

**COPY**

MUHAMMAD AZRI BIN AZMAN

AND

PUBLIC PROSECUTOR



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(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 19 of 2015)

Before: Mortimer P, Leonard and Burrell JJ A.  
30<sup>th</sup> November 2015

*Headnote: Sentence for gang robbery (s.391 CAP 22) and rape (s.376(1) CAP22). Totality principle considered 18 years and 12 strokes reduced to 14 years and 12 strokes.*

Appellant in person.

DPP Siti Nurjainah@Karmila Hj Kula (Public Prosecutor) for the Respondent

**Cases referred:**

*Yurawandy bin Bujang v Public Prosecutor (Criminal Appeal No 31 of 2014).  
Azman bin Pungut and another v Public Prosecutor (Criminal Appeal No 3  
of 2004).*

**Burrell, JA.:**

On 20<sup>th</sup> October 2015 the appellant was sentenced by Judge Nabil in the Intermediate Court to a total of 18 years imprisonment and 12 strokes having pleaded guilty to 2 offences. The first was a gang robbery contrary to s.391 of the Penal Code CAP 22 committed on 5<sup>th</sup> October 2015 with a co-accused, for which a sentence of 8 years imprisonment and 12 strokes was passed. The second was an offence of rape punishable under s.376 (1) of the Penal Code CAP 22, for which a sentence of 10 years imprisonment and 4 strokes was passed. The two sentences were ordered to be served consecutively but the strokes to be non-cumulative making a final sentence of 18 years and 12 strokes.

He now appeals to this court on the ground that the sentence was manifestly excessive. His co-accused was charged with the gang robbery offence only, to which he also pleaded guilty, and was sentenced to 8 years imprisonment and 12 strokes.

**The Facts**

The victim of both offences was the same 17 years old girl who lived in Temburong. She was subjected to a terrifying ordeal the detailed facts of which were described by the sentencing judge as "disturbing".

The girl had advertised on Facebook from her home that she was looking for a better job, in an attempt to improve her circumstances, in the Brunei-Muara district. The appellant answered her advertisement and invited her to come and stay with him in Jerudong to help her look for work, which she did on 1<sup>st</sup> October 2015.

However, in the evening of 5<sup>th</sup> October, she was subjected to a sustained violent attack in which she was assaulted, robbed and raped. It was said, and accepted by the judge, that the attacks were prompted by the appellant's, and his co-accused's need for money to buy drugs. They covered the girl's head with a towel, punched her in the face repeatedly, tied her hands and feet, put tape across her mouth so she could not shout for help and neither could she see anything with the towel around her head.

At this point the co-accused left the room. The appellant then raped the girl whilst she was tied, gagged and blindfolded.

Both men then bundled her into a car, drove around the vicinity for some time before deciding to pull her out of the car and abandon her, still bound and gagged, in the Kampong Panchor Murai district. She was left without any belongings. \$130 and her mobile phone had been stolen from her in the course of the assaults. She was abandoned in a helpless, frightened and injured condition. It was a shameful, unforgiveable act of gratuitous violence on her person and on her dignity.

She was fortunately rescued by Police the same night and taken to hospital. She was examined the next day.

The photographs and medical report record that she sustained serious bruising to her left eye, abrasions to her feet, ankles, hands and wrists where she was tied up with nylon cord and emotional upset. The psychological trauma will, no doubt, remain for a very long time.

The appellant and his co-accused were arrested on 10<sup>th</sup> October 2015. They were brought before the court on 17<sup>th</sup> October and pleaded guilty at the earliest opportunity.

The appellant is 19 years old and has no previous convictions. In a letter to the court he asks for a reduction in sentence as his father had died and his mother and the rest of the family are experiencing hardship. He asks for compassion.

### **Sentence**

In a helpful and detailed reasons for sentence, the judge gave careful consideration to all the relevant factors. He correctly observed that apart from the plea of guilty and the lack of a criminal record at the age of 19 there was little or no mitigation.

Offences of such seriousness, committed with callous indifference on a vulnerable and defenceless 17 year old girl could only be dealt with by way of a very long sentence of imprisonment. The judge referred to two comparable cases *Yurawandy bin Bujang v Public Prosecutor (Criminal Appeal No 31 of 2014)* and *Azman bin Pungut and another v Public Prosecutor (Criminal Appeal No 3 of 2004)*.

The first was a case of robbery and rape committed by a drug addict. The defendant had broken into a teachers' hostel wearing a mask and armed with a knife during the night.

He assaulted and robbed two Taiwanese student teachers at knifepoint. He tied up and gagged one of them and later raped the other one. On appeal this court reduced the sentence of 17 ½ years (made up by 7 ½ years for the robbery and 10 years for the rape) to 16 years, which was still a heavy sentence. The issue which led to the reduction was the proper application of the principle of totality.

### *The Appeal*

In the case before us the sentencing judge correctly determined the starting point for each offence first of all. He then reduced each sentence by one third to reflect the pleas of guilty. For the gang robbery he selected 12 years and 12 strokes, reduced to 8 years and 12 strokes, the minimum number of strokes permissible for a s.391 offence. For the rape he selected 15 years imprisonment and 4 strokes reduced to 10 years and 4 strokes.

For the individual offences these sentences were entirely appropriate.

### *Totality*

The judge decided to order the sentences of imprisonment to be served consecutively, thus 18 years for both offences, "after having regard to the totality principle."

Earlier he had said "there is an overriding need to impose a term of sufficient gravity and deterrence in the public interest so that the offender is sufficiently punished and others similarly disposed would equally be deterred from committing such offences".

We entirely agree but the questions remain was it appropriate to make the two sentences wholly consecutive and was the result manifestly excessive?

For two reasons we have come to the conclusion that the sentences should, in part, have been ordered to run concurrently.

First, although these were two separate and different offences it was nonetheless a single continuous assault, physical at first, sexual later, committed on the same victim, in the same room by the same man.

Secondly, the starting point without the one third discount for the pleas of guilty would be 27 years imprisonment. This is too high even for this grave and wicked conduct. Bearing in mind that the starting point for the s.391 offence was 12 years the increase from 12 to 27 years because the assault was concluded by an act of rape is too much. We have come to the conclusion that had this matter been contested a final sentence of 21 years imprisonment would have been appropriate. This would have been achieved by making 9 years of the rape sentence consecutive to the 12 years starting point for the gang robbery.

Therefore, after the usual discount of 1/3 for the pleas of guilty 6 years of the 10 years for the rape charge shall be served consecutively to the 8 years for the gang robbery.

Thus we are satisfied that all the principles of sentencing, correctly noted by the judge in this difficult and disturbing case, are still met by these partially, rather than wholly, consecutive sentences for a 19 year old with no previous convictions.

**Order**

We allow the appeal to this extent and make the following order,

- i. Gang robbery s.391 : 8 years and 12 strokes.
- ii. Rape: 10 years and 4 strokes.

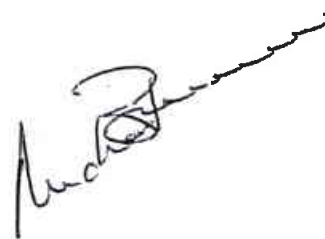
6 years of the 10 years for rape shall be served consecutively to the 8 years for the gang robbery and the strokes non-cumulative so that the sentence shall now be 14 years and 12 strokes.



**Leonard, J.A.**



**Mortimer, P.**



**Burrell, J.A.**