

**ISHAK BIN HJ MUSA**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 12 of 2019)**

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Before: Burrell P, Seagroatt and Lunn JJ A.

**Date of Hearing: 7<sup>th</sup> November 2019**

**Date of Judgment: 19<sup>th</sup> November 2019**

*Headnote: An appeal against a total sentence of 6 years' imprisonment and 4 strokes imposed on the appellant father, on his pleas of guilty, to 4 charges of assaulting one daughter in an overall period of about five years, contrary to s. 354 B, when she was aged between 12 and 17 years, and two charges of assaulting another daughter, when she was aged 9 and 17 years respectively, contrary to S. 354 of the Penal Code, Cap. 22 was dismissed.*

Appellant in person

DPP Nor Hafizah binti Ahmad for Respondent

**Cases referred to in the judgment**

*Pg Shamri Bin Pg Haji Metussin vs Public Prosecutor (CA No. 20 of 2017; unreported, 2 May 2018)*

**Lunn, JA.:**

1. This is an appeal against the total sentence of 6 years' imprisonment and 4 strokes imposed on the appellant on 17 July 2019 by Stephen Chong CJ, following the appellant's conviction on his pleas of guilty on 8 May 2019 to four charges of assaulting his daughter, Ms X, a person under the age of 18 years, whilst he was in a position of trust or authority towards her, intending to outrage her modesty, contrary to section 354B (Charges 1 to 4) and two charges of assaulting another of his daughters, Ms Y, intending to outrage her modesty, (Charges 5 and 6) contrary to section 354 of the Penal Code, Cap. 22.

*The facts*

2. In pleading guilty to the six charges on 8 May 2019, the appellant accepted the Statement of Facts as the basis for the Court accepting those pleas of guilty. Ms X and Ms Y were two of the six children born to the appellant and his wife. Some of the offences were committed whilst the family lived in one home and then, after the

appellant and his wife were divorced, some of the offences were committed when Ms X and Ms Y came to stay with their father in what remained his home in Kampong Tempuan, Telisai Tutong.

3. The offences against Ms X occurred in the overall period 2014 to 29/30 January 2019. On each occasion, being afraid of her father, Ms X did not protest or try to stop the appellant from doing what he did. The assaults began in 2014 when the appellant entered Ms X's bedroom and fondled her breasts on top of her clothes. (Charge 2) On a subsequent occasion in that year, the appellant again entered her bedroom and fondled her breasts and touched her vagina. (Charge 3.) On those occasions, Ms X was 12 years of age. Then, in the late evening of a day in 2016, when Ms X was 14 years of age, the appellant joined Ms X as she lay sleeping in her bedroom and, having fondled her breasts and touched her vagina, lifted up her shirt and sucked her nipples before pulling down her trousers and licking her vagina. (Charge 4.) Finally, on the night of 29/30 January 2019, when Ms X was 17 years of age, the appellant again entered her bedroom and, having lain alongside her on her bed, fondled her breasts and sucked her nipples, before pulling down her trousers and then touching and licking her vagina. (Charge 1)
4. The offences against Ms Y occurred in the overall period 2010 to 2018. On a date in 2010, when Ms Y was nine years of age, whilst Ms Y was sleeping in her parent's bedroom the appellant lay alongside her and, having hugged her, he touched her left breast. The appellant desisted in face of her demand that he do so. (Charge 5) At the time of that offence the appellant's wife was in hospital delivering their child. On a date in 2018, when Ms Y was 17 years of age, whilst they were in the kitchen of his home having breakfast the appellant placed his hands on her buttocks, but desisted when she grabbed his hands and told him to stop what he was doing. (Charge 6)
5. Finally, the appellant's wife, together with both Ms X and Ms Y, reported the matter to the police. In the course of the ensuing investigations the appellant admitted his misconduct towards the two victims.

### *Sentencing*

6. In sentencing the appellant, having referred, *inter alia*, to several judgments of this court, the Chief Justice said that the range of sentence for offences contrary to section 354B was between 3 years and 6 months and 6 years' imprisonment. Then, he identified factors that were relevant to the sentencing of the appellant, namely that:
  - there was a gross breach of trust and authority by the appellant as a father on vulnerable young daughters;
  - the victims were of tender age, the offences committed against Ms X were when she was aged between 12 and 17 years and those against Ms Y when she was aged between 10 and 18 years;
  - the sexual assaults were of a serious nature;
  - the offences were repeated over a period of 9 years; and

- the assaults had resulted in “detrimental psychological impact” on both victims, who felt guilt for having revealed what their father had done to them to the police.

Having regard to the gravity of the offences, the Chief Justice said that “deterrence must be the dominant consideration” in determining sentence.

