

Ibrahim Bin Hj Anggas

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 7 of 2008)**

Power, P; Mortimer and Davies, JJ.A.
24th November, 2008.

Attempted rape contrary to s. 376(1) of the Penal Code. Plea of guilty. Proper starting point for sentence.

DPP Hjh Hana Molina of Deputy Public Prosecutor for the Respondent.
Appellant in person.

Cases cited in the Judgment:

Darsono Seno v PP (Crim. App. No. 5 of 2007)

M D Bin H A v Public Prosecutor (Crim. App. No. 2 of 2008)

PP v Haji Sahak Bin Haji Anis (Crim. Trial No. 36 of 2004).

Public Prosecutor v Mohammad Bin Serudin [2001] 2 JCBD 416

Power, P.:

The appellant faced one count of rape contrary to s. 376(1) of the Penal Code and alternative count of attempted rape contrary to s. 376(1) read with s. 511. He pleaded guilty to the alternative count. He was sentenced by Judge Steven Chong to imprisonment for 8 years and 8 strokes. He now appeals against that sentence. The facts, as set out by Chong J are as follows:

- “1. Shortly stated the facts are as follows. The defendant, aged 39, is separated from his wife. They have 5 children aged between 2 to 12.*
- 2. The complainant is the defendant’s niece. She is 14 years old. Her father and the defendant are brothers. Sadly, the complainant was only 5 when her mother died. He stepmother (her father’s third wife) is aged 17.*
- 3. The defendant and his children as well as the complainant and her parents all lived in the same house.*

4. *In the early hours of 20 May 2007, as the complainant was about to go to bed, the defendant approached her. Despite the complainant's resistance the defendant attempted to have sexual intercourse with her. He was not able to penetrate her and ejaculated on the bed. After that he warned her not to tell her parents what had occurred or he would inform them she "did something" with other men.*
5. *However, on the next day the complainant, who was deeply distressed, told her stepmother about the incident. A police report was made 4 days later.*
6. *Following the police report the defendant was arrested. When interviewed he confessed to the attempted rape of the complainant.*
7. *The defendant has a prior conviction for consuming a controlled drug contrary to section 6(b) of the Misuse of Drugs Act in 1994.*
8. *In his mitigation plea the defendant expressed regret for his act. He said he was anxious about the welfare of his children and asked for a lenient sentence. Both the complainant and her father have also voiced their concern about the effect of a long prison sentence on the defendant's children. They, too, urged the court to exercise leniency for the sake of the children.*
9. *No one can ignore the inevitable hardship which the defendant's children will suffer as a consequence of his incarceration whatever the term. Of course the court has sympathy for them. But that by itself cannot justify the imposition of a lenient sentence."*

For the offence of attempted rape s. 376 (1) of the Penal Code read with s. 511 provides a maximum sentence of 15 years imprisonment with strokes. Chong J having referred to *Public Prosecutor v Mohammad Bin Serudin* [2001] 2 JCBD 416 and *M D Bin H A v Public Prosecutor* (Crim. App. No. 2 of 2008) was satisfied that a proper sentence after plea was 8 years and 8 strokes. This would have involved starting point of 12 years.

The authorities indicate that for the more serious offence of attempted rape of a child under the age of 14 under s. 376(2) the appropriate sentence after plea is imprisonment for between 8 and 9 years and 12 strokes. (9 years and 12 strokes – *Darsono Seno v PP* Crim. App. No. 5 of 2007) (9 years and 12 strokes – *M D Bin H A v PP* Crim. App. No. 2 of 2008) (8 with no strokes because of age – *PP v Haji Sahak Bin Haji Anis* Crim. Trial No. 36 of 2004). It is to be noted that the minimum sentence for a s. 376(2) offence is 8 years.

We are in full agreement with the Judge as to the serious aspects of this offence which we have set out above but are nonetheless satisfied that 12 years is too high a starting point for an offence under s. 376(1). In our view a proper starting point would not be in excess

of 10 years. After plea in the present case we think it proper to arrive at a sentence of imprisonment of 6½ years with 6 strokes.

The appeal will be allowed, and the sentence varied accordingly.

Power, P.

Mortimer, J.A.

Davies, J.A.