

**Public Prosecutor**

AND

**Asing Anak Sabai @ Bonnei**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 13 of 2006)**

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Cons, P.; Power and Mortimer, JJ.A.  
**11<sup>th</sup> November, 2006.**

Rape of a maid. Use of threats and a knife. Slight injury inflicted. Pitifully vulnerable position of victim a grave aggravating factor. Proper starting point of 9 years.

Hjh Anifa Rafiza Bte Hj Abdul Ghani (Deputy Public Prosecutor) for the Public Prosecutor.  
Defendant in person.

**Power, J.A.:**

The respondent pleaded not guilty to one count of rape contrary to s.376 of the Penal Code. The victim was an Indonesian maid working for the sister and brother in-law of the respondent. She had been only 7 weeks in employment. She gave evidence that the respondent enticed her into his room on a pretext and then attacked her and, when she struggled, obtained a knife and threatened her, saying that he would kill her if she refused him. He then pushed her onto the bed, took off her pants, inserted his fingers and then his penis into her vagina. After intercourse he warned her not to tell her employers and she then left his room.

She said that she was frightened and confused and that it was 5 hours before she was able to find her way to a police station and to report the matter. During the struggle she suffered a slight injury to her neck.

The respondent pleaded not guilty but after trial before Madam Justice Hayati was found guilty as charged. His rejected defence was that the victim had led him on and that she had consented to intercourse.

When sentencing the judge took into account the delay between the arrest on 21 September 2003 and the charge on 14 December 2004. She, quite rightly, rejected as unreasonable the prosecution's excuse for this delay.

The trial Judge, took a starting point of 6 years and 6 strokes which she reduced on account of the delay to 5 years and 3 strokes. When sentencing she very properly recognized, as an aggravating factor, the vulnerable position in which this foreign maid was placed. She also took into account, as a mitigating factor, the clear record of the respondent and, as we have already stated, the delay in pursuing the prosecution. The public prosecutor now appeals against the sentence on the ground that it was manifestly inadequate. The rape itself was not the worst of its kind but it did involve threats, force and the use of a knife. The feature of the offence to which we are satisfied, however, that insufficient weight was given was the pitifully vulnerable position in which the victim found herself. Any man preying on a person in her position would have felt confident he could rely on her not having the courage to find her way to a police station and to report the matter. This we view as a grave aggravating factor.

The seriousness of this offence merited a punishment of 9 years after trial. That was the appropriate starting point. We consider it proper to follow the approach of the trial Judge who reduced the sentence by one year because of delay. We consider this was a generous discount but will not in the circumstances interfere therewith. The sentence is increased to one of 8 years. The order of 3 strokes will stand.