

MOHAMMAD FIRDAUS BIN ABU BAKAR

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 43 of 2018)**

Before: Burrell P, Seagroatt and Lunn JJ A.

13th November 2018

Headnote: Sentence – Serious case of gang robbery contrary to s.391 of the Penal Code – Prolonged violence used – 8 years imprisonment and 12 strokes not manifestly excessive - Sentence upheld

Applicant in person

DPP Siti Nurjainah@Karmila binti Haji Kula for Respondent

Burrell, P.:

On 20th October 2015, the applicant was sentenced to 8 years imprisonment and 12 strokes in the Intermediate Court after pleading guilty to an offence contrary to s.391 of the Penal Code of causing restraint to a female person in the commission of theft, more commonly known as gang robbery.

The facts

The applicant was one of two defendants who were jointly charged with this offence. The applicant was D2. D1 was additionally charged with and also pleaded guilty to an offence of rape. The victim of the robbery and the rape by D1 was the same 17 year old girl. She had recently become a lodger at D1's house. Her home was in Temburong but she wanted to look for work in the Brunei Muara area.

On 5th October 2015 she had only been a lodger at D1's house for a little over a week when D1 and the applicant carried out a planned attack on her, in her bedroom, in order to steal from her. Together they beat her, covered her head with a towel and tied her to the bed with ropes. She screamed and tried to escape without success.

When she was subdued D1 asked D2 to leave the bedroom which he did. The prosecution accepts that, thereafter, while D1 was alone in the bedroom with the victim, D2 was not a party to what then took place, namely the rape of the girl by D1.

Later D2 was called back into the room and together they manhandled the girl into a motor car, still tied up. The three of them drove off. While in the car the girl again tried to break free but was further assaulted in an attempt to keep her subdued.

When the car reached the Kampong Panchur Murai area the girl was abandoned in a remote area, having been beaten and tied up and with no belongings. D1 and D2 drove off.

The girl was, later that night, seen by members of the public who helped her and notified the police. She was taken to hospital.

D1 and D2 were arrested on 10th October 2015 and when questioned, D2 admitted his part in the gang robbery. He informed the police that after abandoning the girl they returned to the house and stole the girl's money and other belongings, including a Samsung Galaxy which they sold.

Sentence of the applicant

The judge rightly observed that this was a planned offence which subjected a 17 year old girl to a terrifying ordeal. He noted that the applicant had no previous convictions, had pleaded guilty and expressed remorse. He rightly added that, those matters apart, there was little or nothing that could be said in the applicant's favour.

He was aware of the recent decision in *Yurawandy bin Bujang v PP* (CA 13/2014) in which a sentence of 6 years was passed on two defendants after a plea of guilty to gang robbery. He observed that in that case there had not been any physical violence on the victim.

Discussion

We agree that the facts of this case are more serious than the Yurawandy case. The judge stated that he regarded 12 years imprisonment as a proper starting point for the s.391 offence which he reduced to 8 years because of the plea of guilty.

The DPP has also reminded us that in 2015 the applicant's co-accused, D1, appealed against the same sentence of 8 years and 12 strokes for the same robbery. His appeal against the sentence for the gang robbery was dismissed. We find that the parts played by D1 and D2 in the commission of the robbery were slightly different but such differences were plainly not so great as to warrant a more lenient sentence in respect of D2. It was a joint enterprise involving serious gratuitous violence on a vulnerable defenceless teenage girl. It is true that D1's overall sentence of 18 years for both the robbery and the rape was reduced to 14 years after consideration of the principle of totality in his case. The judge had made the sentences of 8 years for the robbery and 10 years for the rape wholly consecutive.

These considerations relating to totality in D1's appeal do not impact on the correctness of the sentence against D2 for the gang robbery. We consider the sentence passed on D2 as proper. The violence to which the girl was subjected, over a prolonged period, was severe. She was alone and defenceless and very probably feared for her life. The proposed appeal is without merit.

Delay

The applicant's brother filed a notice of appeal on the 10th October 2018, 3 years after sentence had been passed. His letter explains that the family did not know the

appropriate procedure for appealing at the material time. During the appeal hearing the applicant added that the family's financial circumstances were also a factor.

As the time limit for lodging an appeal is 28 days from the date of sentence and/or conviction this notice was almost 3 years out of time.

However, as we have found the proposed appeal is without merit it is unnecessary to consider whether or not the explanation for the delay is satisfactory.

Decision

The application for leave to appeal is refused.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A