

**YURAWANDY BIN BUJANG**

**AND**

**PUBLIC PROSECUTOR**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 31 of 2014)**

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Before: Mortimer P, Leonard and Burrell JJ A.  
**23<sup>rd</sup> May 2015**

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

**Leonard, JA.:**

This is an appeal against sentence. The appellant, a, single and unemployed male Brunei national aged 22, pleaded guilty before the High Court to the following charges.

**1<sup>st</sup> Charge**

That you, sometime between midnight and the early house of the 27<sup>th</sup> day of September 2014, at the Chung Hwa Primary School Teachers' Hostel, Tutong in Brunei Darussalam committed theft of:

- a) Cash in the sum of BND\$100;
- b) One (1) mobile phone model Sony Xperia;
- c) One (1) laptop model Toshiba;
- d) One (1) iPad Mini; and
- e) One (1) camera model Samsung EX2

Belonging to one Miss X (female, 21 years old, Taiwanese national) and in committing the said theft, you voluntarily caused fear of instant death, or of instant hurt, or of instant wrongful restraint to the said Miss X and thereby committed an offence under Section 392 of the Penal Code, Chapter 22.

<p><b>Penalty under Section 392 of the Penal code, Chapter 22</b></p>
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<p>Imprisonment for a term which may extend to 30 years and with whipping with not less than 12 strokes</p>
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**2<sup>nd</sup> Charge**

That you, sometime between midnight and the early house of the 27<sup>th</sup> day of September 2014, at the Chung Hwa Primary School Teachers' Hostel, Tutong in Brunei Darussalam committed theft of:

- a) Cash in the sum of BND\$7;
- b) One (1) mobile phone model HTC Butterfly; and
- c) One (1) laptop model Sony Vaio;

Belonging to one Miss Su Yi Shih (female, 21 years old, Taiwanese national) and in committing the said theft, you voluntarily caused hurt and wrongful restraint to the said Miss Su Yi Shih and thereby committed an offence under Section 392 of the Penal Code, Chapter 22.

**Penalty under Section 392 of the Penal code, Chapter 22**

Imprisonment for a term which may extend to 30 years and with whipping with not less than 12 strokes

**3<sup>rd</sup> Charge**

That you, sometime between midnight and the early hours of the 27<sup>th</sup> day of September 2014, at the Chung Hwa Primary School Teachers' Hostel, Tutong in Brunei Darussalam did commit rape on Miss X (female, 21 years old, Taiwanese national) and in order to the commission of rape have put her in fear of death or hurt to herself, and you have thereby committed an offence punishable under Section 376 (2)(b) of the Penal Code, Chapter 22.

**Penalty under Section 376(2) of the Penal code, Chapter 22**

Imprisonment for a term not less than 8 years and not more than 30 years and with whipping with not less than 12 strokes

**4<sup>th</sup> Charge**

That you, sometime between midnight and the early hours of the 26<sup>th</sup> day of September 2014, at field adjacent to the Jati Emas Laut, Kuala Belait, in Brunei Darussalam did commit the theft of one (1) vehicle model Toyota Corolla, bearing registration number BK7316, belonging to one Wirat Khamin and you have thereby committed an offence punishable under Section 379 of the Penal Code, Chapter 22.

**Penalty under Section 379 of the Penal code, Chapter 22**

Imprisonment for a term which may extend to 3 years, or with fine, or with both

He was sentenced as follows.

1<sup>st</sup> Charge. 7 years 6 months imprisonment and 12 strokes.

2<sup>nd</sup> Charge. 7 years 6 months imprisonment and 12 strokes.

3<sup>rd</sup> Charge. 10 years imprisonment and 12 strokes.

4<sup>th</sup> Charge. 12 months imprisonment.

The judge ordered that the strokes be non-cumulative. The sentences on charges 1, 2 and 4 were made concurrent with each other and consecutive to the sentence on charge 3. Though the appellant seeks a reduction in the number of strokes, this court has no power to reduce them since they are the minimum number prescribed by law.

### ***The Facts***

Two 21 years old female students from Taiwan who were in Brunei to be on a teacher training internship to teach Chinese and help to teach Chinese to local students were accommodated in a teachers' hostel at the Chung Hwa Primary School.

In the early hours of 26 September 2014 the appellant stole a parked Toyota Corolla motor car, the subject of the 4<sup>th</sup> charge. Late on the same day the accused, carrying a backpack containing a knife and a torch, came by chance upon the Chung Hwa Primary School canteen. Being thirsty, he tried to find a way of breaking into the canteen but failed. Noticing a staircase leading to a higher level, he ascended and saw a sign identifying the Teachers' Hostel in which the two Taiwanese girls happened to be living. It was in darkness. Thinking the building to be unoccupied the appellant found a way in and eventually entered the room where the victims were living. One of them cried out and he immediately took out his knife to threaten them. He told them to be quiet and robbed them of the property described in the charges. The girls were trembling and feared for their lives. By this time he was wearing a mask that he had found in the room. He then told Miss X to tie up Miss Su but when she tried to do so he was not satisfied and tied Miss Su's legs and hands more tightly, leaving her sitting on the floor shaking with fear while he took Miss X to the kitchen. There, under the threat of the knife she was ordered to undress and she did so. The Appellant then raped her, ejaculating in her vagina. During the rape Miss X was in great pain. The appellant then made off with the stolen goods in his backpack. He subsequently sold the following items stolen in the robberies; a Toshiba laptop for \$100.00; an iPad mini for \$150.00 and a Samsung digital camera for \$200.00.

Following a report to the police by the victims, the appellant was arrested at about midnight on 29 September, 2014. He admitted the offences and the police were able to recover all the stolen goods. The stolen car was also recovered. On medical examination Miss Su was found to have injuries evidenced by red marks on her wrists.

Miss X, who suffered great pain during the rape, remained traumatized. She was receiving medication and receiving therapy from a psychologist.

The judge noted that, though the appellant had three previous convictions for drug offences, these were the appellant's first offences for a sexual crime, robbery and theft. In mitigation, the appellant told the judge that he was under the influence of drugs at the time of the offences.

This was a case of robbery in a dwelling at night; two young foreign women in a country strange to them being put in fear by a man who put on a mask, shone a torch in their faces in a dark room and threatened them with a knife. For sentence on the first and second charges, the judge took a starting point of 11 years imprisonment on each, reduced the term to seven and a half years in consideration of the pleas of guilty and made the sentences concurrent. These unplanned robberies did not entail actual violence. The tying up of Miss Su was not done in the course of the robberies. In all the circumstances, a more appropriate starting point is 9 years, reduced to 6 in consideration of the plea.

With regard to the rape, the judge selected as a starting point a sentence of 15 years, which was reduced to 10 in consideration of the plea of guilty. We consider that sentence to have been appropriate.

The appeal is allowed to the extent that the sentence for each robbery will be reduced from 7½ years to 6 years imprisonment. That will produce a total effective sentence of 16 years and 12 strokes, which reflects the overall criminality of the appellant's conduct and represents a sentence after trial of 24 years.

**Mortimer, P.**

**Leonard, J.A.**

**Burrell, J.A.**