

**MZM Bin AT**

AND

**Public Prosecutor**

---

**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 15 of 2021)**

---

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

**Date of Judgment: 25 November 2023.**

*Criminal law – Incestuous rape and other sexual offences against two young daughters –  
Sentence*

Nuratikah Binti Hj Omar (M/S Ridzlan & Co.) for the Appellant.

DPP Hjh Rozaimah Bte Hj Abd Rahman and DPP Hjh Atiyah Azzahra POKLSDSLJ Awg Hj Abas for  
Public Prosecutor/Respondent.

**Cases cited:**

*A.I v Public Prosecutor* [2004] 2 JCBD 185

*Richardson and others* [2006] EWCA Crim 3186

**J U D G M E N T**

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

Introduction

On 10 June 2021 in the High Court before Judicial Commissioner Hj Abdullah Soefri Bin POKSM DSP Hj Abidin the appellant was convicted after trial of ten sexual offences against his two young daughters (“X” and “Y”).

Specifically, the charges were as follows:

- (a) Against “X”, there were seven charges: (i) two charges of rape contrary to section 376(2)(c) of the Penal Code (1<sup>st</sup> and 2<sup>nd</sup> Charges); (ii) three charges of outraging modesty contrary to section 354B of the Penal Code (3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Charges); (iii) one charge of causing a person under the age of 16 to watch a pornographic video contrary to section 377C of the Penal Code (4<sup>th</sup> Charge); and (iv) one charge of taking an obscene video of a

child (a person under the age of 18 years) contrary to section 293B of the Penal Code (5<sup>th</sup> Charge).

- (b) Against “Y”, there were three charges: (i) one charge of outraging modesty contrary to section 354B of the Penal Code (8<sup>th</sup> Charge); and (ii) two charges of rape when “Y” was under 14 years of age contrary to section 376(3)(c) of the Penal Code (9<sup>th</sup> and 10<sup>th</sup> Charges).

The Judge imposed an aggregate sentence of 30 years’ imprisonment and 15 strokes less 50 days for the period when the appellant was remanded in custody.

This is an appeal against sentence by the appellant on the ground that it is manifestly excessive.

### The facts

Briefly summarized the offences were committed by the appellant against his two daughters over a span of about three years between 2017 and 2019 on ten separate occasions in the family home. He raped “X” twice when she was 14 years old (1<sup>st</sup> and 2<sup>nd</sup> Charges); and when she was 15 years old, he licked her vagina (3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Charges); caused her to watch a pornographic video of persons having sexual intercourse on his mobile phone (4<sup>th</sup> Charge); and used his mobile phone to take a video of himself inserting a perfume bottle into her vagina (5<sup>th</sup> Charge).

The appellant, when “Y” was 12 years old, licked and inserted his finger into her vagina (8<sup>th</sup> Charge); and raped her twice (9<sup>th</sup> and 10<sup>th</sup> Charges).

### The sentence

In sentencing on the rape offences the Judge was guided by a number of authorities including *A.I v Public Prosecutor* [2004] 2 JCBD 185, where this court, after reviewing a long line of cases, concluded at 188:

*“We are satisfied that the present level of sentencing in Brunei Darussalam indicates that a proper sentence after plea for the rape of a daughter of tender years is 10 years and 12 strokes.*

*This indicates a starting point after trial of 15 years. We are satisfied that if this offence is repeated it should properly attract an increased sentence and that some account when sentencing should be taken of the fact that force was used.”*

The Judge imposed the following sentences:

1<sup>st</sup> Charge (section 376(2)(c) of the Penal Code): 12 years’ imprisonment and 12 strokes.

