

MOHD JAYA BIN HASSAN

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 17 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

9th June 2021

Headnote: Sentence – s.326 Penal Code CAP 22, causing grievous hurt with weapon – Serious injuries – 5 years’ imprisonment upheld – Strokes reduced from 5 to 3.

Applicant in person

DPP Nurul Fitri binti Kiprawi of Public Prosecutor for Respondent

Cases cited in the judgment:

Amali Syaham bin Mohammad vs Public Prosecutor (Cr.Motion 7/2019);

Public Prosecutor vs Sumet oborm (HCCT No 3/2008);

Public Prosecutor vs Ida Bagus (HCCT No 11/2010);

Romie bin Abd Rahman vs Public Prosecutor (Court of Appeal, Criminal Appeal No 16/2002)

Burrell, P.:

On 22nd August 2019, the applicant was sentenced to 5 years imprisonment and 5 strokes having been convicted after trial before Judge Masni in the Intermediate Court for a single offence of voluntarily causing grievous hurt by dangerous weapons contrary to section 326 of the Penal Code Chapter 22.

He now appeals against that sentence. The notice of appeal was lodged at the beginning of March 2020 and was therefore approximately 5 months late in filing.

In accordance with our usual practice we shall firstly consider whether or not there is any merit in the appeal and if so, consider the reason for the lateness thereafter. The reason given in this case is an inability to raise the appeal fee within the 28 days period permitted.

Facts

An outline of the incident, as found to be proved by the trial judge, which led to his conviction is as follows.

At 05.45 am on 16th January 2019, the applicant went to the victim's house armed with a weapon which was concealed in a cloth wrapping. The reason for his visit was to confront the victim concerning the extra marital affair that was on-going between the applicant's wife and the victim. The fact of the affair was not disputed.

Soon after the door was opened the victim pushed the applicant away from his doorstep. In retaliation the applicant pushed the victim who fell to the floor. The applicant then hit the victim on the head when he was on the floor. The victim described being hit with "*a sharp object wrapped in the black cloth*".

The assault caused immediate bleeding to the victim's head. He was taken to hospital where he later lost consciousness for a short time.

The unchallenged medical evidence revealed that the victim sustained a depressed fracture of the skull and lacerations to the head. He underwent two surgical procedures because of the fracture to his skull and we accept that he now suffers from a permanent impairment to his speech.

Sentence

In serious assault cases such as this it is trite to observe that all cases are fact sensitive.

The applicant is now 45 years old. He had a clear record prior to this incident. He was no doubt angered by the victim's conduct with his wife but the fact that he went to his house at 05.45 am armed with a weapon is clear evidence of premeditation and planning.

In his written submission to this court the applicant has referred us to the case of ***Amali Syaham bin Mohammad vs Public Prosecutor (Cr.Motion 7/2019)***. In that case the appellant was a 21 year old who had inflicted injuries somewhat more extensive than in this appeal in the course of a fight in a public place. This court reduced his sentence from 5 years and 5 strokes to 4 years and 3 strokes.

The applicant has also referred us to three other cases which are of little assistance as they are not offences contrary to section 326.

The Respondent's written submissions refer us to three cases under section 326 for comparative purposes which we have considered, in particular:

Amali Syaham bin Mohammad vs Public Prosecutor (Court of Appeal, Criminal Motion No 7/2019);

***Public Prosecutor vs Sumet oborm (HCCT No 3/2008);
Public Prosecutor vs Ida Bagus (HCCT No 11/2010);
Romie bin Abd Rahman vs Public Prosecutor (Court of Appeal, Criminal Appeal No 16/2002)***

These cases are consistent with our conclusion that, bearing in mind the premeditated nature of this attack and the serious injuries suffered by the victim, a sentence of 5 years' imprisonment is within an acceptable range.

However, we have also concluded that the imposition of 5 strokes, for this case and for this appellant, is too many and we accordingly will reduce it to 3 strokes.

Late filing of appeal

As we have found there to be some merit in the appeal in relation to the strokes we now consider the reason given for the late filing, namely insufficient funds.

The lack of funds within the 28 days should not bar an appeal. We are satisfied with the explanation and give leave to appeal.

Order

We treat the application for leave as the appeal. The term of 5 years imprisonment is upheld but the number of strokes will be reduced to 3.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A