

Public Prosecutor

AND

SF Bin M

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 11 of 2022)**

Steven Chong, CJ; Seagroatt and Woolley, JJA.

Date of Hearing: 5th June, 2024.

Date of Judgment: 22nd June, 2024.

Criminal law – Outraging modesty by person in position of trust – Sentence

DPP Dk Didi-Nuraza Pg Hj Abd Latif for Public Prosecutor/Appellant.
Respondent In Person.

Cases cited:

PS Bin PHM v Public Prosecutor [Criminal Appeal No.20 of 2017]

I Bin HM v Public Prosecutor [Criminal Appeal No.12 of 2019]

Steven Chong, C.J.:

Introduction

On 14 November 2022 in the Intermediate court the respondent pleaded guilty to three charges of outraging modesty whilst being in a position of trust contrary to section 354B of the Penal Code.

The Judge sentenced the respondent to an aggregate sentence of 5 years' imprisonment and 4 strokes.

This is the Public Prosecutor's appeal against that sentence on the ground that it is manifestly inadequate.

The facts

Briefly stated the facts were as follows. The respondent is an army retiree and he has a wife and six children. The respondent was aged 43 and the three victims ("A", "B" and "C") were aged 15, 17 and 15 respectively at the time of the offences. "A" and "B" are the respondent's daughters and "C" is his niece.

“C” was the first victim. Her father is the brother of the respondent’s wife. In 2020 she lived with her grandmother in her house but would occasionally sleepover in the respondent’s house as she was close to her cousins “A” and “B”.

Sometime in the night between October and November of that year “C” was sleeping in her cousins’ bedroom when the respondent came in. He laid down next to her and she felt his erect penis pressing onto her buttocks repeatedly. She screamed in fear and he grabbed her neck and told her to be quiet. She managed to push him away and ran out of the bedroom.

The respondent’s wife was woken up by the scream of “C” and she found her in tears. The respondent’s wife confronted him after “C” revealed what he had done. The respondent pretended as if nothing had happened and went to bed.

“B” was the second victim. Sometime between January and February 2022 at about midnight “B” was asleep in the bedroom which she shared with her sister “A” when she was woken up by someone touching her vagina. She was shocked to find her father in bed with her. He left the bedroom after she woke up.

On the next day “B” told her mother of the incident and when the respondent was questioned he simply said he was drunk at the time.

“A” was the third victim. At about midnight on 28 October 2022 she was asleep in her bedroom with two younger sisters aged 4 and 9 when the respondent entered and woke her up. He then pulled her to his bedroom. Inside his bedroom he told her to massage his feet. After that she was asked to lie down next to him in bed to watch a pornographic video on his mobile phone. He then demanded to have sexual intercourse with her. She was shocked and refused. He touched her breasts and pulled her hand toward his penis. She ran out of the bedroom and hid in the kitchen. She took a knife to protect herself but when he approached she fled from the house in panic.

She went to a neighbour’s house to ask for help and was taken to Muara Police Station to make a report.

The sentence

The Judge considered a number of precedent cases under section 354B of the Penal Code including *PS Bin PHM v Pubic Prosecutor* [Criminal Appeal no, 20 of 2017] in which this court upheld an overall sentence of 6 years’ imprisonment and 4 strokes imposed on the appellant after he pleaded guilty to six offences involving his two daughters.

She took a starting point sentence of 5 years’ imprisonment and 5 strokes and reduced this to 3 years’ imprisonment and 2 strokes for the guilty plea on each charge with the sentences of

imprisonment to be concurrent and the strokes to be non-cumulative save for one year and one stroke on two of the charges to be consecutive and cumulative.

In the result the sentence was 5 years and 4 strokes.

Submissions

DPP Dk Didi-Nuraza submits that the total sentence of 5 years and 4 strokes is too low in comparison with the sentences imposed in *PS Bin PHM* (supra) and *I Bin HM v Public Prosecutor* [Criminal Appeal No.12 of 2019] (sentence of 6 years' imprisonment and 4 strokes imposed on the appellant after he pleaded guilty to four charges under section 354B of the Penal Code in relation to his two daughters upheld by this court).

She argues for a higher sentence having regard to the following features in the case: (1) the sexual assaults became progressively serious and involved intrusions on the private parts of the victims; (2) the appellant showed no remorse and continued with the sexual assaults despite being confronted by his wife and in his mitigation plea attributed his commission of the offences to his wife's "*lack of affection*" for him; and (3) the victims were traumatized by the sexual assaults.

The respondent contends that the sentence imposed was fair considering his cooperation with the police during investigation, guilty plea, clear record and remorse for his acts.

Decision

We agree with the submission of the prosecution that the sentence is unduly lenient.

A severe sentence is necessary considering (1) the gross breach of trust and authority by the appellant as father of two of the victims and uncle of one of them; (2) there were three victims; (3) the young age of the victims; (4) the offences occurred over a long period; (5) the sexual assaults were of a serious nature; and (6) the appellant's attempt to shift blame for his criminal acts on his wife for her "*lack of affection*".

In our view an overall sentence of 6 years' imprisonment and 4 strokes is appropriate to reflect the overall criminality of the offences.

We therefore order the sentences of imprisonment of 3 years on the first two charges to be concurrent and the strokes to be non-cumulative but the sentence of imprisonment on the third charge is to be consecutive and the strokes cumulative.

The appeal is allowed and the sentence of the court below is quashed and substituted with a sentence of 6 years' imprisonment and 4 strokes.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.