

MOHAMMAD AZHAN BIN AWANG AHMAD

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 13 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

8th June 2021

Appellant in person

DPP Pg Norsuzanawati binti Pg Hj Abas of Public Prosecutor for Respondent

Seagroatt, JA.:

On 22nd June 2020 this 36 years old appellant pleaded guilty to an offence contrary to section 392 of the Penal Code and was sentenced to a term of 7 years imprisonment and 12 strokes by Judge Zelda Skinner.

The offence was committed on the 29th May 2020 (wrongly stated in the charge sheet and court record as 29th June 2020). The appellant was driving his motor car towards Panaga Beach when he saw a male Indian national waiting at a bus-stop in front of Panaga Golf Club. He stopped his car and offered the waiting man a lift to his staff house in Kuala Belait for fee, at that stage not known.

The Indian man got in intending to sit in the rear seat but the appellant insisted that he sat in the front passenger seat and he duly did so.

On the journey the Indian man asked about the fare amount and was told it was B\$20. He then said he had no money as he had not yet been paid his salary, and showed his empty wallet. At that the appellant locked the car doors and said that it was not a free ride.

He produced a knife and demanded payment or the handing over of his mobile phone. The mobile phone was duly handed over. When they arrived at the Indian man's destination, the appellant threw the cover of the phone out of the car. Thinking that it was his phone that had been thrown, the Indian got out of the car to retrieve it and the appellant drove off. The latter took out the phone's SIM card and deleted all data from the phone. He sold the phone for B\$30 to a friend.

Eventually the appellant was arrested on the 22nd June 2020. The victim identified him on a Police Identification Parade and also identified the knife with which he had been threatened. The knife concerned has not been produced to this Court as requested, only some photographs. It is important that the prosecution does not allow weapons, such as knives to be destroyed until at least one year after the last Court hearing. It should in any event be photographed and measured for record purposes.

This appellant has no previous convictions. He claimed before this court that he carried the knife in the car for self-protection.

After taking into account his plea of guilty, his expression of regret and his desire to change for the better, and reviewing a number of cases in which knives were used to effect the robbery, the judge, from a starting point of 10 years and 12 strokes and stressing the need to impose a sentence which it would be hoped had a deterrent value, she fixed the sentence at 7 years imprisonment and 12 strokes.

The maximum penalty is 30 years with a minimum of 12 strokes. The judge was correct to regard the use of a knife as constituting an aggravating factor.

We are satisfied that the circumstances of this case are to be distinguished substantially from the cases of robbery induced by the threat from a weapon, which have attracted sentences in the region of 10 years after trial. We accept that the knife was carried for self-protection, though that in itself is not justifiable, and used to induce the victim to pay for the "taxi" service. The proper sentence starting point is one of 6 years and 12 strokes which we reduce to one of 4 years in view of his plea of guilty.

Order

The appeal is allowed. The sentence is reduced to 4 years and 12 strokes.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A