

**MAR BIN HAA
AND
Public Prosecutor**

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 14 of 2024)**

Steven Chong, C.J., Lunn and Sir Peter Gross, JJA
16th June 2025.

Criminal law – Taking indecent photographs of a child - Sentence

Appellant In Person.
DPP Siti Khalilah Hussin for the Public Prosecutor.

Cases cited:

Public Prosecutor v Mohd Salleh Bin Abdullah@Ambrose Aban anak Iqah [Criminal Trial No 6 of 2014]

Mohammad Al’Nuzull Bin Samsuddin v Public Prosecutor [Criminal Appeal No. 10 of 2022]

Steven Chong, C.J.:

Introduction

1. On 23 October 2024, in the Intermediate Court, the Appellant was charged with three counts of taking indecent photographs of a child (“*the victim*”) contrary to section 293B(1)(a) of the Penal Code. At the initial stage, the Appellant pleaded guilty to the 3rd Charge, while maintaining a plea of not guilty to the 1st and 2nd Charges.
2. However, on 13 November 2024, prior to the commencement of the trial, the Appellant changed his plea and pleaded guilty to all three charges. Judge Pg Masni Binti Pg Hj Bahar imposed an aggregate sentence of 4 years and 8 months’ imprisonment.
3. The Appellant now appeals against the sentence imposed.

The facts

4. At the material time, the victim was 14 years old and the Appellant was 41 years old. The victim is the Appellant's niece. Both resided in the same household, which was shared with 17 other family members.
5. On 17 October 2024, at approximately 6.00 pm, while the victim was showering at home, she observed a mobile phone being held above her, aimed in her direction. Alarmed and distressed, she immediately exited the bathroom and informed her aunt. A police report was lodged later that same day.
6. Police investigations subsequently revealed that the Appellant had recorded the victim in a state of undress on three separate occasions.
7. The first incident occurred on 14 October 2024. On that occasion, the Appellant used a hole in the bathroom wall to surreptitiously record the victim while she was showering. This conduct formed the subject of the 1st Charge.
8. The second incident occurred on 17 October 2024 at approximately 1.00 pm, when the Appellant again used the same hole in the bathroom wall to record the victim in similar circumstances. This act formed the basis of the 2nd Charge.
9. The third incident, which ultimately led to the discovery of the offences and the subsequent arrest of the Appellant, is as described in paragraph [5] above. This incident constitutes the basis for the 3rd Charge.
10. In his statement to the police, the Appellant admitted to having recorded indecent videos of the victim on all three occasions as described.

The sentence

11. In assessing the appropriate sentence, the Judge took guidance from two precedent cases involving offences under section 293B(1)(a) of the Penal Code for taking indecent photographs of children.
12. The first case was *Public Prosecutor v Mohd Salleh Bin Abdullah@Ambrose Aban anak Iqah* [Criminal Trial No 6 of 2014], where the High Court adopted a starting point of 3 years' imprisonment. This was reduced to 2 years on account of the accused's plea of guilt. In that case, the accused had used his mobile phone to photograph the victim's vagina while she was visiting his residence. The victim, who was 10 years old at the time, was the granddaughter of a friend of the accused.
13. The second case was *Mohammad Al'Nuzull Bin Samsuddin v Public Prosecutor* [Criminal Appeal No. 10 of 2022], in which the accused, a teacher of children with special needs, was convicted after trial in the Intermediate Court of two charges: one under section

354 of the Penal Code for outrage of modesty, and the other under section 293B(1)(a) of the Penal Code for taking an indecent video. The evidence established that the accused engaged in oral sex with the victim, who was one of his students and 14 years old at the time. It was further revealed that the accused had used his mobile to record a video of the victim masturbating. The trial court imposed consecutive sentences of 6 years' imprisonment and 3 strokes for the charge under section 354 of the Penal Code, and 3 years' imprisonment for the charge under section 293B(1)(a) of the Penal Code. The resulting aggregate sentence of 9 years' imprisonment and 3 strokes was upheld on appeal by this Court.

14. The Judge also took into account several aggravating facts in determining the appropriate sentence. First, the victim's young age – she was only 14 years old at the time of the offences. Second, the familial relationship between the Appellant and the victim, namely that the victim is his niece, which represented a significant breach of trust. Third, the offending was not isolated but repeated, occurring on three separate occasions. Lastly, the Judge considered the potential psychological and reputational harm to the victim, particularly in view of the risk that the indecent recordings could be disseminated on the internet.
15. Having regard to these aggravating factors as well as the relevant sentencing precedents, the Judge adopted a starting point of 3 years and 6 months' imprisonment for each charge. In light of the Appellant's pleas of guilt, a discount was applied, and the sentence for each charge was reduced to 2 years and 4 months' imprisonment.
16. Applying the principle of totality, the sentences in respect of 2nd and 3rd Charges were ordered to run concurrently with each other, but consecutively to the sentence imposed for the 1st Charge. The resulting aggregate sentence was one of 4 years and 8 months' imprisonment. Although the Judge did not expressly state this, it is apparent that the starting point adopted was a global sentence of 7 years' imprisonment.

The appeal

17. The Appellant seeks a reduction in sentence on the ground that his imprisonment would cause undue hardship to his family, who are said to be dependent on him. He submits that his wife is currently unemployed, their child suffers from thalassemia, and his elderly mother is in poor health.
18. The Deputy Public Prosecutor submits that the individual sentences imposed are appropriate and fall within the applicable sentencing range. It is further submitted that the aggregate sentence adequately reflects the aggravating factors present, as well as the overall criminality of the Applicant's conduct.

19. A psychological report dated 3 June 2025 addressing the impact of the offence on the victim was submitted to this Court by the Prosecution in the course of this appeal. The report indicates that the victim is suffering from very low self-concept, moderate depression, moderate anger, high levels of self-disruptive behaviour, and experiences significant distress when recalling the incident.
20. We consider it necessary to emphasize that, in cases of this nature, the Prosecution ought to have placed such material before the sentencing court in the first instance – whether in the form of a detailed psychological report, or at the very least, a victim impact statement. It is unsatisfactory that such relevant and material information was not provided until the appellate stage.
21. Reports of this kind are of substantial assistance to a sentencing court in properly assessing the harm caused by the offence. The impact of the offence on the victim is a critical and relevant consideration in the determination of an appropriate sentence.

Decision

22. In our view, the individual sentences imposed by the Judge fall within the appropriate range for offences of this nature. The central issue on appeal is whether the aggregate sentence imposed was, in all the circumstances, manifestly excessive.
23. We acknowledge and express sympathy for the Appellant's family circumstances. However, these circumstances, while unfortunate, are not exceptional. Such personal considerations do not diminish the seriousness of the offences and cannot serve to justify a reduction in sentence.
24. We accept the aggravating factors identified by the Judge and would emphasise an additional aggravating feature: the offences were perpetrated within the family home – a setting where the victim was entitled to feel secure. The violation of this fundamental trust amplifies the gravity of the offending.
25. Having given due consideration to all relevant circumstances, including the nature and context of the offences as well as the harm caused to the victim, we are not persuaded that the sentence imposed was manifestly excessive or erroneous in principle. In the result, the appeal against sentence is dismissed.

STEVEN CHONG, C.J

LUNN, J.A.

SIR PETER GROSS, J.A.