for her 14th Birthday on 9th July 2013 during school.



15. The defendant did not bring Miss X out anywhere, and met Miss X for the purposes of having sexual intercourse with her.
16. The defendant has no previous convictions in Brunei Darussalam.”

Mitigation

Mr. Shazale urged the Court to consider the following factors in the defendant’s favour: (1) Guilty plea; (2) previous good character; (3) service to the community.

Guilty plea

Mr. Shazale submits that on the authority of *Ridzwan Bin Haji Mansor v Public Prosecutor* [2007] 2 JCBD 172, notwithstanding that the guilty pleas came about as a result of a plea bargain arrangement with the prosecution, the defendant should be given the usual one third discount.

I agree. The guilty pleas were entered at the first opportunity after the prosecution agreed to reduce the number of charges from six to three and the victim was spared the ordeal of having to testify in a trial.

Previous good character

The defendant is a first offender. He was 49 years old at the time of the offences. His wife is a primary school teacher. They have six children aged between 10 to 24.

Mr. Shazale gave this account of the defendant’s career:

“The defendant has been a teacher all his working life. He started teaching at a primary school in 1987 and over the years developed an interest in the subject of special education, culminating in the defendant furthering his studies at the UBD in that subject. He duly obtained a degree in special education- B.Ed in Primary Education (Special Education) in 2004. Whilst studying at the UBD, the defendant continued to teach at Sekolah Menengah Sayyidina Othman Kg. Bukit Beruang where he had been teaching since 2001 following his transfer from the said primary school. At the said secondary school, the defendant steadily rose in seniority and by the time the offences were committed he was the third most senior teacher after the principal and deputy principal, holding the position of Senior Master I in Administration. As Senior Master, the defendant was, amongst other duties, responsible for matters pertaining to student welfare such as procuring financial assistance for underprivileged and orphaned students through a Ministry of Education, dealing with students who have been taken ill whilst in school, and was also



responsible for handling donation matters. The defendant also taught the MIB subject to Year 9 students.

The defendant's expertise in special education was recognized when he was asked to represent his country by delivering a talk on the subject at an international conference held in Brunei Darussalam in 2007 in which over 30 countries participated. The following year, he delivered a talk on the same subject at a national level conference.

In 2009, the defendant was awarded the Pingat Indah Kerja Baik (PIKB) by His Majesty The Sultan."

I give credit to the defendant for his clear record and his service and achievements in the field of education.

Service to the community

This is what Mr. Shazale says:

"The defendant was also actively involved in various voluntary social and community work. He is and has been since the year 2000, the secretary of the Majlis Perundangan Kampong for Kg Danau where he resides. As secretary, his work involved organizing various activities and functions for the village, such as the annual tahlil function, Hari Raya celebrations, the sacrificial ceremony during Hari Raya Aidil Adha, organising visits for senior citizens of the village, etc. The defendant is also the current secretary of the Majlis Takmir Masjid Kg Danau. His duties include organizing religious activities, talks and religious education classes for the villagers. He was also the secretary of the Parents-Teachers Association at Sekolah Rendah Kg Danau in 2012 and 2013. At the national level, the defendant was, between 2005 and 2010, the Vice-President of the Badan Sukarelawan Kebangsaan, an organization until the time of his arrest. His active involvement in social and community work meant that the defendant is a well-known and respected member of the community at Kg Danau. The defendant's conviction will certainly severely tarnish his standing and reputation within the community.

It almost goes without saying that the defendant will lose his job and all the monetary privileges that go with the job such as retirement gratuity and pension. Due to his advanced age and the inevitable stigma of a serious conviction, he will also find it difficult to obtain any gainful employment after his eventual release from prison. This will result in financial hardship to the defendant and his family and therefore constitutes punishment in itself."



I agree that the defendant certainly deserves credit for the valuable contribution he has made to the community.

As for the financial hardship which the defendant and his family will suffer as a result of the convictions, I have sympathy for the family but this is an inevitable consequences of his acts.

Sentence

Reference was made by the prosecution and the defence to a number of cases concerning incestuous rape, statutory rape and unlawful carnal knowledge to assist the court to determine an appropriate sentence: *Public Prosecutor v AOM* [2011] 2 SLR 1057; *Narawi Bin Haji Yahya v Public Prosecutor* [Criminal Appeal No. 35 of 2012]; *Haji Abu Bakar Bin Haji Bulat v Public Prosecutor* [Criminal Appeal No. 7 of 2013]; *Pg. Sahri Bin Pg. Hj Omar v Public Prosecutor* [Criminal Motion No. 35 of 2013]; *Hishamuddin Bin Hj Chuchu* [1997] JCBD 186; *Public Prosecutor v MS Bin M* [2005] 2 JCBD 233; *Public Prosecutor v U.M.* [Criminal Trial No. 4 of 2005]; and *M.S. Bin H.I. v Public Prosecutor* [Criminal Appeal No. 7 of 2005].

Counsel have not been able to find a case involving the statutory rape of a student by her teacher.

In a case of this nature, when it comes to sentence, the paramount consideration must be the public interest. Parents have every right to expect that their children will be in safe hands when they are with their teachers. When that trust is violated by a teacher who exploits the vulnerability of a student because of her immaturity by having sex with her a severe sentence is necessary to punish, deter and reflect public outrage.

Mr. Shazale in his submissions made the point that the defendant and the victim were “lovers” and were both “attracted” to each other. In my view this cannot mitigate the offences at all. The defendant being a Senior Master, aged nearly 50 at the time of the offences, and a married man with six children, had a position of responsibility towards the victim who was only 13 (2nd and 4th Charges) and a student in his school.

The fact that the victim consented to sex is irrelevant for the purpose of sentencing. The charges are of the rape of a girl under 14 with her consent (2nd and 4th Charges) and unlawful carnal knowledge (6th Charge). The primary objective of the law is the protection of young girls who may not have the experience of 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 a substantial starting point is justified, even when the defendant's clear record, good character and his contributions as a teacher and to the community are taken into account, because of the following aggravating features in the case: (1) violation of trust reposed in the defendant as a teacher; (2) the wide gap between the age of the victim and the age of the defendant; (3) the defendant preyed on the youth and immaturity of the victim and groomed her for sex by showing her pornography and buying her gifts; and (4) the repetition of the sexual acts over a period of time.

The sentence, is as follows (with reduction given for the defendant's guilty plea):

- (1) 2nd Charge: 12 years reduced to 8 years.
- (2) 4th Charge: 15 years reduced to 10 years.
- (3) 6th Charge: 5 years reduced to 3 years and 4 months.

Having regard to the principle of totality I order the sentences to be served concurrently. The sentence is therefore 10 years imprisonment with effect from the date of remand.

As the defendant is above 50 I do not order whipping.

DATO PADUKA STEVEN CHONG
Judge, High Court