

Mohammad Khairol Azizan Bin Abd Karim

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 17 of 2021)**

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

Date of Hearing: 4th June, 2024.

Date of Judgment: 12th June, 2024.

Criminal law – Gang-robbery – Sentence

Appellant In Person.

PO Ahmad Firdaus Bin Haji Mohamad for the Public Prosecutor.

Case cited:

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

Steven Chong, C.J.:

Introduction

On 26 June 2021 in the Intermediate Court the appellant who had at first claimed trial pleaded guilty to gang-robbery contrary to section 395 of the Penal Code.

The Judge sentenced him to 5 years' imprisonment and 12 strokes.

The appellant appeals against that sentence.

The facts

Briefly summarised on the night of 11 January 2015 the appellant lost \$2,000 to the complainant gambling. The appellant was a sore loser. He told the complainant he would pay him the next day but had no intention to do so.

On the following day the appellant with another man drove to a car park in Kampong Tungku to meet the complainant. As soon as they exited their car the appellant who was armed with a metal rod attacked the complainant and robbed him of \$1,000.

The complainant suffered injuries to his left hand and a police report was made leading to the arrest of the appellant.

The sentence

In assessing sentence the Judge referred to a long line of gang-robbery cases including *Awg Jamudin Bin Hj Suhaili v Public Prosecutor* [2014] 1 JCBD 226, in which this court considered a sentence of 9 years' imprisonment and 12 strokes appropriate for an offence of gang-robbery involving the use of a deadly weapon on a guilty plea.

The Judge took into consideration the appellant's "*previous conviction*" and decided on a starting point of 9 years' imprisonment and reduced this to 6 years' imprisonment for the guilty plea. A further reduction of one year was accorded for the delay in the prosecution.

The appeal

The appellant is a widower and he appeals for the sentence to be reduced primarily on the ground that it will cause hardship to his three children who are dependent on him.

The prosecution concedes that: (1) the Judge was mistaken in thinking the appellant had a previous conviction when he was a first offender; and (2) a reduction in sentence should have been accorded to the appellant for giving evidence favourable to the prosecution in the trial against his accomplice.

Decision

This court has said time and again that 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.

We find it difficult to understand why the prosecution did not assist the court by informing the Judge that the appellant was a first offender when she gave her reasons for sentence.

It is important that the prosecution understand that it has a duty to the Court as well as to any defendant, and that duty always extends to correcting a judge if he/she makes an error of fact or law in the course of his/her formal findings or judgment.

Notwithstanding the Judge's error in considering the appellant had a previous conviction the starting point sentence imposed was within the range for gang-robbery cases even for an offender with a clear record and she gave appropriate reductions in the sentence for the guilty plea and delay in the prosecution.

That said we think a reduction of one year in the sentence is proper to reflect the assistance which the appellant provided to the prosecution.

The appeal is allowed to the extent that the sentence of 5 years' imprisonment is substituted with 4 years' imprisonment and the 12 strokes being mandatory to remain.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.