

PG MOHD AZHARUDDIN BIN PG HJ TAJUDDIN

AND

PUBLIC PROSECUTOR

**Court of Appeal of Brunei Darussalam
(Criminal Appeal No. 19 of 2020)**

Before: Burrell P, Seagroatt and Lunn JJ A.

Date of hearing: 1st November 2022

Date of judgment: 12th November 2022

Appellant in person

DPP Hajah Rozaimah binti Haji Abdul Rahman for Respondent

Seagroatt, JA.:

This now 32 years old appellant pleaded guilty on the 1st December 2020 to an offence of armed robbery contrary to section 392 of the Penal Code Cap 22. He appeared before Judge Radin Safiee in the Intermediate Court and was sentenced by him on the 5th December 2020 to a term of 8 years imprisonment and 12 strokes. By law the minimum term for such a offence is 7 years imprisonment with 12 strokes.

The appellant's Notice of Appeal is dated the 21st December 2020 and therefore is in time. The circumstances of the offence disclose a deliberate if somewhat opportunistic decision to steal some items from a convenience store manned only by the ultimate victim. There was no other person in the immediate area at the time, shortly before 0800 hours.

On entering the store the appellant collected a bottle of water and paid for it. He was wearing a Covid-19 type mask which substantially covered his face. He then went to his car to get a knife. On returning to the store he collected a number of items and took them to the pay counter, ostensibly to pay for them. As the cashier victim was totalling the cost, the appellant pointed the knife at the victim's neck, who then grabbed the knife. There was a struggle with the appellant managing to pull the knife free from the victim's hand, but wounding him in so doing. The victim had acted with courage.

The appellant seized a black bag containing some valuable items. He tried to set light to a paper plate with a lighter and then left the store. Fortunately the victim was able to alert a friend who worked nearby and this person took details of the appellant's car. By reason of this information, the police were able to trace the appellant and he was arrested on the same day (29 November 2020) in the evening.

In sentencing him the judge expressly took account of his plea of guilty at the outset, his previous good character and recorded his plea for leniency in view of the hardship his imprisonment would inflict upon his family, though this last factor as the judge correctly said as a matter of law, was not to be taken into account. He had brought this resulting misery upon himself.

From a starting point of 12 years he reduced the sentence to 8 years to reflect the proper discount. The addition of 12 strokes was the minimum to be imposed by law.

The appellant's own submission in mitigation submitted on 27 August 2022 (but dated 15 August 2022) contains the same basic points made by him to the sentencing judge, including the family hardship consequent upon his sentence, which we have earlier indicated is not a matter of mitigation.

The carrying and use of the knife to terrorise and inevitably to wound were aggravating features. We have not been supplied by the Prosecutor with a medical report on the victim so as to know whether or not he has fully recovered from the wound to his hand. It is always important that the court should be presented with medical evidence in such a case. The information presented was very limited. We specifically asked for an up-to-date medical report. The factual report on admission to hospital fills in one gap but the employer's letter merely confirms he is still in work but has difficulties. Therefore the current and long-term prognosis is unknown to this court.

We have been referred by the Public Prosecutor to a number of decisions in cases which have some similarities with the circumstances of this case. Section 398 of the Penal Code stipulates a minimum sentence of imprisonment of 7 years for such an offence. We do not consider the sentence imposed upon this appellant to be manifestly or at all excessive.

Burrell, P.

Seagroatt, J.A.

Lunn, J.A