

Muhammad Danish Ilya Zunnurain Bin Abdullah
AND
Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 6 of 2024)

Steven Chong, C.J., Lunn and Woolley, JJA

Date of Hearing: 14 June 2025.

Date of Judgment: 18 June 2025.

Criminal law – Robbery – Sentence

Mr. Daud Ismail (M/S Daud Ismail & Co.) for Appellant.

DPP Emily Goh for the Public Prosecutor.

Cases cited:

Public Prosecutor v Ahmad Aidul Arman Bin Abdullah Yu@Yu Chiek Say [Criminal Trial No. 23 of 2010]

Maimun Bte Hj Omar v Public Prosecutor (CA No. 1 of 2013).

Steven Chong, C.J.:

Introduction

1. On 23 March 2024, in the Intermediate Court, the Appellant was charged with the principal offence of robbery while armed with a deadly weapon, namely a knife, contrary to section 392 read with section 398 of the Penal Code. This offence carries a minimum sentence of 7 years' imprisonment and a maximum of 30 years' imprisonment, together with not less than 12 strokes.

2. The Appellant pleaded not guilty to the principal charge but elected to plead guilty to an alternative charge of robbery by causing fear of injury to the victim through the use of a knife, an offence punishable under section 392 of the Penal Code. This alternative charge carries a maximum penalty of 30 years' imprisonment and a minimum of 12 strokes.

3. The Appellant appeals against the sentence of 4 years 7 months' imprisonment imposed by Judge Harnita Zelda Skinner.

The facts

4. The Appellant was 18 years old and employed as a hospital patient care assistant. On 10 January 2024, at approximately 1.30 am, the Appellant drove his aunt's Suzuki Swift using its original registration number. He stopped at the roadside, replaced the original plates with false ones, and proceeded to a convenience store in Gadong.

5. Upon arrival at around 2.30 am, the Appellant reverse-parked to enable a quick getaway. He entered the store, attempted to negotiate with the cashier (the victim) to purchase a Redbull beverage at a reduced price, and later settled for a Milo drink and some sweets.
6. After requesting a plastic bag, the Appellant produced a knife from his back pocket, pointed it at the victim, and instructed her to remain quiet. He demanded that she hand over cash and open the register. Fearing for her safety, she complied. He took \$310 and placed it in the plastic bag.
7. As the Appellant was about to leave the store, he returned to seize the victim's mobile phone. A struggle ensued, during which the Appellant, still armed with the knife, failed to retrieve the phone. He fled the scene in the Suzuki Swift, taking the stolen cash with him.
8. Subsequent police investigations led to the Appellant's arrest later that day. He admitted to the robbery and disclosed that he had obtained the false registration plates from a rubbish disposal site and discarded them in a storm drain after the incident. He also admitted parking nearby to switch back to the original plates before fleeing.
9. CCTV footage corroborated the sequence of events, showing the Appellant committing the offence dressed in black. The knife and false registration plates were later recovered based on the Appellant's direction.
10. The Appellant has since made full restitution of the stolen amount and has no prior convictions.

The sentence

11. In determining the appropriate sentence to be imposed, the Judge had due regard to several precedents involving offences of robbery under section 392 of the Penal Code. Among the cases considered was *Public Prosecutor v Ahmad Aidul Arman Bin Abdullah Yu@Yu Chiek Say* [Criminal Trial No. 23 of 2010], in which the accused, having pleaded guilty to robbing a shop assistant of \$11 while brandishing a kitchen knife, was sentenced to 7 years' imprisonment and 12 strokes. The authorities cited establish that the typical sentencing range for robbery under the provision lies between 3 and 10 years' imprisonment, accompanied by 12 strokes.
12. The Judge took into account the mitigating factors present in the Appellant's case, namely his early plea of guilt and the fact that he was only 18 years old at the time of the offence. Nonetheless, given the serious nature of the offence and the need for deterrence, she was of the view that a Community Service Order was not an appropriate sentencing option.
13. Having considered all relevant factors, the Judge adopted a starting point of 7 years' imprisonment, reflecting the gravity of the offence. This was reduced to 4 years and 7 months' imprisonment to accord due weight to the Appellant's plea of guilty. In accordance with the statutory requirement, the sentence was accompanied by 12 strokes.

The Appeal

Appellant's submissions

14. By the Notice of Appeal, Petition of Appeal and lengthy written submissions submitted by Mr. Daud Ismail it was contended that the sentence of 4 years and 7 months' imprisonment and 12 strokes imposed on the Appellant was manifestly excessive having regard to his age, his plea of guilty, clear criminal record and personal circumstances.

15. At the outset of the hearing, Mr. Daud Ismail applied for an order of the Court directing the Social Welfare Department to prepare a Probation Report on the Appellant and for an adjournment of the proceedings to the next Session, pending the provision of that report. To support that application he provided written submissions, together with an authority, namely the judgment of this Court in *Maimun Bte Hj Omar v Public Prosecutor* (CA No. 1 of 2013). He submitted that the provision of a probation report was necessary to enable this Court to consider, "*the full spectrum of sentencing options available.*" In explaining the extraordinarily late filing of the submission, Mr. Daud Ismail said that he had only become aware of the judgment in *Maimun Bte Hj Omar* at the weekend.

