

**MD ADI SAPUTRA**  
**AND**  
**PUBLIC PROSECUTOR**

---

**Court of Appeal of Brunei Darussalam**  
**(Criminal Motion No. 49 of 2020)**

---

Before: Burrell P, Seagroatt and Lunn JJ A.  
**12<sup>th</sup> November 2022**

*Headnote: Sentence: serious abuse of trust by appellant sexually abusing his younger step-sister. Abuse started when the victim was 5 years old. 9 years and 4 months with 4 strokes upheld*

Applicant in person  
DPP Nurul Fitri binti Kiprawi for Respondent

**Cases cited in the judgment**

*Md Ehsan Niezam bin Abdullah v Public Prosecutor (HCCM No 17 of 2016)*  
*A.I v Public Prosecutor (C of A Criminal Appeal No 8 of 2004)*

**Burrell, P.:**

On 7<sup>th</sup> October 2020 the applicant, aged 19, was convicted on his pleas of guilty to 4 charges under s.354B CAP 22 namely of outraging the modesty of a young girl who was 10 years old at the time of the first charge, in July 2018 and 12 years old at the time of the 4<sup>th</sup> charge in December 2019. The young girl, referred to as Miss X, was the applicant's stepsister.

On 24<sup>th</sup> October he was sentenced to 9 years and 4 months imprisonment and 4 strokes by Intermediate Court Judge Dk Norismayanti binti Pg Hj Ismail.

The applicant filed a Notice of Appeal dated 25<sup>th</sup> November. We shall overlook the fact that it was one day late and treat this as a criminal appeal, not a criminal motion.

Facts

The amended statement of facts was read and agreed.

The appellant and his mother came to Brunei from Indonesia when he was 11 years old. His mother remarried in Brunei. Her new husband had a 3 year old daughter. The appellant's sexual abuse of his stepsister started when she was 5 years old and

continued until 2019. The four incidents which are the subject of this appeal occurred between July 2018 and December 2019. On the first occasion he used his I-Phone to video record himself rubbing Miss X's vagina whilst she was asleep. On the second occasion, in February 2019, he attempted to penetrate Miss X's vagina, again, while she was asleep. However she woke up which stopped any further abuse.

In October 2019 he used a vibrator on Miss X's vagina and also licked her vagina. On this occasion, he ejaculated on to her stomach. In December 2019 he again sexually abused Miss X in an almost identical way to the October incident.

Miss X had told her father and stepsister about the continuing abuse in October 2019 but the matter only came to the attention of the police when the girl finally decided to tell her teacher at school who immediately reported the matter.

The appellant admitted to the police that he had abused his stepsister on numerous occasions since 2012.

The appellant has no other convictions.

### Sentence

When sentencing the judge noted the appellant's expression of remorse, his pleas of guilty and his clear record. However she correctly observed that this was a very serious breach of trust on a very young and vulnerable girl. Miss X was too fearful to tell anyone what was being done to her until she was 12 years old.

The judge decided, rightly in our view, that a deterrent sentence was merited. The law requires, for this offence, a minimum of 3 years imprisonment and a maximum of 10 years, with whipping.

Bearing in mind the gross abuse of trust, the trauma caused to the victim and the length of time over which the abuse took place, the judge decided that the individual sentences should steadily increase, offence by offence. Thus, after stating her starting points for each offence and discounting them by one third for the pleas of guilty she passed the following sentences.

- 1<sup>st</sup> charge – 3 years and 8 months with 3 strokes
- 2<sup>nd</sup> charge – 4 years and 4 months with 4 strokes
- 3<sup>rd</sup> charge – 5 years with 4 strokes
- 4<sup>th</sup> charge – 5 years and 8 months with 4 strokes

In support of this approach of increasing each sentence she relied on *Md Ehsan Niezam bin Abdullah v Public Prosecutor (HCCM No 17 of 2016)* and *A.I v Public Prosecutor (C of A Criminal Appeal No 8 of 2004)*.

We consider this approach to be fair and appropriate in this case, albeit that the actual conduct in charges 2, 3 and 4 is similar and equally serious. Although the incident in charge 2, arguably, is more serious.

We find no grounds to interfere with the individual sentences of imprisonment and strokes imposed. We turn finally to the question of totality.

### Totality

The judge considered the overall criminality involved and directed that the sentences on charges 2, 3 and 4 be served concurrently but consecutively to the 1<sup>st</sup> charge, this making a final sentence of 9 years and 4 months. The strokes would be non cumulative making a total of 4 strokes.

This means that the sentence after pleas of not guilty and a conviction after trial would have been 14 years and 4 strokes.

### Decision

We find there to be no grounds to reduce this sentence. We do not consider it to be excessive or wrong in principle. It is a long sentence for a young man of his age but one which properly reflects the serious breach of trust, the harmful and degrading conduct, the length of time over which the abuse occurred and the tender years of the victim.

Appeal dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**