

Jaya Shah Khairol Bin Sofian
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 7 of 2024)

Steven Chong, C.J., Lunn and Woolley, JJA
17th June 2025.

Criminal law – Rape of 14 years -old-girl – Multiple offences - Sentence

Applicant In Person.
DPP Nurul Fitri Kiprawi for the Public Prosecutor.

Cases cited:

Public Prosecutor v Hamran Bin Bakar [2016] 1 JCBD 182
MZM Bin AT v Public Prosecutor [Criminal Appeal No. 15 of 2021]

Steven Chong, C.J.:

Introduction

1. On 18 March 2023, in the High Court, the Applicant was convicted following a trial, of three counts of rape in contravention of section 376(1) of the Penal Code. Judicial Commissioner Muhammad Faisal Bin PDJLD DSP Haji Kefli imposed concurrent sentences of 20 years' imprisonment and 12 strokes on each charge.
2. The Applicant now seeks leave to appeal out of time against the sentence imposed.

The facts

3. The Applicant, who was 44 years old at the material time, is the victim's uncle by marriage, being married to her maternal aunt. The victim was 14 years old. Both the Applicant and the victim resided in a shared household, comprising 19 family members, including the Applicant's wife and their four children.
4. Between November 2020 and February 2021, the victim was subjected to multiple acts of rape committed by the Applicant. The first incident occurred one morning in

November 2020. The victim, then asleep in her bedroom on the ground floor, was asked by the Applicant to assist with his child upstairs. Instead, he entered her room, locked the door, and, despite her resistance, raped her. He ejaculated on her stomach and cleaned her using a blanket.

5. The second incident took place later that same month. On that occasion, the Applicant instructed the victim to send his children away and brought her into his bedroom dressed only in a towel. After locking the door, he told the victim that she was beautiful and that he missed her. He then forcibly undressed her and raped her. The victim was left feeling frightened and distressed, and was concerned about the possibility of pregnancy.
6. The third incident occurred sometime in February 2021. After returning home from school, the victim was again directed by the Applicant to go to his room after sending his children away. Once inside, he locked the door, removed her clothing against her will, and raped her. He ejaculated on her stomach, wiped her with a towel, and subsequently forced her to perform oral sex on him.
7. The offences came to light when the victim confided in two of her cousins and an aunt. A police report was subsequently lodged on 28 March 2021.

The sentence

8. In determining the appropriate sentence to impose, the Judge considered several relevant authorities, including the case of *Public Prosecutor v Hamran Bin Bakar* [2016] 1 JCBD 182. In that case, this Court, on the Public Prosecutor's appeal against the sentence of 14 years' imprisonment imposed by the Intermediate Court, held that a starting point of 25 years' imprisonment was appropriate for the overall conduct of the accused – a father who pleaded guilty to nine counts of raping his three daughters, aged 13 to 16, and in the case of one of them, again when she was aged 26. A reduction to 16 years' imprisonment was applied in recognition of the accused's guilty plea.
9. In the present case, the Judge identified several aggravating factors, including the young age of the victim, the Applicant's gross abuse of trust as the victim's uncle, and the repeated commission of the offences over an extended period. Taking these factors into account, the Judge imposed concurrent sentences of 20 years' imprisonment and 12 strokes for each charge.

The appeal

10. The Applicant seeks a reduction in sentence solely on the basis that his incarceration has resulted in hardship to his wife and their four children, all of whom rely on him for financial and emotional support.
11. The Prosecution submits that the sentence imposed is neither manifestly excessive nor wrong in principle, particularly in light of the gravity of the offences committed, the presence of aggravating factors, and guidance provided by relevant sentencing authorities.
12. Furthermore, the Prosecution contends that the seriousness of the offending is underscored by the psychological report dated 7 May 2025, which details the impact of the offence on the victim. According to the report, the victim is currently suffering from moderate depression and moderate anxiety. However, no immediate psychological intervention has been recommended at this stage.

Decision

13. In our view, having regard to the aggravating factors already identified by the Judge, and taking into account three additional aggravating features, there is no arguable basis to contend that the sentence imposed was excessive, let alone manifestly so. The additional aggravating factors are as follows:

First, the offending occurred within the sanctity of the victim's home – a place where she was entitled to feel safe and protected.

Second, in one instance of the offending, the Applicant subjected the victim to a heightened degree of degradation, coercing her into performing oral sex against her will.

Third, during the trial, the Applicant gave evidence impugning the victim's character, alleging that she had engaged in an inappropriate relationship with his son, attempted to entice him into sexual activity, and was generally promiscuous. These allegations were rejected by the Judge.

14. The sentence imposed is consistent with the sentencing benchmarks established by this Court in *MZM Bin AT v Public Prosecutor* [Criminal Appeal No. 15 of 2021]. While the Court is not unsympathetic to the Applicant's family circumstances and the hardship likely to be experienced by his wife and four school-going children, those factors are not so exceptional as to justify a reduction in sentence.

15. In the circumstances, the application for an extension of time to appeal is without merit and is accordingly dismissed.

STEVEN CHONG, C.J.

A handwritten signature in black ink, appearing to be 'S. Chong', written in a cursive style.

LUNN, J.A.

WOOLLEY, J.A.