16. In answer to a question from the Court, Mr. Daud Ismail said that no such application had been made to the Judge at the time of sentencing.

17. However, having received the written submissions together with a copy of the judgment from Mr. Daud Ismail and having adjourned to consider the application, it became apparent from the Court files that an application, supported by a written submission dated 23 March 2024, had been made to the Judge in which reference was made specifically to *Maimun Bte Hj Omar*, in support of the submission that the Judge should make a Community Service Order, pursuant to section 5 (1) of the *Offender (Probation and Community Service) Act*, Cap. 220. The Notes of Proceedings confirmed that to have been the case.¹ In an oral response to the application, DPP Emily Goh had submitted to the Judge that the circumstances in which such an order was made were for less serious offences than that faced by the Appellant.

18. Moreover, in her reasons for sentence the Judge addressed the submission directly. Having acknowledged the mitigating factors advanced by the Appellant, the judge stated that, "*...there is no justification to release the defendant*", either under section 263 of the *Criminal Procedure Code* or under section 5 (1) of the *Offender (Probation and Community Service) Act*, Cap. 220. In doing so, the Judge adverted to the aggravating factors in the Appellant's case, namely: clear awareness of his actions, premeditation in the use of false number plates and the fact he left the engine of his car running whilst he committed the robbery and that he was possessed of a knife. She said that a deterrent sentence was necessary to reflect the gravity of the offences.

19. In those circumstances, we continued to hear the appeal.

20. In support of his submission that the judge erred in not ordering that the Appellant be subject to a Community Service Order, Mr. Daud Ismail drew attention to a range of mitigating factors.

21. The Appellant was 18 years old at the time of the offence and entered an early plea of guilt. It was also highlighted that the Appellant has maintained an exemplary record of employment as

¹ Notes of Proceedings, pages 9-11.

a hospital patient care assistant. He comes from a difficult personal background: he was raised in a broken home by parents, both of whom have criminal records. Following their divorce, the Appellant and his three siblings were placed in the care of their grandmother. At the age of 17, after the passing of his grandfather, the Appellant was compelled to leave school in order to provide financial support for his siblings and grandmother. He was gainfully employed at the time of the offence and has demonstrated remorse by making full restitution.

Respondent's submissions,

22. DPP Emily Goh submitted that the sentence imposed on the Appellant was entirely appropriate, having regard to the serious nature of the offence and the surrounding circumstances.

Discussion

23. The judgment of this Court in *Maimun Bte Hj Omar* is of no assistance to the Appellant. Although in that case this Court quashed the total sentence of 4 years' imprisonment imposed on the appellant and imposed a probation order for one year together with 100 hours of community service, it is clear that the factual context, in particular that of inordinate delay in the proceedings, was unique. On 28 January 2013, that appellant had pleaded guilty to 6 charges of fraudulently or dishonestly using as genuine, in separate dealings with Standard Chartered bank to obtain a loan, a clearance letter stating that a particular person had no obligations in respect of any loan to one or other of TAIB or IBB. The offences occurred in the period 1 November 2002 to 13 January 2003. First, there was an inordinate delay in the investigation from March 2003 to March 2008. Secondly, the appellant was charged with more serious offences under section 468 of the Penal Code. There followed delay during which trial dates were fixed for January 2009, vacated and re-fixed. Once the trial started, it staggered on for years, during which both prosecuting and defence counsel were replaced. Finally, on 28 January 2013, the prosecution amended the charges to the ones to which the appellant pleaded guilty. So, the offences were 10 years old when the appellant came to be sentenced. In that period, the appellant had been divorced. She rebuilt her life, remarried and secured employment. Most importantly she committed no other offences.

24. None of the factual context of *Maimun Bte Hj Omar* which explained the highly unusual course taken by this Court, is relevant in any way whatsoever to the case of this Appellant

25. Although the Statement of Facts does not describe the nature of the knife with which the Appellant was armed and which he brandished at the victim of the robbery, as is evident from the Notes of Proceedings, at the sentencing hearing the Judge had sight of a photograph of the knife. For our part, we viewed the knife itself. It is an ordinary kitchen knife, just over 9 inches in overall length, with a sharp point to the blade and one sharpened edge.

26. Having regard to the aggravating factors of the case, in particular, the degree of planning involved in the commission of the offence, which was carried out with the obvious intention of avoiding identification and arrest, as well as the use of a knife to threaten the victim, together with the fact that whilst he was holding the knife the Appellant engaged in a struggle with the victim in an attempt to steal her mobile telephone, we are satisfied that notwithstanding the accepted mitigating factors, the Judge was correct in concluding that a Community Service Order was not appropriate in the circumstances.

27. The Judge was entitled to take a serious view of the offence and to impose a sentence with deterrent effect in the broader public interest.

Conclusion

28. We do not consider the sentence to be manifestly excessive. Accordingly, the appeal is dismissed.

STEVEN CHONG, C.J.

A handwritten signature in black ink, appearing to read 'J.A. Woolley', with a long horizontal stroke extending to the right.

LUNN, J.A.

WOOLLEY, J.A.