

AMALI SYAHAM BIN MOHAMMAD

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Motion No. 7 of 2019)**

Before: Burrell P, Seagroatt and Lunn JJ A.
24th April 2019

Headnote: Assault causing grievous harm: trial: unprovoked joint attack: use of metal bar: multiple injuries: sentence of 5 years and 5 strokes reduced to 4 years and 3 strokes: excessive and disproportionate to sentence on co-accused.

Applicant in person
DPP Siti Nurjainah@Karmila binti Haji Kula for Respondent

Seagroatt, JA.:

This applicant, 21 years old was convicted after trial, on 1st August 2018 of an offence of causing grievous hurt contrary to s.326 of the Penal Code by Judge Masni of Intermediate Court. He used a metal pipe to inflict a number of injuries involving an undisplaced fracture of the ulna of his left forearm, a laceration of the top of his head and some extensive bruising of the upper part of his back and shoulders. There are photographs to show some of these injuries.

He was sentenced to a term of 5 years and 5 strokes on the 18th August 2018. He was of previous good character. His co-accused had pleaded guilty to an offence of causing hurt, contrary to section 323 for assaulting the same victim on the same date. He was sentenced to 2 months imprisonment and after serving his sentence gave evidence against this appellant at his trial.

The appellant now appeals against his sentence. He is 5 months out of time. He has explained this delay as being caused by the need to discuss matters with his family, particularly with regard to raising the money to pay for this application. Notwithstanding the difficulties of an application to appeal consequent upon significant delay after the 28 day period allowed following conviction, we proceeded to consider the merits of the appeal. The incident took place in January 2017 some 20 months before this appellant's trial. The background to this goes some way towards explaining what happened and why.

On the day in question 13 January 2017, the appellant was with his co-accused and the latter's girlfriend. The victim Mohammad Faiz Izzudin, sent a text to the co-defendant's girlfriend intending or seeking to lure her away from the co-defendant. The latter

persuaded her to send a text to Izzudin inviting him to come to the house where they were. He did so and arrived in a car, informing the girlfriend where he was, whereupon she went down to tell him that her boyfriend was coming down to “get him”.

The co-accused, the boyfriend, opened the car door, took the golf club which was inside and struck him (Izzudin). There was a conflict of evidence with the co-accused saying that the victim (Izzudin) struck him.

Then the appellant joined in the fight using a metal bar to attack Izzuddin who was, on the evidence, dragged from the car and attacked by both defendants. The attack continued in the house to which the appellant brought the victim with both defendants continuing their attack.

The appellant’s defence was that he did not intend to hit Izzuddin and was merely trying to break up the fight between Izzuddin, the victim and his co-accused, and that he did not use any weapon.

Once the police were involved the appellant made several statements of admission. There was a “voir dire” in relation to these statements so as to determine their admissibility, the appellant contending that he was treated with brutality and forced to sign the admissions.

The judge rejected the appellant’s contentions and on all the evidence convicted him of the offence. As a result he is not entitled to the usual 1/3rd discount on sentence.

The mitigation advanced following conviction was of minimal value. He was hitherto of good character but this was an unprovoked attack with the appellant seeming to take up his friend’s, the co-accused’s, cause following what appeared to be the victim’s effort to steal the co-accused’s girlfriend. The use of the metal pipe posed a threat of much greater injury and the attack persisted into the house.

The judge had regard to a number of decisions, some of this court, but each case turns on its own facts, as we have said before. Nonetheless, like other cases, this was a dangerous assault and the consequences could have been worse. Such violence with a seriously dangerous weapon calls for a deterrent sentence.

We have had regard to his mitigation before this court which in essence outlines the difficult circumstances of his family in his absence, though brought about by his own act of violence against another person. We also take the view that in comparison with his co-accused the sentence imposed was somewhat excessive and we reduce it to one of 4 years imprisonment with 3 strokes.

The appeal is therefore allowed to this extent. The sentence of 5 years and 5 strokes will be set aside and a sentence of 4 years imprisonment with 3 strokes is substituted.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A