

**Julaihi Bin Mohd Yusof**

AND

**Public Prosecutor**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 20 of 2004)**

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Cons, P.; Power and Mortimer, JJ.A.  
**14<sup>th</sup> November, 2005.**

Total of 4 years and 7 months' imprisonment, with 6 strokes held to be entirely appropriate for offences the subject of this appeal. A further sentence of 4 years and 1 month's imprisonment passed by a Magistrate for different offences. The Magistrate ordered sentence to commence at the conclusion of the present sentence, making a total of 8 years and 8 months in all. Magistrate's sentence not before this court.

Total sentence to be served of 8 years and 8 months excessive. For purely technical reasons, total sentence of four years and four months under appeal reduced by two years. Total now to be served 6 years and 8 months.

Appellant In Person.  
Suhana Bte Hj Sudin (Deputy Public Prosecutor) for the Public Prosecutor.

**Mortimer, J.A.:**

The appellant pleaded guilty before Steven Chong, J. on 6 December 2004 to 8 offences for which the appellant receive a total of 4 years 7 months imprisonment and 6 strokes.

In summary these offences were: 1 offence of causing hurt to his sister-in law an abrasion to the front of her neck without complications; 2 separate offences of causing hurt with knives in which one victim received a laceration 2.5 inches long on the right side of his chest and the other victim a cut 18 cms long and 0.5 cm to 1 cm deep in the region of his left shoulder; 1 (associated with the last offence) of possession of an offensive weapon; and 3 offences concerning an attempt to escape police custody in which a police uniform was torn.

The offence against his sister-in-law happened on 27 November 2003. He became involved in a quarrel between his brother and his sister-in-law in which the appellant took her by the neck as if to strangle her causing an abrasion to the front of her neck. The sentence passed was 1 month imprisonment.

The 4 offences involving the use of a knife took place on the 18<sup>th</sup>, 29<sup>th</sup> and 31<sup>st</sup> July 2004 and they involved him losing his temper when in possession of a knife and the possession of the knife itself.

On 18 July he visited a house looking for a female friend. She was not there and on leaving he had an exchange of words with the victim during which he took out the knife and slashed at him causing the 2.5 inch cut on the right side of his chest. He received 2 years and 2 strokes for this.

On 29 July he was at another address also looking for a girl friend who was not there. Again he lost his temper, damaged the kitchen door, then took his knife and cut the electric cable to a fan. The judge imposed 3 months and 1 stroke for this offence.

On 31 July 2004 he had a knife with him when loitering with friends at about 22.45 hours. This is the offence of possession of an offensive weapon for which a sentence of 1 year was passed. He saw an acquaintance nearby whom he approached. He demanded money from the acquaintance because he was in possession of some of the appellant's belongings. When his request was refused once more he lost his temper, produced a knife and slashed his acquaintance causing the 18 cms cut to his shoulder. Realising what he had done the appellant immediately called a boat and told the injured man to go home. For this he received 2 years and 2 strokes.

When he was seen by the police on each occasion the appellant immediately admitted his guilt.

The 3 offences committed when he tried to escape from police custody happened on 9 August 2004. He was in a police car which stopped at traffic lights and he took the opportunity of leaping out and running away. He was caught by one of the officers but in the struggle the officer's uniform was torn. The offences were; attempting to escape from lawful apprehension; obstruction of a public servant in the discharge of his function; and mischief by damaging the uniform for which respectively he was sentenced to 3 months, 1 month and 3 months and 1 stroke.

The appellant had previous convictions. His record shows that he had appeared in court on 2 previous occasions. The first on 7 July 1993 when he was sentenced to a total of 3 years imprisonment and 3 strokes for 19 offences of theft and mischief. These offences cannot have been of the most serious kind. The other occasion was on the 23 July 1998 when he was fined for a number of drugs offences involving possession of drugs and equipment for consumption.

The Judge considered totality and concluded that the appropriate sentence in all the circumstances was 4 years 7 months and 6 strokes. He made the sentences for 2 offences on 31 July concurrent and the 3 offences on 9 August concurrent but otherwise they were consecutive.

Although the Judge thought the appellant's record to be 'appalling', he did not sentence him on his past. He clearly and rightly gave weight to the importance of his pleas of guilt and other mitigating factors in the individual sentences. He also gave appropriate weight

to the serious features of the case, concerning the use and carrying of a knife, or knives, by a short-tempered man.

In the result, there is no basis upon which we can say that this total sentence of 4 years and 7 months, with 6 strokes, is otherwise than entirely appropriate and fully justified.

### *The adjournment*

However, on 16 May 2005 we adjourned the hearing after being informed that since the hearing below the appellant had been sentenced to a further 4 years and 1 month by a Magistrate for three offences of consuming methylamphetamine and two offences of possession of the drug. This sentence was ordered to commence at the end of the sentence under appeal before this court. The sentence passed by the Magistrate was itself under appeal to the High Court but the Appeal had not then been heard.

The appellant asked for all the sentences to be made concurrent rather than consecutive. So, we adjourned this appeal until after the appeal from the Magistrate so that we could consider the total sentence which the appellant will face.

On 25 August 2005, the appeal from the Magistrate was dismissed and the sentences remained consecutive to the present sentences, making eight years and eight months in all. He pleaded guilty to all the offences charged in each court.

### *Conclusion*

Even bearing in mind that the series of offences involved in this Appeal and the offences before the Magistrate are quite separate, the total sentence which he now faces of 8 years and 8 months we regard as excessive for the criminality involved. For a sentence of this length after plea the starting point would be 13 years. Had all these offences been heard before the same Court, bearing in mind his ready acceptance of guilt, we consider that the total criminality would have been adequately reflected by a total sentence of 6 years and 8 months.

We have no jurisdiction over the Magistrate's sentence. In these unusual circumstances and for wholly technical reasons, we allow this Appeal in part and order that the sentence of 2 years' imprisonment imposed for his offence of 18 July 2004 should be served concurrently with the other sentences imposed at the same time. The total sentence for the offences before us on this Appeal will, therefore, be two years and seven months' imprisonment with six strokes. The Magistrate's sentence will commence at its conclusion, so that the appellant will serve 6 years and 8 months in all.