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AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 2 of 2022)**

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

Date of Hearing: 8th June, 2024.

Date of Judgment: 19th June, 2024.

*Criminal law – Multiple offences of rape of a young girl aged 9 when the first incident occurred –
Offender a police officer – Sentence*

Appellant In Person.

PO Nor'adliatul Hidayah Hj Mohd Zaidi for Public Prosecutor.

Cases cited:

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

Caley & Ors v R [2012] EWCA 2821

Steven Chong, C.J.:

Introduction

On 6 December 2021 in the High Court at the commencement of the trial before a Judicial Commissioner the appellant pleaded guilty to four sexual offences against his cousin's daughter: one offence of rape contrary to section 376(1) of the Penal Code (1st Charge); one offence of causing a person under the age of 16 years to watch a pornographic video contrary to section 377C of the Penal Code (2nd Charge); and two offences of rape contrary to section 376(2) of the Penal Code (3rd and 4th Charges).

The appellant appeals against the overall sentence of 30 years' imprisonment and 24 strokes.

The facts

The appellant was a police lance corporal with 22 years service and a married man with three children when he committed the offences over a period of more than five years. He is a cousin of the victim's father and was a frequent visitor to their house.

On three occasions between 2015 and 2021 the appellant, having obtained permission from the victim's parents, picked her up from home in his car and drove to various isolated places where he raped her in the car. The victim was 9 years old when she was first raped and 15 years old when the last offence was committed. In the second incident the appellant asked the victim to watch a pornographic video of sexual intercourse on his mobile phone before raping her.

The victim feared for her safety when she was raped and complied with the appellant's warning to her not to disclose the rape to anyone on the two earlier incidents but she confided in her mother after the third incident and a police report was made leading to his arrest.

The sentence

The Judge highlighted four aggravating factors: (1) tender age of the victim; (2) gross breach of trust by the appellant; (3) repetition of the offences; and (4) the appellant was a police officer when he committed the offences.

Reference was made to several cases of a similar nature for guideline on sentencing including *A.I v Public Prosecutor* [2004] 2 JCBD 185.

The Judge gave a reduction of one third from the starting point sentence for the guilty plea and imposed the following sentences:

1st Charge: 9 years' imprisonment and 8 strokes.

2nd Charge: one year's imprisonment.

3rd Charge: 10 years' imprisonment and 12 strokes.

4th Charge: 10 years' imprisonment and 12 strokes.

The sentences of imprisonment were to be consecutive and the strokes on the 3rd and 4th Charges were to be cumulative resulting in an aggregate sentence of 30 years' imprisonment and 24 strokes.

The appeal

The appellant is aged 44 and his appeal for a reduction in sentence is primarily on the ground that his family will suffer hardship without his support.

Decision

We of course have sympathy for the appellant's wife and young children. The imprisonment of an offender will often cause hardship to his family but as we have said time and again this cannot be one of the factors which can affect what would otherwise be the right sentence.

This was, on any view, grave offending and there is no arguable basis for suggesting that the sentences imposed either individually or in totality were manifestly excessive.

First, the starting point sentences were within the range of the guideline sentences laid down by this court in *A.I v Public Prosecutor*.

Secondly, the Judge was actually overly generous in giving the appellant a reduction of one third from the starting point sentences for the guilty plea.

The well established practice is to accord the largest reduction of one third from the starting point sentence to defendants who indicated their plea of guilty at the first reasonable opportunity. Thereafter, the reduction in sentence should be reduced according to the stage in the proceedings at which the guilty plea is entered. A guilty plea at the door of the trial court, as in this case, will still merit some reduction but not more than one tenth: *Caley & Ors v R* [2012] EWCA 2821.

Thirdly, the rape by the appellant of the victim when she was only 9 years old, the repetition of the offences over a long period, the abuse of trust placed in him by the victim's parents, and the violation of trust as a police officer entrusted to uphold the law, all these factors in combination justified a severe sentence.

The nature of these offences over a period of years against a young girl, commencing when she was 9 years continuing until she was 15 years are bound to have caused some psychological trauma. The fact that they were committed by a relative on a frequent basis under the cover of his respected status and visits to the family home would have been a source of mental conflict for her. Yet the prosecution failed to obtain any report on the extent of any problems experienced by her as the consequences of the trauma.

We have not been told why the prosecution neglected this important aspect. It is the prosecution's duty to ensure that this glaring failure on its part to disclose the fullest picture to this Court must not happen again.

The appeal is dismissed.

STEVEN CHONG, C.J.

SEAGROATT, J.A.

WOOLLEY, J.A.