

Pg Hasmali Bin Pg Damit

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 9 of 2004)**

Power, P; Mortimer and Davies, JJ.A.

15th November, 2007.

Appeal against conviction for two rapes of 13 year old daughter –credibility issue resolved in favour of daughter- appeal dismissed. Appeal against total sentence of 20 years and 15 strokes concurrent with earlier sentence of 10 ½ years for 7 offences of using criminal force intending to outrage modesty against same daughter – serious offences – force and threats – sentence upheld.

Appellant in person.

DPP Hjh Anifa Rafiza for the Public Prosecutor/Respondent.

Cases cited in the Judgment:

Ahmad bin Hj Ibrahim v Public Prosecutor [Criminal Appeal Number 8 of 2004]

Davies, J.A.:

On 23 May 2005 the appellant was convicted after a trial on two counts of raping his 13-year-old daughter; the first in March 2001, the second in April 2001. He was sentenced to a term of 20 years imprisonment and 15 strokes on each charge, the sentences to be served concurrently and also concurrently with a sentence of 10 1/2 years and 12 strokes imposed on 20 May 2004, the sentences to take effect from 20 May 2004.

The appellant appealed against his conviction and against his sentence. He appears on his own behalf in those appeals.

A preliminary question

The appellant was originally charged on nine charges, seven of using criminal force intending to outrage modesty and two of rape. He pleaded guilty to the first seven offences and not guilty to the rape charges. He was then sentenced on 20 May 2004 in respect of those seven charges, the sentence of 10 1/2 years referred to above.

Two of the charges of using criminal force (the second and third charges) were in respect of events which occurred in March and April 2001 respectively, the

approximate dates of the events giving rise to the rape charges. Because of this proximity in time and because also there was some factual similarity between the events giving rise to the charges of using criminal force and the events giving rise to the rape charges, this Court, shortly prior to the hearing of this appeal, raised with the parties a concern that the facts upon which the appellant was charged with using criminal force in March 2001 might be the same facts as those upon which he was charged with rape in that month, and that the facts upon which he was charged with using criminal force in April 2001 might be the same facts as those upon which he was charged with rape in that month.

In response to this expression of concern, the public prosecutor has produced to the Court copies of the complainant's statements in one of which she detailed, with great particularity, all of the events giving rise to the offences of using criminal force and those giving rise to the rape charges. Upon an analysis of this, from which it appears that the complainant had a very clear recollection of events in March and April 2001, this Court has been able to see that its concern was not justified and that the facts which gave rise to the rape charges were different from and additional to the facts which gave rise to the offences of using criminal force in March and April 2001.

In particular, it emerges from this statement that, in each of these months, the rape incident and the incident of using criminal force intending to outrage modesty were separated in time and that, in the offences in each month, the complainant's clothing was different, the circumstances leading up to the commission of the offences were different and the locations of the offences were different.

We were also greatly assisted in resolving our concern on this question by some excellent submissions from DPP Hjh Anifa Rafiza on behalf of the Public Prosecutor.

The appeal against conviction

The appeal against the convictions was on the basis that the learned primary judge should have found that there was a reasonable doubt as to the appellant's guilt and that consequently he was entitled to be acquitted. The appellant added that his conviction was unsafe and unsatisfactory.

However, when it came to the hearing, the appellant told the Court that he no longer wished to pursue that appeal. Accordingly we dismiss the appeal against conviction.

The appeal against sentence

The learned judge was correct in saying that this was a very bad case of repeated rape by a father of his 13-year-old daughter. They occurred, as we have already mentioned, in the context of multiple offences of using force to outrage her modestly by interfering with her sexually. He used force, tying her hands to a bedhead and threatened to kill her if she told anyone.

In sentencing the appellant to 20 years and 15 strokes on each offence, the sentences to be concurrent and concurrent with the earlier sentence of ten and a half years, the learned trial judge referred to the guidelines set by this Court in *Ahmad bin Hj Ibrahim v Public Prosecutor* [Criminal Appeal Number 8 of 2004] and appears to

have followed them. Given that there were repeated rapes, that force and threats were used and that the rape was on the appellant's own 13-year-old daughter, we do not think that the sentence was manifestly excessive particularly as it was to run concurrently with the earlier sentence and that the strokes imposed were not cumulative. The learned judge was correct to order that the sentences take effect from 20 May 2004.

We dismiss the appeal against sentence.

Power, P.

Mortimer, J.A.

Davies, J.A.