Md Nazirul Azmi Bin Masdi

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 15 of 2024)

Steven Chong, CJ; Lunn and Sir Peter Gross, JJA
Date of Hearing: 3 November, 2025.
Date of Judgment: 10 November, 2025.

Criminal law – Possession and distribution of obscene photographs – Use of criminal force with intent to outrage modesty – Victim aged 15 – Sentence.

Applicant In Person.
DPP Hajah Siti Mu'izzah Binti Haji Sabli for the Public Prosecutor.

Cases cited:

Public Prosecutor v Mohd Salleh bin Abdullah@Ambrose Aban anak Iqah [High Court Criminal Trial No. 6 of 2014]
Public Prosecutor v Mohammad Shahdon bin Mohammad Ramlee [Intermediate Court Criminal Trial No. 17 of 2015]

Steven Chong, C.J.:

Introduction

1. On 12 November 2024, before the Intermediate Court, the applicant was arraigned on four charges under the Penal Code. The 1st Charge alleged possession of obscene photographs of the victim, contrary to section 293A. The 2nd and 3rd Charges alleged the use of criminal force on the victim with intent to outrage her modesty, contrary to section 354. The 4th Charge alleged the distribution of obscene photographs of the victim, contrary to section 293B. The applicant entered a plea of not guilty to all four charges.

2. Following representations made by counsel for the applicant to the Public Prosecutor, the applicant, on 13 February 2025, pleaded guilty to the 4th Charge. By consent of both parties, the Court, in passing sentence, took into consideration the offence under the 2nd Charge, which the applicant admitted to having committed pursuant to section 13A of the Criminal Procedure Code. The remaining two charges were withdrawn by the prosecution.

3. Judge Pg Masni Pg Hj Bahar sentenced the applicant to 4 years' imprisonment. The present application is for an extension of time to appeal against that sentence.

The facts

4. The Statement of Facts tendered by the prosecution and unequivocally admitted by the applicant disclosed that, at the material time, the applicant was 24 years old and employed as an office assistant with the Scouts Association, earning approximately $430 per month. On 28 June 2023, the applicant became acquainted with the 15-year-old victim through the messaging application WhatsApp. Their initial exchanges consisted of text messages, but the communication gradually developed into a "*romantic relationship*", during which they frequently engaged in phone and video calls.

5. As the relationship progressed, the applicant began requesting that the victim send him obscene photographs of herself. The victim initially declined and instead sent only "*decent*" photographs. Despite her refusal, the applicant persisted in his demands. When the victim continued to resist, the applicant threatened to disclose their sexual conversations. Out of fear that he would act on his threat, the victim reluctantly sent him two photographs – one depicting her bare breasts and another showing her breasts covered by a bra.

6. A few weeks after the commencement of their relationship, and at the applicant's request, he and the victim met in person. The applicant collected the victim in his Mazda motorcar and later parked near a building. While inside the car, the applicant lifted the victim's shirt, pulled down her bra, and groped her breasts without her consent. He photographed this act using his mobile phone.

7. Between October and December 2023, the applicant decided to sell 12 obscene photographs of the victim on a messaging platform known as Telegram, in a group chat titled "*Brunei 18+*" with the intention of earning additional income.

8. On 4 January 2024, a member of the public came across an advertisement on Telegram offering for sale pornographic material depicting young girls, including the victim. Alarmed by the content, the individual posed as a prospective buyer and contacted the seller, who was using the account name *"@Jemmey745*". When contacted, the applicant confirmed that he had the pornographic material available for sale, including material depicting local young girls, some of whom were as young as 13 years old. On 8 January 2024, the individual expressed interest in purchasing them, and the applicant instructed that a payment of $20 be made into his BIBD bank account. Upon receipt of payment, the applicant sent several obscene photographs and videos of young girls, including 12 obscene photographs of the victim.

9. After receiving the material, the individual lodged a police report to expose the applicant's criminal activities. During the ensuing investigation, the police were able to identify the victim from one of the photographs, in which she was wearing her school uniform. The victim was summoned to the Women and Children's Abuse Investigation Unit, where she confirmed that the images were of herself and that she had sent them to the applicant during their relationship. This identification led to the applicant's arrest.

10. Following his arrest, the applicant's mobile phone was seized and submitted to the IT Forensic Unit for examination. The forensic analysis revealed that the device contained a substantial quantity of pornographic material, including the obscene photographs of the victim. It also confirmed the presence of a Telegram account registered under the username *"@Jemmey745*". Further investigation verified that the BIBD account used for the transactions was held by the applicant.

11. In his statement to the police, the applicant admitted that the 12 obscene photographs of the victim comprised both images he had taken himself and those the victim had sent him at his request. He further acknowledged storing all the photographs on his mobile phone and distributing or selling them to around 30 individuals via Telegram, charging between $10 and $20 per set. The payments were made into his BIBD bank account, from which he received a total of approximately $300.

