

PG SHAMRI BIN PG HAJI METUSSIN

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 20 of 2017)**

Before: Mortimer P, Burrell and Seagroatt JJ A.
2nd May 2018

Headnote: *Offences of outraging modesty of daughters [s.354B of Penal Code] over period in excess of two years – equivocal plea argument rejected – two offences charged – consecutive terms of 3 years and 2 strokes totaling 6 years and 4 strokes after discount applied for pleas of guilty – gross abuse of trust – sentences not manifestly excessive.*

Appellant in person
DPP Hjh Rozaimah binti Haji Abd Rahman for Respondent

Cases cited in the Judgment:

South Thameside Magistrates Court ex parte [1983] 3 All ER 689
S. (An infant) – v – Recorder of Manchester [1971] AC 481

Seagroatt, JA.:

This is an application for an Order to set aside pleas of guilty entered by the appellant to counts of outraging the modesty of two daughters over a period of time in excess of two years when they were between the ages of 12 and 15 years. The pleas were entered on the 22nd November 2017 and he was sentenced on the 27th November 2017 by Judge Lailatul Zubaidah. The Statement of Facts was read and agreed by him on the 23rd November 2017. He was unrepresented throughout. His notice is dated the 18th December 2017 and so is in time.

The sentences imposed on each count were ones of 3 years imprisonment and 2 strokes. This is the minimum sentence under section 354B of the Penal Code (CAP.22). The first four counts related to identical offences against his younger daughter committed between October 2014 and October 2017, and the last two were identical offences against his older daughter committed sometime in 2014 and 2015. They were offences which the judge regarded as a “case of prolonged molestation, spanning over at least 2 years.”

The sentences on the first three counts were ordered to be concurrent with each other (therefore a total of 3 years imprisonment and 2 strokes) and the sentences on the

other three counts were ordered to be concurrent with each other (making a total of 3 years imprisonment and 2 strokes) but consecutive to the penalties on the first three counts thus making a total of 6 years and 4 strokes.

His Notice of Appeal contains an application to withdraw his pleas of guilty on the following grounds:

1. He did not want to plead guilty.
2. He was not given the opportunity to meet and obtain advice from his family and a lawyer before entering his plea.
3. He alleges that a Sgt. Nasrullah promised that he would not be imprisoned.
4. He alleges that he told the "lady prosecutor", that he wanted to retract his plea to which she responded "Pity the children".
5. He feared that his children would be taken to a welfare home before he was sentenced on the 27th November 2017.

This last point is not expressed clearly but appears to suggest that he was prepared to maintain his pleas of guilty up to and including the sentencing in order to prevent his children being taken into care.

He says that efforts by his wife in the meantime to contact the prosecutor to indicate that he wished to retract his pleas had been unsuccessful.

The law in relation to the retraction of pleas of guilty is clear. Where the plea is unequivocal, "once entered the discretionary power (to allow that plea to be vacated) should be exercised judicially, vary sparingly and only in clear cases" (Per Glidewell, J) (South Thameside Magistrates Court *ex parte* [1983] 3 All ER689)

Lord Morris of Borth – Y – Gest in *S. (An infant) – v – Recorder of Manchester* [1971] AC 481, said:

"The finding of guilt may involve reaching a conclusion in regard to disputed or contested facts. It may involve proceeding on the basis of or accepting a confession made in court by way of an unequivocal and unambiguous plea of guilty which so far as the court can tell was intentionally made with full appreciation of all that it involved."

The first hurdle for this appellant to overcome is the fact that sentence had been passed, after two earlier court appearances, before he raised the matter of an equivocal plea.

On the first occasion on the 22nd November 2017 when each count was read to him, he pleaded guilty and said that he understood the charge and penalty. The record of the proceedings shows this. That is signed by the sentencing judge.

The next day the Statement of Facts was ready and read out in court and he is recorded as saying that he admitted the statement and, in mitigation, said "I plead guilty to the offences that I committed. I apologise to my wife and children." When asked why he committed the offence, he replied "I did not think wisely."

The Statement of Facts contains the following: "The defendant admitted that all the sexual assaults were committed on his daughters because he could not get enough satisfaction from his sexual relationship with his wife." It is not clear however whether this explanatory admission was made in the course of an interview with Police Officers or in a written statement although no issue arises in respect of that.

The fact that he was unrepresented is not in the circumstances of this case a relevant matter. He says that he was influenced by a Police Officer but he had three opportunities to change his pleas before sentencing when he well knew the maximum penalty. His concern, as now expressed, was to avoid imprisonment but the penalties were clearly explained to him and he acknowledged this. He had had two occasions overnight to consider his position.

Following acceptance by him of the Statement of Facts, containing his version of the circumstances giving rise to the offences against his daughters, he said "I apologise to my wife and daughters."

We are satisfied that this appellant tendered unequivocal pleas. He well understood the nature of the alleged offences, he gave some sort of explanation for committing them and expressed remorse. Furthermore he understood the nature of the penalties. This is a belated attempt to find some way of avoiding a valid conviction and inevitable imprisonment. There is no merit in his application.

The pleas being unequivocal ones and properly tendered, there can be no grounds for appealing against conviction and in so far as the applicant's Notice constitutes an appeal against conviction, that appeal is dismissed.

The matter remaining is his appeal against sentence.

The offences against his two daughters are identical in nature though committed in different situations, but mainly in the family home. They consisted of sexual assaults falling short of any attempted penetration.

They came to light as a result of a complaint by the younger daughter to the Deputy Principal of her School who had been alerted to the sexual assaults by a friend of the daughter in whom the daughter had confided.

Following a Police investigation the appellant admitted the offences as reflected in the Statement of Facts.

We have already set out the sentences imposed. The section of the Penal Code, 354B, prescribes a minimum term of 3 years imprisonment with whipping. The judge imposed this minimum term with 2 strokes on each count.

These offences were rightly described by the Judge as appalling examples of gross abuse of trust over more than two years. She recognized the need for a deterrent sentence.

She was right to make the second group of concurrent sentences consecutive to the first group to achieve the total of 6 years imprisonment, with the overall term reflecting the pleas of guilty. The starting point was thus 9 years plus strokes.

The 6 year term is by no means excessive. This was a serious case. The maximum sentence is 10 years imprisonment after trial.

These sentences individually and overall are by no means excessive. A proper discount was applied.

This appeal is therefore dismissed.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A