

**J. Bin Hj J.**

AND

**Public Prosecutor**

---

**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 17 of 2007)**

---

Power, P., Mortimer and Chong, JJ.A.

**5<sup>th</sup> May, 2008.**

Multiple rapes by a father of his two young daughters – overall sentence of 18 years and 12 strokes appropriate to reflect the criminality of the offences – appeal dismissed – conviction for attempted rape not supported by the facts – conviction quashed.

Appellant In Person.

Zuraini Bte Hj Sharbawi (Deputy Public Prosecutor) for Public Prosecutor.

**Case cited in the Judgment:**

*Ahmad Bin Hj Ibrahim v Public Prosecutor* [2004] JCBD 185

**Chong, J.A.:**

1. This is an appeal against sentence by the appellant J. Bin Hj. J..
2. On 12 November 2007 in the High Court before Hairol Arni, JC, the appellant was convicted after a trial of three counts of rape (Charges 1, 3 and 4) and one count of attempted rape (Charge 2).
3. The appellant was sentenced to 15 years and 12 strokes on Charge 1; 9 years and 12 strokes on Charge 2; 17 years and 12 strokes on Charge 3; and 18 years and 12 strokes on Charge 4. The sentences of imprisonment were ordered to run concurrently and the strokes to be non-cumulative making an overall of 18 years and 12 strokes.
4. The offences were alleged to have been committed on four separate occasions in 2000, 2002 and 2006. Shortly stated the facts which the judge found are these. The victims are the appellant's two daughters referred to as Miss X and Miss Y in the trial.
5. In 2000 Miss X was 10 years old. She was asleep in the bedroom at home when the appellant entered and proceeded to take off her panties. He then raped her. After that he warned Miss X not to tell her mother and if she did so he would beat her mother (Charge 1).

6. Sometime in 2002 Miss X, who was then aged 12, was sleeping in the bedroom at night when she realized the appellant was “playing with her private part and her breast”. She was shocked and shouted. The appellant left the room. Miss X told her mother that the appellant had been “disturbing” her but did not reveal the details as she was afraid (Charge 2).
7. Miss Y was 7 years old in 2002. One day, whilst she was in the toilet at her grandfather’s house, the appellant grabbed hold of her and asked her to lie down on the floor which she did. But she refused to take off her trousers and panties when he ordered her to do so. The appellant removed her trousers and raped her. She shouted in pain but the appellant covered her mouth with his hand. She did not tell anyone of this incident because the appellant threatened to kill her (Charge 3).
8. In 2006 Miss Y, who was then nearly 11 years old, was asleep on the floor in the appellant’s bedroom when he raped her again. At the time Miss X’s mother and siblings were also sleeping in the same room. But the appellant covered Miss X’s mouth with his hand when he raped her (Charge 4).
9. The offences came to light after Miss X was found to be pregnant in April 2006. It was only then that she told her mother that the appellant had raped her. As to her pregnancy Miss X said she was “so stressed up” after the rape incident that she began having sex with six of her friends. Miss Y, too, disclosed what the appellant had done to her and a police report was made.
10. The appellant, who is unrepresented, appeals against his sentence on the ground that it is excessive.
11. Although the appeal is against sentence only we invited the Deputy Public Prosecutor to address us on the propriety of the conviction on Charge 2. On the facts we do not think the conviction for attempted rape can be sustained. In our view, at most the facts support a charge for outrage of modesty. The Deputy Public Prosecutor concedes that in the circumstances this conviction cannot stand. We therefore give leave to the appellant to appeal against conviction on this charge.
12. In passing sentence the judge referred to the guidelines set out by this court in *Ahmad Bin Hj Ibrahim v Public Prosecutor* [2004] JCB 185 and appears to have followed them.
13. This is a very bad case of multiple rapes by a father of his two young daughters. Having regard to the totality principle we think the overall sentence of 18 years and 12 strokes is appropriate to reflect the criminality of the offences.

14. The conviction on Charge 2 is quashed and substituted with a conviction for using criminal force to outrage modesty contrary to section 354 of the Penal Code. It follows that the sentence of 9 years and 12 strokes is also quashed and we substitute that with 3 years and 3 strokes.
15. The appeal against sentence is dismissed.

**CHONG, J.A.**  
Judge, Court of Appeal

**POWER, P.**  
President, Court of Appeal

**MORTIMER, J.A.**  
Judge, Court of Appeal