

**MUHAMMAD ZAMI'ULHAYAT@IZZAT BIN MOHSIN**

AND

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Motion No. 15 of 2020)**

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Steven Chong, C.J.; Burrell and Seagroatt, JJ.A.

**Date of Hearing: 7<sup>th</sup> June, 2023.**

**Date of Judgment: 10<sup>th</sup> June, 2023.**

*Criminal law – Armed gang robbery – Sentence*

Appellant In Person.

DPP Hj Atiyah Azzahra POKLSDSLJ Awang Hj Abas for Public Prosecutor/Respondent.

**Cases cited:**

*Awg Jamudin Bin Hj Suhaili v Public Prosecutor* [2014] 1 JCBD 226

*Public Prosecutor v Mohammad Aimaduddin Bin Zefry* [2016] 2 JCBD 210

*Abdul Aziz Bin Haji Ali v Public Prosecutor* [2015] 1 JCBD 119

*Fuad Muzaka v Public Prosecutor* [Criminal Motion No. 11 of 2017]

**Steven Chong, C.J.:**

On 24 October 2020 in the Intermediate Court the appellant was convicted after a trial of two charges under the Penal Code: gang robbery armed with a deadly weapon contrary to section 398 (1<sup>st</sup> Charge); and theft contrary to section 379 (2<sup>nd</sup> Charge).

The co-accused, Ak Masrulizam Bin Pg Masri (“D2”) jointly charged with the appellant pleaded guilty to the charges and gave evidence for the prosecution in the trial.

Judge Hajah Hazarena Binti POKSJDJ Haji Hurairah passed concurrent sentences of 10 years’ imprisonment and 12 strokes on the 1<sup>st</sup> Charge and one year’s imprisonment on the 2<sup>nd</sup> Charge.

The appellant appeals against that sentence.

### The facts

Conviction not being challenged by the appellant the relevant facts which the Judge found proven need not be rehearsed in detail for present purposes. On the morning of 26 June 2019 the appellant accompanied by D2 was driving his Toyota Vios when they came upon two Indonesian nationals Saekhu and Edo with their car parked on the side of the road at Simpang 162 Kampong Tungku. The two Indonesians were waiting to start their work shift at the time.

The appellant approached Saekhu and asked to borrow his mobile phone to make a call. This was a ruse to distract Saekhu so that the appellant was able to steal a bag belonging to Edo which was on top of the car before driving off.

Upon discovering the bag only contained a piece of clothing the appellant and D2 returned to the scene. On this occasion the appellant took a machete from his Toyota Vios and held it to Saekhu's neck while instructing D2 to take his bag which contained \$852 before they sped off. Saekhu who had tried to stop the duo from escaping by holding onto the passenger side mirror was kicked by D2 and fell. The appellant and D2 shared the money between themselves.

### Prior convictions

In 2015 the appellant was convicted of six offences under the Penal Code: one of theft and five of forgery.

A total sentence of 2 years 2 months' imprisonment was imposed.

### The sentence

A case relied upon by the Judge for guidance on sentence for armed robbery was *Awg Jamudin Bin Hj Suhaili v Public Prosecutor* [2014] 1 JCBD 226, in which the appellant pleaded guilty to two offences of gang robbery, one of them involving the use of a deadly weapon and was sentenced to a total of 11 years 8 months' imprisonment and 12 strokes. On appeal this court substituted a sentence of 9 years' imprisonment and 12 strokes. This meant the starting point sentence would have been 13 ½ years' imprisonment if the appellant had been convicted after a trial.

Turning to the theft offence the Judge referred to *Public Prosecutor v Mohammad Aimaduddin Bin Zefry* [2016] 2 JCBD 210 in which this court reaffirmed the decision in *Abdul Aziz Bin Haji Ali v Public Prosecutor* [2015] 1 JCBD 119 that even for a minor theft a sentence of 6 months' imprisonment after a guilty plea would be appropriate.

The Judge noted that the appellant had been convicted after a trial and was therefore not entitled to the one third discount afforded for a guilty plea. An overall sentence of 10 years' imprisonment and 12 strokes was imposed.

The appellant says the sentence is excessive and will cause hardship to his family. He points out that his accomplice, D2, was sentenced to 6 years' imprisonment and 12 strokes and in *Fuad Muzaka v Public Prosecutor* [Criminal Motion No. 11 of 2017] the two appellants were similarly convicted of armed robbery and sentenced to 7 years' imprisonment and 12 strokes.

We find no merit in the appellant's complaints. It is often the case that the imprisonment of an offender will cause hardship to his family but it cannot be one of the factors which can affect what would otherwise be the right sentence. The sentences imposed in the case of D2 and in *Fuad Muzaka* took into account the fact that guilty pleas were entered.

The appellant committed two offences within a short span of time, first, stealing from the victim and then returning to rob him the second time when he found what he had stolen was of little value. It was a brazen robbery on the side of a public road in broad daylight using a deadly weapon to threaten the victim. He was convicted after a trial. He has prior convictions for theft and forgery which is an aggravating factor.

Protection of public safety has an important role to play in the sentencing of an offender. General and specific deterrence weighs heavily in favour of a deterrent sentence in the circumstances.

The sentence is not excessive and the appeal is dismissed.

**STEVEN CHONG, C.J.**

**BURRELL, J.A.**

**SEAGROATT, J.A.**

