

**P. Bin H. P.**

AND

**Public Prosecutor**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 15 of 2007)**

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Power, P.; Mortimer and Chong, JJ. A  
**5<sup>th</sup> May, 2008.**

Appellant in person.  
DPP Zuraini Hj Sharbawi for Public Prosecutor.

**Case cited in the Judgment:**

*A.I. v Public Prosecutor* [2004] II 13 LR 185

**Power, P.:**

The appellant P. BIN H.P. appeals against his sentences, imposed after trial by Intermediate Judge Lim of 20 years of each of two charges rape (Charges 1 and 2) and 3 years on one charge of outraging modesty (Charge 3). The first two sentences were made concurrent and the third sentence was ordered to be consecutive making an overall total of 23 years. No sentence of whipping was imposed as the appellant was over the age of 50 years.

The offences were particularly serious as the victim was the appellant's daughter, was aged 15 years and 11 months at the time of the offences and, even more seriously, had a mental age of only 7 years and 8 months.

The first offence of rape (Charge 2) occurred on 6 April 2006. The appellant picked up the victim from Jerudong Park at about 10 pm. He took her to the "stables" which were dark and deserted, told her to get out of the car, took off her jeans, fondled her and then had intercourse with her while she was lying on a mat. She submitted because she was in fear and afterwards was told that she was not to tell anyone.

On 12 April 2006 at about 8 am the appellant, instead of taking the victim to her previous school to collect her record book, took her to the family banana farm. In a hut on the farm he took off her clothes and underwear, fondled her breasts, played with her private part and rubbed his penis against it. (Charge 3)

She did not resist because she was afraid. He then took her to collect her record book but she was unable to do to because the teacher was not there. He then drove to the isolated BUKIT SHABANDAR MOON - sighting area where he undressed her and

inserted his penis into her private part. (Charge 1) after withdrawing he ejaculated into a towel.

She did not resist because she was afraid. She gave no consent and on the way home she told this to the appellant. He made no comment but again told her not to tell anyone about the incident.

Later that day she complaint to her teacher which led to a Police investigation which uncovered the offences.

The appellant now complains that the sentences were manifestly excessive.

When sentencing Judge Lim referred to *A.I. v Public Prosecutor* [2004] II 13 LR 185 in which this court held at p.185

“We are satisfied that the present level of sentencing in Brunei Darussalam indicates that a proper sentence after plea for the rape of a daughter of tender years is 10 years and 12 strokes.

This indicates a starting point after trial of 15 years. We are satisfied that if the offence is repeated it should properly attract an increased sentence and that some account when sentencing should be taken of the fact that force was used. We see, however, little difference between the use of minimal force and the use by the father of his parental authority to overbear the victim. We are satisfied that for the second offence it would have been proper to add 2 years to the 10 years sentence imposed for the first offence. “

Had the victim not been mentally retarded the proper sentences for the two rapes would, we are satisfied, have been 15 and 17 years concurrent.

The offences are, however, more serious given the mental condition of the victim which calls for an increase in the sentences.

Proper sentences in the circumstances would be 16 yeas and 18 years concurrent. The two sentences for rape will be varied accordingly.

Three years was an appropriate sentence for the offence of outraging modesty but it should, given the lengthy sentence imposed on the rape offences, be made concurrent therewith.

All sentences will be made concurrent making an overall period of imprisonment of 18 years.

**Power, P.**

President, Court of Appeal

**Mortimer, J.A.**

Judge, Court of Appeal

**Chong, J.A.**

Judge, Court of Appeal