

Public Prosecutor
AND
Jahidul Islam
Md Usuf Ali

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2024)

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

Criminal law – Unlawful Canal Knowledge – Kidnapping - Sentence

PO Hjh Atiyyah Azzahra POKLSDSLJ Hj Abas for the Public Prosecutor.
1st and 2nd Respondents In Person.

Cases cited:

Narawi Bin Haji Yahya v Public Prosecutor [2013] 1 JCBD 77
Public Prosecutor v Zoelariffin Bin Hj Zaini [2001] 2 JCBD 478
MZM Bin AT v Public Prosecutor [Criminal Appeal No. 15 of 2021]
Public Prosecutor v Ali Bin Hj Othman [2004] 2 JCBD 254

Steven Chong, C.J.:

Introduction

1. On 3 January 2023, the 1st and 2nd Respondents were jointly charged before the Intermediate Court with one count of kidnapping of a girl under the age of 14 (*“the victim”*) from her lawful guardian, contrary to section 361, punishable under section 363 of the Penal Code. In addition, the 1st Respondent was charged with five counts of having unlawful carnal knowledge with the victim contrary to section 2 of the Unlawful Carnal Knowledge Act. The 2nd Respondent faced one count of the same offence.
2. Both Respondents denied the charge of kidnapping and elected to claim trial in respect that count. However, they each pleaded guilty to the respective charges of unlawful carnal knowledge. Following the trial, both Respondents were convicted of the kidnapping charge. Judge Pg Masni Binti Pg Hj Bahar thereafter imposed an aggregate

sentence of 8 years' imprisonment and 4 strokes on the 1st Respondent, and 6 years' imprisonment and 2 strokes on the 2nd Respondent.

3. In the Notice of Appeal, the Prosecution challenged the sentences imposed on both Respondents on the ground that they were manifestly inadequate. However, by way of a subsequent written notice, the Prosecution withdrew the appeal insofar as it concerned the 2nd Respondent. Accordingly, the present appeal is pursued solely in relation to the sentence imposed on the 1st Respondent.

The facts

4. In 2022, the victim, a 14-year-old schoolgirl, entered into a relationship with the 1st Respondent, a 33-year-old Bangladeshi national. The relationship began after the victim contacted him by mobile phone, ostensibly to enquire about hiring a pick-up vehicle for a friend.
5. On 12 November 2022, the victim and the 1st Respondent arranged to meet at the Ayam Ku restaurant in Sengkurong. In order to facilitate this meeting, she misled her mother by claiming that she intended to visit Aunty Nelda, a family friend, at her shop in the Al Baraqah Complex in Sengkurong, accompanied by the family's domestic helper. Her mother granted permission, and both the victim and the helper proceeded to the shop at around 1.00 pm.
6. Upon arrival, the victim informed the helper that she wished to go to the supermarket nearby. The helper remained at the shop and observed the victim enter the supermarket. However, from there, unbeknownst to the helper, the victim proceeded to the Ayam Ku restaurant, where the 1st Respondent was waiting for her. From there, he led her to a lorry parked at the rear of the Al Baraqah Complex. Inside the lorry, waiting in the driver's seat, was the 2nd Respondent, a 36-year-old Bangladeshi national.
7. The two Respondents then transported the victim to the 1st Respondent's residence in Kampong Kapok, where she remained for two days. During that period, the victim engaged in sexual intercourse with the 1st Respondent on five separate occasions and with the 2nd Respondent on one occasion.
8. When the victim failed to return to Aunty Nelda's shop, the helper searched for her but could not locate her. The helper subsequently informed the victim's mother, and a police report was filed. Following police investigations, the victim was located at the 1st Respondent's residence, and both the 1st and 2nd Respondents were arrested on the night of 13 November 2022. In their respective statements to the police, both Respondents admitted to having engaged in sexual intercourse with the victim on the occasions as charged and acknowledged that they were aware of her age at the material time.

9. A subsequent assessment by a mental health specialist confirmed that the victim had been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), which accounted for her difficulties with attention and concentration in school.

