

Norazmi Bin Hj Tahir

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 8 of 2020)

Before: Steven Chong, C.J., Burrell, P., and Seagroatt, J.A.
26th May 2021

Headnote: Criminal law – Robbery – Child victim – Appellant above 50 years old – Sentence of whipping not to be executed.

Appellant In Person.

DPP Hjh Rozaimah Hj Abdul Rahman and Hjh Attiyah Azzahra POKLSDSLJ Awg Hj Abas for the Public Prsoecutor.

Case cited in the Judgment:

Mohd Rafee Bin Jublee v Public Prosecutor [2009] 2 JCBD 158

Steven Chong, C.J.:

Introduction

On 9 September 2019 in the Intermediate Court the appellant was charged with robbery contrary to section 392 of the Penal Code.

At first the appellant contested the charge and the trial commenced on 27 January 2020. After four witnesses had given evidence for the prosecution the appellant changed his plea to guilty.

Judge Dk Hjh Norismayanti Binti Pg Hj Ismail sentenced the appellant to 4 years 8 months' imprisonment and 12 strokes.

This is the appellant's appeal against sentence.

The facts

On the evening of 4 August 2019 the appellant was in a convenience store in Kampong Pulaie when he noticed a 1 ½ year old child (“*the child*”) wearing a gold necklace and she was standing alone at the time. The appellant took the opportunity to steal the gold necklace from the child by quickly removing it from her neck but in so doing scratched her left cheek and she started crying. The appellant walked away from the child and left the convenience store after buying a cigarette lighter.

The parents of the child went to her when they heard her crying and immediately saw a scratch mark on her left cheek and her gold necklace was missing. The theft by the appellant was captured in the CCTV footage of the convenience store and a police report was made.

After the appellant’s arrest during police investigations he admitted (i) he stole the gold necklace from the child; (ii) he scratched the child’s left cheek in the course of unfastening the gold chain from her neck; and (iii) he sold the gold necklace to a woman for \$70 which was used to repair his car.

Antecedent

The appellant was 49 years old and he was unemployed at the time of the offence. He has a wife and 5 children.

On police record the appellant has 18 previous theft convictions and one drug consumption offence between 1990 and 2017. The appellant was sentenced to one year 8 months’ imprisonment in respect of his last conviction.

The Judge’s approach to sentencing

The Judge referred to a number of robbery cases for guidance on sentence including *Mohd Rafee Bin Jublee v Public Prosecutor* [2009] 2 JCBD 158, in which this court was of the view that a sentence of 3 years 6 months’ imprisonment and 12 strokes was proper where the appellant had pleaded guilty to robbery at a convenience store by threatening to hurt the cashier, bound her wrists with telephone wire and stole her mobile phone, 12 easi recharge cards and \$400 from the cash till.

From a starting point of 7 years’ imprisonment the Judge reduced the sentence to 4 years 8 months’ giving the appellant full credit for pleading guilty. The minimum 12 strokes was imposed.

The appeal

No complaint is made by the appellant on the sentence of imprisonment.

The appellant’s appeal is only against the sentence of whipping of 12 strokes.

Our decision

The aggravating feature in this case is that the appellant preyed upon a vulnerable child victim. The appellant's appalling criminal record shows his inclination to steal. We are of the view that the sentence of 4 years 8 months' imprisonment is appropriate given the gravity of the offence.

As to the sentence of whipping, section 392 of the Penal Code prescribes a minimum of 12 strokes upon conviction. The sentence of whipping was rightly imposed at the time since the appellant was then 49 years old. But the appellant turned 50 years old on 2 August 2020 and no males above 50 years of age shall be punished with whipping pursuant to section 258 of the Criminal Procedure Code.

Conclusion

As the appellant is above 50 years old we allow the appeal to the extent that the sentence of whipping shall not be executed.

Steven Chong, C.J.

Burrell, P.

Seagroatt, J.A.