

**NOVI YUSUF AFENDI**  
**AND**  
**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)**  
**(Criminal Appeal No. 10 of 2014)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
**25<sup>th</sup> of November 2014**

*Sentence – Culpable homicide – Section 304(1)(a) Penal Code – Life sentence reduced to 30 years imprisonment.*

Appellant in person  
DPP Suhana Hj Sudin for Respondent

**Leonard, JA.:**

The appellant Novi Yusuf Afendi, pleaded guilty before the High Court to a charge of culpable homicide not amounting to murder, contrary to section 304(1)(a) of the Penal Code. After convicting him, the court imposed the maximum available sentence, which is life imprisonment. Against that sentence he now appeals on the ground that it is excessive.

The appellant, an Indonesian national, was 27 years old at the time of the offence. The victim was a 32 year old Indonesian woman who was a flatmate of the appellant's wife in accommodation provided by their employer. According to a Statement of Facts tendered by the prosecution and agreed by the appellant they had been chatting when the appellant took the victim's mobile telephone and began playing with it. The deceased became angry, slapped him and accused him of being a thief. He lost his temper and punched her. When she shouted "Thief, thief" he became angrier: he chased her and there was a struggle. The appellant forcefully held the deceased's neck and upper jaw to prevent her from shouting, then tried to strangle her with the cord attached to an iron. The deceased fought him off and ran into a room but before she could close the door he pushed it open and threw her to the floor. Still holding the iron, he again tried to strangle her and she resisted, placing her arms over her neck and face, still shouting "Help! Thief, thief." Trying for a third time the appellant managed to get the cable round the neck of the deceased and pulled it hard until she stopped shouting and died. He put her on the bed, covered her body with a blanket and left the scene. The body of the deceased was found to have suffered no less than 65 injuries, attributed to her struggle with the appellant in an attempt to defend herself.

After his arrest the appellant made several statements in the course of which he admitted what he had done and indicated an intention to plead guilty to a charge of culpable homicide under section 304(2) of the Penal Code on the basis that he had no intention to kill. The prosecution was not prepared to accept a plea on that basis and proceeded with a charge of

murder and a charge under section 304(1). Had he been prepared, as he was later, to admit an intention to kill, a plea of guilty at the outset of the case when it came before the court would have been more substantial mitigation than his late plea after a change of mind. It was only at the close of the prosecution's case that the appellant pleaded guilty to culpable homicide under section 304(1). His plea was accepted; he agreed a statement of facts and was convicted. A plea of guilty at that stage, where the evidence which had been given against him in court was very strong, suggests a tactical decision to escape the death penalty rather than an indication of remorse. At that stage of the trial it saved very little time or expense. It appears from the record that before the appellant was sentenced, a written plea in mitigation was tendered to the court. At the time he was represented by Mr Ridzlan.

The Penal Code was amended on the 7<sup>th</sup> May 1997. Whereas up to that time the sentence for this offence was a fixed mandatory one of life imprisonment, it is now discretionary. The Public Prosecutor has been unable to find a case after that date in this jurisdiction that is comparable to this one.

The trial judges made it clear that they regarded this as a bad case of culpable homicide and they were not prepared to impose any sentence other than life imprisonment, notwithstanding the late guilty plea. However, the fact that the prosecution was prepared to accept the plea of guilty to culpable homicide must indicate that they acknowledged that the appellant had suffered grave and sudden provocation and was therefore entitled to be acquitted of murder. The court was bound to sentence on that basis. It is not open to the respondent to attempt to defend the sentence on the basis that the provocation was less than grave.

Had the trial proceeded with the result that he was convicted of the section 304(1) offence, the maximum possible sentence would have been imprisonment for the rest of his natural life. After pleading guilty to that offence he finds himself facing the same sentence. Where a defendant has co-operated with the police during the investigation and admitted what he did, albeit without admitting an intention to kill, and has pleaded guilty, even at a late stage, there ought in the eventual sentence to be some recognition of his cooperation, of his plea, and other mitigating factors.

Before this court the appellant tendered a ten page plea in mitigation in which he repeats the matters set out in a written submission tendered below by Mr Ridzlan. He expresses profound remorse and regret. He claims that he was stressed and feeling unwell at the time of the offence which was committed in the heat of the moment. A man of previous good character both here and in Indonesia, he says that he has in that country a wife (who was in Brunei at the time of the offence), young children and elderly parents in poor health as well as a sister who is permanently disabled. He had until his arrest been supporting them financially. They will doubtless suffer hardship as a result of the appellant's incarceration and it is most unlikely that their circumstances will ever permit them to journey to Brunei to visit him. Financial hardship caused to the family of a person sent to prison is not a factor to which a court can give much if any weight but the fact that the appellant is to serve his sentence in a foreign land in circumstances where unlike a local prisoner he has no realistic prospect of visits from his wife and young children is a matter that ought in a suitable case to be taken into account by way of mitigation. That might not be so where a professional criminal came to Brunei from abroad for the purpose of committing crime here. We have come to the view that in recognition of the mitigation the sentence ought to be one of imprisonment for a term of years instead of a life sentence. The term must be a long one for the trial judges were quite right in regarding the case as a bad one of its kind.

Every case will turn on its own facts and sentences in other jurisdictions will not necessarily be a good guide because the law and culture may not be the same as the law and culture here. After careful consideration of the facts of the case and the mitigating circumstances we have mentioned, including the late plea of guilty we take the view that the appropriate sentence should be imprisonment for 30 years. The appeal is allowed. The life sentence is set aside and a sentence of 30 years' imprisonment is substituted.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**