Public Prosecutor

AND

Hj Abd Latif bin Hj Mohd Noor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 10 of 2006

Power, P.; Mortimer and Litton, JJ.A.
1st May, 2007.

S.325 offence – voluntarily causing grievous hurt – the term "starting point" properly refers to the general level of sentence for the offence being dealt with after trial – observations as to the correct approach to the calculation of sentence after trial.

DPP Aldila Bte Hj Mohd Salleh for the Public Prosecutor.
Defendant in person.

Cases cited in the Judgment:

Ahmad Bin Hj Ibrahim [C.A. No. 8 of 2004].
Public Prosecutor v Shahril Nizam bin Sukor [HCCT 3 of 2004].
Yeo Kwan Wee Kenneth v Public Prosecutor [2004] SGHC 44.

Power, P.:

This is an appeal by the Public Prosecutor against a sentence of 14 months imposed by Judge Lim Siew Yen on the Respondent after a plea of guilty to a charge of voluntarily causing grievous hurt to his wife brought under s.325 of the Penal Code.

The appellant and his wife had argued heatedly after he told her that he could not return her mobile phone as he had lent it to his girl friend. He started assaulting her by pulling her hair. She fell and he then punched and kicked her on the head and face.

Her daughter took her to hospital where she was found to have suffered:

1. a lacerated wound on the under side of her lip
2. bleeding from the lower incisor teeth with a fracture of the alveolar bone
3. contusion over the left side forehead and left upper cheek.

Respondent asked for leniency and particularly that he be not imprisoned as this would mean dismissal from police force.

Judge Lim rightly indicated that the penalty under s.325 is imprisonment which may extend to 10 years and with whipping.

She noted the certainty that the imposition of imprisonment would lead to dismissal, the financial difficulties that would flow from this, the Respondent's remorse and the victim's adamant refusal to compound i.e. to withdraw her complaint pursuant to s.224 of the Criminal Procedure Code.

The court was referred to *Public Prosecutor v Shahril Nizam bin Sukor* [HCCT 3 of 2004], in which when dealing with a s.325 offence the Chief Justice imposed a sentence of 3 years after trial. He took a starting point of 4 years with discount of 25% for clear record. This sentence could be equated to 2 years after plea.

The court was also referred to *Yeo Kwan Wee Kenneth v Public Prosecutor* [2004] SGHC 44 where on appeal on a similar charge 18 months was reduced to 12 months and 3 strokes.

The Public Prosecutor now appeals against the sentence on the ground that it is "inadequate". The submission is that s.325 by virtue of the Schedule to the Interpretation and General Clauses Act falls under s.38(1) of that Act which provides "whenever, in or by virtue of the provisions of any law specified on the Schedule more than one penalty is prosecuted for an offence the use of the word "and" shall signify that the penalties shall be inflicted cumulatively".

S.325 provides that the offence of voluntarily causing grievous hurt "shall be punished with imprisonment for a term which may extend to 10 years and with whipping".

Ms. Aldila submits that by virtue of s.38 the court is required to impose both imprisonment and whipping and that the trial Judge was wrong to follow *Public Prosecutor v Shahril* which imposed only a term of imprisonment.

We have, in the present case, a bad assault on a defenceless woman. The sentence of 14 months imprisonment was a proper one. However the approach adopted by the Judge is open to criticism. When sentencing she said:

> "I would take a starting point of 18 months as the Defendant has pleaded guilty. On account of his clear record, I give a ¼ discount which reduces the imprisonment to 14 months imprisonment. I will not order any whipping as none was ordered in *Public Prosecutor v Shahril Nizam bin Sukor* [HCCT No. 3 of 2004]. The sentence will take effect from today."

We feel it appropriate to comment upon the use of the term "starting point". As we understand it that term is properly used when referring to the general level of sentence after trial which is proper for the offence being dealt with. An example of this approach can be found in *Ahmad Bin Hj Ibrahim* [C.A. No. 8 of 2004] where the court was

satisfied that the starting point after trial for the rape of a family member was 15 years. In any particular case this starting point is then adjusted up or down depending upon the individual circumstances of the case. These would include the seriousness of the offence, which may require either an upward or downward adjustment, the record of the offender and all mitigating circumstances. This approach produces a sentence which is appropriate for that offender. Where there is a plea of guilty a further reduction of ⅓ is appropriate.

We stress that this reduction of ⅓ should be given after the sentence has been assessed which has taken into account all of the factors set out above. In the present case we are satisfied that, the relevant factors having been taken into account, 21 months would have been appropriate after trial and allowing ⅓ reduction for plea the proper sentence would be 14 months which was the sentence imposed of Judge Lim.

The Judge was however wrong to refuse to order whipping, s.38(1) of Cap. 4 makes the imposition of a sentence of imprisonment and of whipping mandatory. We would have considered an order for whipping of 2 strokes would have been appropriate in the present case, however, in view of the lapse of time between the original sentence in August 2006, when no order of whipping was imposed, and the fact disclosed to us today that the Respondent's wife has died while he has been in prison we are satisfied that it would be proper to order the imposition of one stroke.

The sentence is varied accordingly.