

M D Bin H A

AND

Public Prosecutor

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 2 of 2008)

Power, P.; Mortimer and Chong JJ.A.
6th May, 2008.

Appellant in person.
DPP Aldila Bte Hj Md. Salleh for Public Prosecutor.

Cases cited in the Judgment:

Darsono Seno v Public Prosecutor [Criminal Appeal 5 of 2001]
Public Prosecutor v M S Bin M A [1992] JCBD 17.

Power, P.:

In this matter the appellant pleaded guilty to three charges:- one of outraging modesty and two of attempted rape. He was sentenced to 6 months and 2 strokes on the first charge and to imprisonment of 9 years and 12 strokes on each of the other 2 charges.

The sentences of imprisonment on the second and third charges were ordered to run concurrently but to be consecutive of the sentence of imprisonment on the first Charge.

The strokes on all charges were ordered to be concurrent.

This made a total sentence of imprisonment of 9 years and six months and total of 12 strokes.

The appellant now seeks to have the sentences modified were manifestly excessive.

The facts reveal that the appellant is married with 5 children. The victim was his 13 years old daughter.

On 26th June 2006 on a pretext he obtained permission for her to leave school early and when she returned home at 3pm, he forced her to watch a pornographic film. He told her to lie on his bed and then despite her crying and begging him stop he undressed her, started to suck her breasts, touched her vagina, inserted his finger therein and then proceeded to put his penis against her vagina. The victim, crying uncontrollably and begging him to stop, wriggled her body trying to stop him. Seeing

this he desisted and told her not to tell her mother. The July offence followed an identical scenario. He again desisted because of the daughter's persistent resistance.

These are the facts of the two charges of attempted rape.

On 20th July, 2006 at about 4.00 am, the appellant sneaked into the bedroom which the victim occupied with her younger sister. He woke the victim, told her to lie on her stomach, got on top of her, touched her breasts and pressed his penis against her buttock, after a few minutes his wife arrived, shouted at him and he desisted. This was the offence of outraging modesty.

Commissioner Hairol was satisfied that this was a serious case which warranted a deterrent sentence. He was, we are satisfied, right to take that view.

The maximum sentence on the attempted rape charges is 15 years and 12 strokes (see S. 376(2) and S. 511 of the Penal Code and the judgment of Sir Denys Roberts C.J in *Public Prosecutor v M S Bin M A* [1992] JCBD 17.

The sentences imposed on the 2 offences of rape are within the range which this court indicated appropriate for such offences in *Darsono Seno v Public Prosecutor* (Criminal Appeal 5 of 2001). The sentence imposed on the outraging modesty offence was, if any thing, lenient. We see no reason to interfere with the order that the sentences of imprisonment on the rape offence be concurrent and the sentence on the outraging modesty be consecutive.

It was proper to order that the strokes imposed on each offence be concurrent.

The appeal is dismissed.