2 <sup>nd</sup> Charge (section 376(2)(c) of the Penal Code):	12 years' imprisonment and 12 strokes.
3 <sup>rd</sup> Charge (section 354B of the Penal Code):	4 years' imprisonment and 3 strokes.
4 <sup>th</sup> Charge (section 377C of the Penal Code):	2 years' imprisonment.
5 <sup>th</sup> Charge: (section 293B of the Penal Code):	4 years' imprisonment.
6 <sup>th</sup> Charge: (section 354B of the Penal Code):	4 years' imprisonment and 3 strokes.
7 <sup>th</sup> Charge (section 354B of the Penal Code):	4 years' imprisonment and 3 strokes.
8 <sup>th</sup> Charge (section 354B of the Penal Code):	4 years' imprisonment and 3 strokes.
9 <sup>th</sup> Charge (Section 376(3) of the Penal Code):	16 years' imprisonment and 12 strokes.
10 <sup>th</sup> Charge (Section 376(3) of the Penal Code):	16 years' imprisonment and 12 strokes.

The Judge ordered the imprisonment sentences on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Charges to be concurrent; and the 9<sup>th</sup> and 10<sup>th</sup> Charges to be concurrent but consecutive to the 1<sup>st</sup> to 8<sup>th</sup> Charges.

As to the sentence of whipping, save for the strokes on the 8<sup>th</sup> Charge which would be cumulative, the strokes on all the other Charges would be non-cumulative.

In the result the total sentence was 30 years' imprisonment and 15 strokes.

### The appeal

Counsel for the appellant concedes that there were a "*number of significant issues*" in the case "*especially the Appellant's campaign of assault directed against victims under his care [which] can be described as nothing short of disturbing*".

Nevertheless, it is submitted that the sentence imposed was excessive considering the appellant was a first offender and there "appears to be some conceivable opportunity for redemption" which the Judge failed to take into account in his favour.

### Decision

The guidelines on sentencing in cases of incestuous rape laid down by this court in *Al v Public Prosecutor* nearly 20 years ago applied to rape offences under section 376(1) of the Penal Code

punishable under section 376(2) with a mandatory minimum sentence then of 8 years' imprisonment and 12 strokes.

On 24 July 2017 significant statutory changes were made to the mandatory minimum punishment for rape under section 376(1) of the Penal Code.

Section 376(2) provides for a mandatory minimum sentence of 10 years' imprisonment and 12 strokes.

Section 376(3) provides for a mandatory minimum sentence of 15 years' imprisonment and 12 strokes.

In *Richardson and others* [2006] EWCA Crim 3186, the court said at [4]:

*"Statutory changes in sentencing levels are constant. In recent years, maximum sentences have been increased (for example, drug related offences) or reduced (for example, theft). In general changes like these provide clear indications to sentencing courts of the seriousness which the criminal conduct addressed by the changes is viewed by contemporary society. In our parliamentary democracy, sentencing courts should not and do not ignore the results of the legislative process, and as a matter of constitutional principle, reflecting the careful balance between the separation of powers and judicial independence, and an appropriate interface between the judiciary and the legislature, judges are required to take such legislative changes into account when deciding the appropriate sentence in each individual case or where guidance is being offered to sentencing courts, in the formulation of the guidance."*

We think an upward adjustment of the guideline sentences in *AI v Public Prosecutor* is necessary to take into consideration the increased mandatory minimum sentences for the offence of rape.

In relation to rape contrary to section 376(2) of the Penal Code the starting point should be 18 years' imprisonment and 15 strokes reduced to 12 years' imprisonment and 12 strokes on a guilty plea.

As to rape contrary to section 376(3) of the Penal Code the starting point should be 27 years' imprisonment and 15 strokes reduced to 18 years' imprisonment and 12 strokes on a guilty plea.

A higher sentence may be imposed where there are multiple offences.

The individual sentences imposed by the Judge for the ten offences were well within the permissible sentences for these offences on the authorities he relied on in sentencing and we see no basis to intervene.

As to the total sentence of 30 years' imprisonment and 15 strokes, we are satisfied that this was justified by the collective weight of the aggravating factors present. The ten separate offences were committed by the appellant over a period of some three years against his two young daughters in the family home and there was a shocking level of depravity in his actions.

The appeal is dismissed.

**STEVEN CHONG, C.J.**

**BURRELL, J.A.**

**SEAGROATT, J.A.**