

Mohammed Tarip Bin Abdul Ghani

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2005)**

Cons, P.; Power and Mortimer, JJ.A.
17th November, 2005.

3 offences of Rape of daughter when 13 and 16 years. Guidelines in *A Bin I v PP* [Cr. App.No.8 of 2004] considered. Overall sentence of 14 years imprisonment appropriate. Appeal dismissed.

Appellant in person.

Christopher Ng and Aldila Bte Hj Salleh (Deputy Public Prosecutors) for the Public Prosecutor.

Cases cited in the Judgment:

A Bin I v PP [Cr.App.No.8 of 2004]

PP v Awg I Bin A [HCCT No.8 of 2005]

PP v Corporal 6690 M Bin T [HCCT No.10 of 2005]

Mortimer, J.A.:

On 21 June 2005 before Hairolarni, J.C. in the High Court the Appellant pleaded guilty to three counts of rape upon Miss X, his daughter.

The first of these offences took place in February 2001 when she was only 13 years of age. The remaining two offences were committed on 2 September 2004. His daughter was then 16 years of age. The first offence was charged under s.376(2) and the last two offences under s.376(1) of the Penal Code. All these offences carry a maximum sentence of 30 years imprisonment with a mandatory sentence of at least 8 years with 12 strokes.

The commissioner sentenced the Appellant to fourteen years imprisonment and twelve strokes on each count but he ordered the sentences to run concurrently making fourteen years and twelve strokes in all.

The Appellant appeals against these sentences.

The Facts

The first offence was committed one evening in February 2001. The Appellant entered the room in which his daughter was sleeping. He woke her, took her by the hair and demanded her to suck his penis. At first, she refused but complied when threatened with a punch. He then forced her to remove her pants and raped her. She cried and begged him to stop but he continued for a few minutes before withdrawing and ejaculating over her.

The remaining two offences took place on 2 September 2004. By this time, his daughter was 16. They were planned. The Appellant drove her to a friend's house sometime before 10am. He forced the girl to accompany him into the house. He locked the door and tried to remove her clothes. At first, she resisted but, after hitting her and threatening to hit her again, she submitted. He also took off his own clothes and forced her to suck his penis. Then he pushed her on to the bed and raped her. She was crying and begging him to stop. A few minutes later, he withdrew and ejaculated onto her.

About an hour later, he again forced the girl to strip and again raped her on the bed.

Following the offences, he drove her to the RIPAS Hospital jetty where she took a boat to school. On the journey in the car, he warned her not to tell anyone about the offences including her mother.

When challenged with the offences he admitted them at the outset blaming stress from taking the drug 'Syabu' or Methamphetamine.

The medical findings were consistent with the daughter having had intercourse.

The mitigation advanced at trial was:

1. His full admission at the outset and his pleas of guilt.
2. A plea for leniency on the grounds that he has eight children still of school age.
3. That he would forfeit his army gratuity.
4. His previous good character.

In sentencing the Appellant the Commissioner referred to the guidelines laid down by this Court in *A Bin I v PP* [Cr.App.No.8 of 2004]. He also cited two other cases; *PP v Awg I Bin A* [HCCT No.8 of 2005] and *PP v Corporal 6690 M Bin T* [HCCT No.10 of 2005]. In particular, he cited the Chief Justice's remarks in the latter case highlighting the seriousness of this type of offence and the impact on the victim. Matters, which are well known to this court.

The Appeal

The appellant relies here upon the mitigation he put forward in the court below and also that his wife is now pregnant and is standing by him. He submits also that he was drunk at the time of the offences and refers again to his voluntary admission of guilt, his plea and his previous good character.

- A. *Bin I v PP* [Cr.App.No.8 of 2004] provides guidelines for sentencing in offences of this kind committed before December 2004. It therefore applies to the offences in this Appeal.

For an isolated rape of this kind, in the absence of repetition or other aggravating features, the guideline is 15 years as a starting point after trial, reduced to 10 years after a guilty plea. Although the aggravating features of these individual offences would not have justified the substantial increase from 10 years to 14 years, the total sentence of 14 years passed by the Commissioner was entirely appropriate. It fully and properly reflected the overall criminality of the offences taking into account both the aggravating features and guilty plea.

In these circumstances, the Appeal is dismissed.

Appeal dismissed