The sentence

10. In determining the appropriate sentence to be imposed, the Judge considered relevant precedents relating to the offences of unlawful carnal knowledge and kidnapping.
11. The Judge first referred to *Narawi Bin Haji Yahya v Public Prosecutor* [2013] 1 JCBD 77, where the appellant, a 43-year-old married man with 12 children, pleaded guilty to two charges of unlawful carnal knowledge involving the victim, a 14-year-old girl, after the trial had commenced. The High Court upheld a sentence of 4 years' imprisonment and 2 strokes.
12. The Judge also considered *Public Prosecutor v Zoelariffin Bin Hj Zaini* [2001] 2 JCBD 478, in which the defendant, a 32-year-old divorcee with five children, was initially charged with the rape of the victim, a 13-year-old girl. He subsequently pleaded guilty to the alternative charge of unlawful carnal knowledge and was sentenced by the High Court to 3 years' imprisonment and 3 strokes.
13. As to the offence of kidnapping, the Judge had regard to *Public Prosecutor v Ali Bin Hj Othman* [2004] 2 JCBD 254, where the defendant, a 38-year-old married man with four children, pleaded guilty to five charges, including the kidnapping of the victim, a 5-year-old girl. In that case the victim had been left unattended in a vehicle while her mother went to purchase food. The defendant drove off with the vehicle and later molested the victim. For the offence of kidnapping, a sentence of 2 years' imprisonment was imposed by the High Court.
14. Taking into account the seriousness of the offences and the circumstances of the present case, the Judge imposed a sentence of 2 years' imprisonment and 2 strokes on each of the charges of unlawful carnal knowledge, and 4 years' imprisonment for the offence of kidnapping.
15. In respect of the 1st Respondent, the Judge ordered that two of the sentences for unlawful carnal knowledge and the sentence for kidnapping be served consecutively. The strokes for the two unlawful carnal knowledge charges were also ordered to be cumulative. This resulted in a total sentence of 8 years' imprisonment and 4 strokes.
16. As for the 2nd Respondent, the sentences for unlawful carnal knowledge and kidnapping were ordered to run consecutively, yielding an aggregate sentence of 6 years' imprisonment and 2 strokes.

The appeal

17. At the heart of the Prosecution's appeal is the contention that the Judge erred in declining to impose a higher term of imprisonment on the 1st Respondent, notwithstanding the repeated acts of unlawful carnal knowledge perpetrated against a highly vulnerable victim. The Prosecution submits that the victim's age and intellectual impairment ought to have been accorded greater weight as aggravating factors.
18. In support of its case, the Prosecution tendered two reports at the appellate stage. The first is a psychological assessment report dated 10 April 2025, prepared by a clinical psychologist. The report reveals that the victim's verbal comprehension and processing speed fall within the borderline range, while her perceptual reasoning and working memory are in the extremely low range. Her full-scale IQ places her within the mildly impaired range, corresponding to the 0.5th percentile. While the incidents in question did not appear to have caused overt psychological distress at the time of assessment, the psychologist opined that the victim remains highly susceptible to exploitation due to her cognitive limitations and deficits in social functioning. The evaluation further confirms that she suffers from a learning disability with pervasive impairment across multiple cognitive domains. No further psychological intervention was recommended at that juncture.
19. The second report is from the director of a private learning centre that the victim has attended since 2022. According to this report, the victim receives instruction in basic academic subjects such as Mathematics and English, and engages in vocational training activities including cleaning and kitchen maintenance. She particularly enjoys baking-related tasks. Her social development is being supported through structured play and peer interaction. The report notes that while the victim has demonstrated progress and established positive bonds with staff, she nonetheless requires constant supervision and step-by-step guidance owing to her cognitive challenges.
20. The prosecution relies on a line of authorities to support its submission that a more severe sentence is warranted, including the decision of this Court in *MZM Bin AT v Public Prosecutor* [Criminal Appeal No. 15 of 2021] where it was affirmed that a higher sentence may be appropriate in cases involving multiple offences. It is argued that, in the present case, a custodial term of no less than 9 years ought to have been imposed, taking into account the nature and frequency of the offences as well as the particular vulnerability of the victim.

Decision

21. A sentence may be regarded as unduly lenient if it falls outside the permissible range that a sentencing judge, acting reasonably and with proper regard to all relevant considerations, could have imposed. Having given due consideration to the submissions

and the circumstances of the case, we are satisfied that the sentences imposed on both Respondents, when viewed in their entirety, fall within the range reasonably available to the sentencing court.

22. In relation to the 1st Respondent, we acknowledge the Prosecution's emphasis on the particular vulnerability of the victim and the repeated nature of the offences involving unlawful carnal knowledge. These are undoubtedly serious aggravating factors. However, it is apparent from the sentencing remarks that the Judge gave due weight to these matters. This is reflected in the decision to impose consecutive sentences for two of the unlawful carnal knowledge charges, as well as for the kidnapping offence.
23. The Prosecution's submission that the sentence of 8 years' imprisonment should be increased to a minimum of 9 years, on the ground that it is manifestly inadequate, is unpersuasive. An enhancement of merely one year does not, in our view, support the contention that the original sentence was manifestly inadequate.
24. Considering the case as a whole, we are not persuaded that the sentence imposed is manifestly inadequate or lies outside the scope of a reasonable exercise of the sentencing discretion. Accordingly, the appeal against sentence is dismissed.
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STEVEN CHONG, C.J.



LUNN, J.A.



WOOLLEY, J.A.