The sentence

12. In determining the appropriate sentence, the Judge considered a number of precedents involving offences of a similar nature. These included *Public Prosecutor v Mohd Salleh bin Abdullah@Ambrose Aban anak Iqah* [High Court Criminal Trial No. 6 of 2014], where the defendant was convicted of using his mobile phone to take an obscene photograph of the 10-year-old victim. In that case the High Court adopted a starting point of 3 years' imprisonment, which was reduced to 2 years following a guilty plea.

13. The Judge also referred to *Public Prosecutor v Mohammad Shahdon bin Mohammad Ramlee* [Intermediate Court Criminal Trial No. 17 of 2015], in which the defendant was convicted of 18 sexual offences, including one count of distributing an obscene video of the victim, for which he was sentenced by the Intermediate Court to 6 years' imprisonment, reduced to 4 years in light of his guilty plea.

14. Having considered these precedents, the Judge noted that although the applicant had initially contested all four charges, he subsequently pleaded guilty to the 4th Charge and admitted to the commission of the 2nd Charge, which was to be taken into consideration for sentencing. These pleas were made after the applicant's representations were accepted by the prosecution. The Judge therefore held that the applicant was entitled to the full one-third reduction ordinarily awarded to offenders who plead guilty at the first reasonable opportunity.

15. Taking into account the aggravating features of the case – namely, the use of threats by the applicant to compel the victim to send the obscene photographs to him, the serious nature of the sexual molestation, and the wide dissemination of the obscene photographs of the victim – the Judge, following the sentencing approach in *Mohammad Shahdon*, determined a starting point of 6 years' imprisonment. Applying the one-third reduction for the guilty plea, the Judge imposed a sentence of 4 years' imprisonment.

The appeal

Grounds of appeal

16. The applicant seeks leave to appeal against sentence out of time. Having been sentenced by the Judge on 24 March 2025, an application for leave to appeal against sentence was not filed on behalf of the applicant until 9 June 2025.

17. In seeking a reduction of sentence, the appellant largely reiterated the arguments advanced by his counsel before the court below. He contended that he is a first-time offender, has shown remorse for his actions, and is the primary caregiver for his aged parents who are dependent on him for both physical and financial support. He further submitted that he suffers from diabetes, which should be taken into consideration in mitigation.

Respondent's submissions

18. The Deputy Public Prosecutor submitted that the mitigating factors relied upon by the applicant do not warrant any reduction of sentence. She further argued that the sentence imposed was not excessive, having regard to the aggravating circumstances of the case, namely: the emotional distress and humiliation suffered by the victim; the use of threats and coercion to obtain the obscene photographs from her; the act of photographing the sexual assault; and the applicant profited from the dissemination of the victim's obscene images.

Our decision

19. We note with some concern that no psychological report, or at the very least a victim impact statement, was tendered before the sentencing Judge. As this Court observed in *MAR Bin HAA v Public Prosecutor* [Criminal Appeal No. 14 of 2024], where a total sentence of 4 years and 8 months' imprisonment was upheld following the appellant's guilty plea to three charges of taking obscene photographs of his 14-year-old niece, such material would have been significant assistance to the sentencing court in assessing the degree of harm suffered by the victim. The assessment of harm is a critical consideration in the determination of an appropriate sentence.

20. In the course of the sentencing submissions before the court below, counsel for the applicant contended that the obscene photographs sent by the victim to the applicant were

exchanged in the context of a "*romantic relationship*", and that this should be treated as a mitigating factor. The Judge rightly rejected this submission at the very outset. We find this argument to be wholly untenable, as it disregards the crucial fact that the victim was a young and vulnerable teenage girl. Moreover, the applicant had admitted to the Statement of Facts, which clearly stated that he had used threats to compel her to send the obscene photographs to him.

21. We accept that there are two material mitigating factors in the applicant's favour - namely, his plea of guilty to the 4th Charge and admission to the 2nd Charge, as well as his clear antecedent record. We also noted, and are sympathetic to, the applicant's family circumstances. However, while these circumstances are unfortunate, they are not exceptional and do not warrant any reduction in sentence.

22. As regards the applicant's medical condition, it is well established that even a serious illness, if capable of proper management within the prison system, does not of itself warrant a lesser sentence. While a medical condition may, in exceptional cases, justify a lower sentence as an act of mercy rather than as a matter of principle, no such circumstances arise here. There is no evidence the applicant's diabetes cannot be adequately treated in prison, and we therefore find no basis to extend judicial mercy to interfere with the sentence on this ground.

23. Having regard to the aggravating features of this case – in particular, the young age of the victim, the reputational harm to her arising from the distribution of the obscene photographs, the element of grooming by the applicant in exploiting her youth and vulnerability, the grave nature of the sexual assault, the photographing of that assault, the use of threats to compel the victim to send the obscene images of herself, the wide dissemination of those images, and the fact that the applicant derived profit from their distribution – we are satisfied that the sentence of 4 years' imprisonment cannot be said to be manifestly excessive.

Conclusion

24. There being no arguable basis to interfere with the sentence imposed, the application for an extension of time to appeal is dismissed.

Dato Seri Paduka Steven Chong, CJ

Lunn, J.A.

Sir Peter Gross J.A.