

AA Bin HMZ

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 12 of 2023)**

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

Date of Hearing: 10th June, 2024.

Date of Judgment: 20th June, 2024.

Criminal law – Outraging modesty – Sexual intercourse against the order of nature – Victim the 15 years old nephew of the offender – Sentence.

Appellant In Person.

PO Nor'adliatul Hidayah Hj Mod Zaidi for Public Prosecutor.

Cases cited:

PS bin PHM v Public Prosecutor (Criminal Appeal No. 20 of 2017]

Public Prosecutor v B Bin R

Steven Chong, C.J.:

Introduction

On 28 October 2023 in the Intermediate Court following a trial before Judge Pg Masni Binti Pg Hj Bahar the appellant was convicted of three offences under the Penal Code: two offences of outraging modesty by a person in a position of trust or authority contrary to section 354B; and one offence of sexual intercourse against the order of nature contrary to section 377(1).

The Judge imposed an aggregate sentence of 9 years 6 months' imprisonment and 4 strokes.

This is an appeal by the appellant against sentence.

The facts

The events giving rise to the appellant's conviction occurred between February 2022 and April 2022 in a flat in Subok.

In brief the offences involved the appellant forcing his 14 year old nephew to massage his buttocks and perform oral sex on him twice and having anal sex with the boy once.

The sentence

The Judge considered the appellant's abuse of trust being the victim's uncle as an aggravating factor.

She imposed concurrent sentences of 3 ½ years imprisonment and 2 strokes non-cumulative on the section 354B offences and a consecutive sentence of 6 years' imprisonment and 2 strokes cumulative on the section 377(1) offence resulting in a total sentence of 9½ years' imprisonment and 4 strokes.

The appeal

The appellant was aged 37 at the time of the offences. He appeals for the sentence to be reduced on two grounds.

First, he is a widower with six children in school and an elderly mother dependent on him.

Second, he is a first offender.

Decision

The individual sentences imposed are within the range for offences of this nature: see for example the decisions of this court in *PS bin PHM v Public Prosecutor* (Criminal Appeal No. 20 of 2017) (offence of outraging modesty); and *Public Prosecutor v B Bin R* (offence of sodomy). The crucial question is whether the overall sentence imposed was manifestly excessive.

We are satisfied there are no arguable grounds that the overall sentence imposed was manifestly excessive considering the serious nature of the multiple offences committed over a period of three months; young age of the victim; and violation of trust and authority by the appellant.

This is yet again another case where the prosecution failed to provide the Judge or this court with a psychological report on the impact of the offences on the victim. We cannot overstate

the importance of such a report to the sentencing process particularly in cases involving sexual offences.

The appeal is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.