

ZAINAL ABIDIN BIN HJ MD HASHIM

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2016)**

Before: Mortimer P, Burrell and Seagroatt JJ A.
17th May 2016

Headnote: Appeal against sentence. Pleaded guilty to three offences of outraging the modesty of daughter when 11 years and 13 years old. Sentenced to total of 3 years 6 months and 3 strokes. Appeal dismissed.

Appellant in person
DPP Norhayati DP Hj Omar for Respondent

Seagroatt, JA.:

On the 30th April 2016, this appellant appeared before Judge Hanani having pleaded guilty to 3 counts of outraging the modesty of his daughter who was 11 years old at the time of the first offence, and 13 years old at the time of the other two offences. He was sentenced to concurrent terms of 3 years and 2 strokes on each offence with 6 months and 1 stroke of the sentence on the third offence to be consecutive making a total term of 3 years 6 months and 3 strokes. This represents a starting point after trial of 5 years 3 months and five strokes.

In the third count the first in time, the defendant went to the daughter's bed late at night sometime in 2014 and touched her vagina causing her to wake up. It appears that the defendant shared the bedroom with his wife and four children, and slept on a mattress on the floor.

The second count in time occurred in April 2016 in very similar circumstances. Again in the early hours of the morning the daughter awoke to find her father groping her breasts. She moved her position to cause him to cease.

A few nights later, still in early April of this year when the usual sleeping arrangements had continued, again in the early hours, the daughter woke up to find her father groping her breasts over her clothes. Similarly she shifted her position to cause him to cease.

The next day she confided in her teacher and a report to the police was made on the 6th April 2016, which brought to light the earlier offences.

The defendant is 41 years of age. He gave as an explanation for committing the offences, that they were not deliberate and that he did not realise what he was doing. That is impossible to accept. He added that he felt aroused by seeing his daughter in the bedroom.

The judge took into account fully the mitigation advanced by the defendant and rejected the prosecution's call for the principle of enhancement of sentence for subsequent offences. She was right to do so.

Most importantly she noted the reactions and current fears of the daughter victim. She had said that his actions had caused her to feel angry, sad, ashamed and traumatized. She feared that he might do something worse such as raping her if she was alone with him. As a consequence she needed to be separated from him for now until the case was over. She wanted him to acknowledge his wrongdoing. She was now living with her grandparents.

The sentence

The judge considered a number of cases of offences within the family though each is fact sensitive.

The offences carry a minimum sentence of 3 years with a maximum of 10 years and whipping.

The judge clearly recognized the gravity of the offences and the serious effect on the family in deciding that a custodial sentence was inevitable.

In imposing sentences of 3 years on each offence, she made 6 months of the sentence on the third offence consecutive to the concurrent term on the first and second count. Although not stating specifically that she was applying her mind to the totality of sentence, and not stating a specific discount for the pleas of guilty, the overall result is unimpeachable, and the appeal is dismissed.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A