

Nuruddin Bin Ahmid

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 14 of 2008)**

Power, P.; Mortimer and Davies, JJ.A.
4th November, 2008.

Appellant (aged 33 and of previous good character) pleaded guilty to serious robbery of young woman. He punched her unconscious causing bruising of the face neck and body. Gold jewellery, 2 mobile phones, a digital camera and B\$970 taken. Sentenced to 7 years imprisonment and 12 mandatory strokes under Sec 394 of the Penal Code. This involves a starting point of between 10 and 11 years which is manifestly too high. Starting point of 8 years with a third discount for early plea appropriate. Appeal allowed and sentence of 5 1/2 years imprisonment substituted with the mandatory 12 strokes.

Appellant in person.

DPP Dk Norsuzanawati Binti Pg Hj Abas for the Public Prosecutor/Respondent.

Cases cited in the Judgment:

Public Prosecutor v Hamdee bin Hj Mohd Zaidi [HCCT No 4 of 2002].

Public Prosecutor v Mahadi bin Ismael and Anor [HCCT No 4 of 1993].

Public Prosecutor v Mohd Azrian bin Hj Bungsu [Criminal Appeal No 3 of 2000].

Public Prosecutor v Pg Hj Amir Hamzah Omar Saifuddin bin Pg Hj Amir Md Yusof [HCCT No 2 of 1997].

Mortimer J.A.:

On 18 February 2006 the appellant pleaded guilty before Hairol Arni J to an offence of robbery under Sec 394 of the Penal Code which provides a maximum sentence of 30 years imprisonment and a mandatory 12 strokes. The appellant, who was 33 years and of previous good character, was sentenced to 7 years imprisonment and the 12 mandatory strokes. He appeals to this court contending that the sentence of 7 years is manifestly excessive and contrary to principle.

The Facts

At the hearing the appellant agreed the following facts. On 28 September 2005 at about 5.00 pm the young woman victim was waiting for a bus in Jalan Kota Batu. He approached her asking where she was going. When she indicated Bandar he said he had called a taxi and would she like to share the cost at B\$5 each. She agreed and handed him the money from her handbag. He then attacked her dragging her by the hair to a nearby junction. There he punched her about the face and body and made as if the strangle her. She begged him to stop and simply take her property but he continued beating her until she became unconscious. He stole her 2 mobile 'phones, her digital camera, a gold necklace, a gold bracelet and B\$970 in money.

The victim did not recover consciousness until about midnight. She then sought help at a nearby house, following which she was admitted to hospital and the matter was reported to the police.

The appellant was not arrested until 12 January 2006. He then readily admitted the offence to the police who were able to recover the property save for the money and one mobile 'phone.

The Judge's Sentence

In passing the sentence of 7 years the judge noted that the appellant was of good character and a family man. Although he made no reference to the plea of guilt he cannot have overlooked this important mitigation.

The judge rightly noted the maximum of 30 years imprisonment provided for this offence, the serious injuries, the overall gravity of the offence and the likely long term psychological effects on the victim. He made no assessment of his starting point after trial for this sentence.

The Submissions

The appellant submits that the sentence is excessive. He submits (in effect) that the court failed to give sufficient discount for his early admission and plea, his good character, his family circumstances and the fact that in his case this is an isolated offence.

DPP Mrs. Suzana appears for the public prosecutor. She argues that the sentence is proper and ought to be upheld citing previous cases, in particular three robbery cases in which seven years imprisonment was imposed in each. These are *Public Prosecutor v Mahadi bin Ismael and another* [HCCT No 4 of 1993] in which a knife was welded; *Public Prosecutor v. Hamdee bin Hj Mohd Zaidi* [HCCT No 4 of 2002]; and, *Public Prosecutor v Mohd Azrian bin Hj Bungsu* [Criminal Appeal No 3 of 2000].

She also puts before us the more serious case of *Public Prosecutor v Pg Hj Amir Hamzah Omar Saifuddin bin Pg Hj Amir Md Yusof* (HCCT No 2 of 1997). This

involved an entirely gratuitous attack on an unarmed security guard with a knife in order to steal property in his custody. A sentence of 9 years for the robbery and 2 years consecutive for the possession of the knife and assault were imposed making eleven years in all. The sentences were upheld by this court.

The Appeal

It is important to note that each of the cases cited each involves a sentence which was imposed after trial. They demonstrate an appropriate starting point for the sentence after trial of relevant unexceptional cases of robbery to be between 7 and 9 years. We agree. However, where an accused person admits his guilt on arrest and pleads guilty at the first opportunity (as in this appeal) he is normally entitled to a one third reduction from the proper starting point. This has been emphasized many times in the past by this court. It is the policy of the court and is granted for the enormous saving of time and public money which is involved in an early acceptance of guilt.

Without question the instant case involves a serious offence which calls for heavy punishment. The only issue for our consideration is whether in all the circumstances the sentence of seven years imprisonment is manifestly excessive or contrary to principle.

For this 33 years old man of previous good character who has admitted the offence to the police and who has pleaded guilty on the earliest occasion, the 7 year sentence involves a starting point of between 10 and 11 years after trial. Even for this serious offence the previous cases put before us demonstrate such a starting point to be manifestly too high. In our view the appropriate starting point here is about 8 years imprisonment which for the plea and other mitigating circumstances would be reduced to five and a half years.

It follows that the 7 year sentence imposed does not adequately give effect to the early acceptance of guilt, the guilty plea and the other mitigating factors to which we have referred.

The Order

For these reasons we allow this appeal. The appropriate starting point for the sentence in this appeal is about 8 years reduced to five and a half years. We therefore reduce the sentence of seven years imprisonment to one of five and a half years. The 12 mandatory strokes not subject to appeal remain.

General

This appeal again highlights the importance of judges fixing and stating the starting point when sentencing after a guilty plea. This practice leads to increased consistency of sentences and assists in the assessment of the appropriate term to impose.

