

**Mohammad Faizul Helmey Bin Ahmad Umar**

AND

**Public Prosecutor**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Motion No. 6 of 2022)**

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Steven Chong, C.J.; Seagroatt and Woolley, JJA

**Date of Hearing: 8<sup>th</sup> June, 2024.**

**Date of Judgment: 19<sup>th</sup> June, 2024.**

*Criminal law – Armed robbery – Outraging modesty – Robbery – Theft – Sentence*

Appellant In Person.

PO Hjh Atiyah Azzahra POKLSDSLJ Awg Hj Abas for Public Prosecutor.

**Cases cited:**

*Public Prosecutor v Kamarulzaman Bin Bahrum* [Criminal Trial No, 18 of 2004]

*Mohamad Arif v Public Prosecutor* [2010] 2 JCBD 320

*Public Prosecutor v Pg Abdul Rahman Bin Pg Shahbudin* [2003] 1 JCBD 138

**Steven Chong, C.J.:**

Introduction

On 30 December 2022 in the Intermediate Court the appellant pleaded guilty to five charges under the Penal Code: armed robbery contrary to section 398 (1<sup>st</sup> Charge); outraging modesty contrary to section 354 (2<sup>nd</sup> Charge); robbery contrary to section 392 (3<sup>rd</sup> Charge); and theft contrary to section 379 (4<sup>th</sup> and 5<sup>th</sup> Charges).

Judge Pengiran Masni Binti Pengiran Haji Bahar imposed an aggregate sentence of 22 years' imprisonment and 24 strokes.

The appellant appeals against that sentence.

The facts

In brief the facts were as follows.

### 1<sup>st</sup> and 2<sup>nd</sup> Charges

On the morning of 18 October 2021 the appellant was riding his bicycle in Bengkurong when he saw a woman ("X") inside a Kia Picanto car parked on the side of the road. "X" stopped the appellant to ask him for directions to a house. He offered to show her the way and got into the car.

As "X" was driving the appellant suddenly took out a knife, punched her stomach and slapped her. He told her to stop the car and to get out. When she refused to leave the car he got into the driver's seat and drove to a secluded area. After parking the car he forcibly lifted her dress and rubbed his penis on her genital area until ejaculation. He then forced her out of the car and drove off with her handbag.

### 3<sup>rd</sup> charge

On the morning of 20 October 2021, two days after the offences concerning "X", the appellant was driving the Kia Picanto car he had stolen from her when he saw a woman ("Y") waiting at a bus stand. The appellant stopped at the bus stand and offered "Y" a lift to Kianggeh. He drove her to a side road, stopped the car, pushed her back against the seat and demanded money from her. He snatched a gold bracelet from her wrist and took her mobile phone before dropping her off at a shop.

### 4<sup>th</sup> Charge

In November 2021 the appellant went to a car workshop in Kampong Telisai where he stole the licence plates of a Hyundai Atos car which were then affixed on the stolen Kia Picanto car he was using. He drove the Kia Picanto car for about one month before abandoning it at the vicinity of a supermarket car park.

### 5<sup>th</sup> Charge

Also in November 2021 the appellant decided to steal a Toyota Kijang car parked outside a house at Jalan Pasir Berakas with the windows open. He entered the car and used a pair of scissors to start it. He drove to Seria in the car. The car was eventually abandoned at a car park in Lumut after it broke down.

The appellant was arrested on 30 November 2021 following police investigations.

### Previous convictions

The appellant has seventeen previous convictions of robbery, house-breaking, theft, mischief and drug consumption between 2007 and 2017.

### The sentence

In sentencing on the robbery offences (1<sup>st</sup> and 3<sup>rd</sup> Charges) the Judge referred to *Public Prosecutor v Kamarulzaman Bin Bahrum* [Criminal Trial No, 18 of 2004], in which the defendant pleaded guilty to a charge of robbery contrary to section 392 of the Penal Code and was sentenced to 10 years' imprisonment and 12 strokes. The defendant robbed the victim, who had given him a lift in his car, of his wallet and mobile phone. He had previous convictions of house-breaking, theft, receiving stolen property, extortion and drug offences.

The Judge regarded the appellant's prior conviction for robbery as an aggravating factor justifying an uplift in the starting point sentence for the robbery offences.

From a starting point sentence of 15 years' imprisonment and 12 strokes a reduction of one third was given to reflect the guilty plea resulting in a sentence of 10 years' imprisonment and 12 strokes on each charge.

As to the outraging modesty offence (2<sup>nd</sup> Charge) the Judge referred to the sentences imposed in precedent cases including *Mohamad Arif v Public Prosecutor* [2010] 2 JCBD 320, in which the court observed that convictions for offences under section 354 of the Penal Code attract sentences of between 6 months to 5 years' imprisonment.

The Judge imposed a sentence of one year's imprisonment and one stroke.

No mention was made by the Judge about the starting point sentence for this offence.

Turning to the theft offences (4<sup>th</sup> and 5<sup>th</sup> Charges) the Judge referred to *Public Prosecutor v Pg Abdul Rahman Bin Pg Shahbudin* [2003] 1 JCBD 138, in which Mohammed Saied, C.J. suggested a starting point sentence of 12 months' imprisonment for a car theft offence where the offender has a clear record.

The Judge took a starting point sentence of 15 months' imprisonment and reduced this to 12 months' imprisonment on each charge to reflect the guilty plea.

Standing back to consider the principle of totality the Judge ordered the sentences on the 1<sup>st</sup> and 2<sup>nd</sup> Charges to run concurrently and the sentences on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Charges to run consecutively and the strokes to be cumulative resulting in an aggregate sentence of 22 years' imprisonment and 24 strokes.

### The appeal

The appellant was aged 31 and worked as a sales assistant at a convenience store in Seria.

He challenges the sentence on the ground that it is excessive in comparison to the sentences imposed in other robbery cases.

### Decision

The sentences individually are within the range for offences of this nature and there is no arguable basis that they are manifestly excessive. The key question is whether the overall sentence of the Judge for the totality of the offending is manifestly excessive.

This is far from being the appellant's first encounter with the law. The Judge correctly considered his very poor record of previous convictions as an aggravating factor justifying an uplift in the starting point sentence.

Another aggravating feature we consider highly relevant is that the appellant committed these offences over a short span of 2 months and within 3 months of his release from prison after undergoing a sentence of 5 years one month and 3 strokes for house-breaking and theft offences.

We think the appellant is a dangerous man and poses a significant risk to public safety especially women. The offences in relation to X demonstrate the appellant has no inhibition of using gratuitous violence and the sexual assault was of a serious nature involving intrusion on the victim's genitalia to the point of ejaculation.

The sentence in totality properly reflected the overall criminality of the offences and the appeal is dismissed.

**STEVEN CHONG, C.J.**

**SEAGROATT, J.A.**

**WOOLLEY, J.A.**