#### *Starting point for sentence*

7. The judge stipulated a starting point for sentence of 6 years’ imprisonment and 3 strokes in respect of the assaults on Ms X, contrary to section 354B. (Charges 1 to 4.) In respect of the assaults on Ms Y, contrary to section 354, the judge stipulated a starting point for sentence of 3 years’ imprisonment and 3 strokes. (Charges 5 and 6)

#### *Sentence*

8. Affording the appellant a discount of one-third from that taken as the starting point for sentence, to reflect the guilty pleas of the appellant, the judge imposed sentences of 4 years’ imprisonment with 2 strokes on each of Charges 1 to 4, which sentences were to be served concurrently and 2 year’s imprisonment and 2 strokes in respect of each of Charges 5 and 6, which sentences were to be served concurrently. Then, he ordered that the sentences imposed in respect of Charges 5 and 6 be served consecutively to the sentences imposed in respect of Charges 1 to 4. Accordingly, the total sentence imposed on the appellant was 6 years’ imprisonment and 4 strokes.

#### *Notice of appeal*

9. In the Notice of Appeal, filed on his behalf by the appellant’s eldest daughter, the court was invited to reduce the sentence imposed on the appellant having regard to the adverse impact it had on his family all of whom, including his ex-wife, are dependent on him financially. The six children range in age from two to twenty years.
10. In his written submissions, in inviting this court to reduce the sentence, the appellant expressed remorse for having committed the offences and drew attention to the hardship his incarceration had caused to his family. Also, he said that he suffered from high blood pressure.

#### *The respondent’s submissions*

11. In her helpful submissions, Ms Nor Hafizah drew the Court’s attention to a number of judgments of this court in which sentences imposed in respect of offences contrary to both section 354 and 354B of the Penal Code were considered. In particular, she submitted that the judgment of this court in a *Pg Shamri Bin Pg Haji Metussin vs Public Prosecutor (CA No. 20 of 2017; unreported, 2 May 2018)* was relevant. That was one of the judgments to which the Chief Justice had referred in sentencing the appellant. She submitted that, having regard to the multiple factors

of aggravation in the commission of the offence, the judge was correct to determine that a deterrent sentence was required and that the sentences imposed on the appellant, both individually and overall, were not manifestly excessive.

12. In addition, Ms Nor Hafizah presented the court with statistics provided by the Women and Children Abuse Investigation Unit of the Royal Brunei Police Force addressing the changing incidence of reported sexual offences, including “outraging modesty” cases, in the period 2014 to the third Quarter 2019. The number of such reported cases had increased from 37 in 2014 to 57 in 2018. However, no figures were made available for the number of convictions for that offence in the years described.

### *Discussion*

13. Clearly, the judge was correct to determine that it was necessary to impose a deterrent sentence on the appellant. The offences were serious offences, committed against Ms X over a period of about five years, during which the appellant took advantage of the fact that her fear of him prevented her from protesting or resisting his sexual advances. The two offences committed against Ms Y encompassed a total period of about eight years. Notwithstanding, that she had resisted his sexual advances in 2010, nevertheless he pressed ahead with more sexual advances against her in 2018.
14. With respect, the judge was correct in his enumeration of the factors of aggravation in the commission of the offences by the appellant. Further, the individual sentences that the judge imposed on the appellant correctly reflected the gravity of the offences committed against each of the two victims.
15. The Chief Justice’s approach to sentence in ordering that the concurrent sentences of imprisonment imposed in respect of the offences committed against Ms Y be served consecutively to the concurrent sentences of imprisonment imposed in respect of Ms X resonated with the sentencing orders made by the judge in *Pg Shamri Bin Pg Haji Metussi*, which approach was approved by this court. There, the judge sentenced the appellant on his pleas of guilty to a series of offences against each of two of his daughters, contrary to section 354B of the Penal Code, when they were aged between 12 and 15 years. Four of the offences (Charges 1-4) were committed against his younger daughter in a period of three years, between October 2014 and October 2017. Two of the offences were committed against his older daughter in a period of two years in 2014 and 2015. The judge ordered that the sentences of 3 years’ imprisonment and 2 strokes which he imposed in respect of the first three charges (Charges 1-3) be served concurrently. He made a similar order in respect of the same sentences he imposed in respect of Charges 4- 6, but ordering that they be served consecutively to the sentences of imprisonment imposed in respect of Charges 1-3. Accordingly, the total sentence imposed on the appellant was 6 years’ imprisonment and 4 strokes.
16. Given the seriousness of the offences, the consequences to his family of being deprived of his support in consequence of the lengthy term of imprisonment imposed on the appellant is of little weight in this appeal.

17. Each of the psychological reports, dated 27 June 2019, to which the Chief Justice referred, said of the respective victims "... she may benefit from psychological therapy to help process her overwhelming thoughts and emotions". Although it was asserted that each victim would be seen by the "Community Psychological Division" for this purpose, regrettably at the time of the hearing of the appeal neither victim had been seen. However, the court was informed that appointments had been made for the victims to see the psychologists on 11 November 2019.
18. The Chief Justice's approach to sentencing in the instant case was entirely apposite. There is no merit in this appeal, which is dismissed.

**Burrell, P.**

**Seagroatt, J.A.**

**Lunn, J.A**