

Public Prosecutor

AND

Hapandi Bin Tahir

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 24 of 2024)**

Muhammed Faisal Bin PDJLD Kol (B) DSP Haji Kefli, J.C

Date of Judgment: 5th March 2025

***Headnote:** Criminal Appeal – Outrage modesty – S.354 Penal Code CAP 22 – Sentence after trial – 8 months’ imprisonment – Prosecution appeal on grounds (i) sentence manifestly inadequate (ii) Magistrate wrong to give one-third discount in sentence after trial.*

DPP Hajah Siti Mu’izzah Binti Haji Sabli for the Public Prosecutor.

Respondent In Person.

Cases cited:

Public Prosecutor V Mohammad Shahdon bin Mohammad Ramlee (ICCT Criminal Trial No. 17 of 2015)

Public Prosecutor V Normajili Bin Napir (High Court Criminal Appeal No.16 of 2009)

Hamdani bin Hj Muhin V Public Prosecutor (Court of Appeal Criminal Appeal No.13 of 2000)

Sgt 3983 Haji Nora’afbillah bin Ahmad@Ja’afar V Public Prosecutor (High Court Criminal Appeal No.27 of 2020)

Kang Byong Dug V Public Prosecutor (High Court Criminal Appeal No.21 of 2022)

Kasim Bin Omar V Public Prosecutor (Court of Appeal Criminal Appeal No. 10 of 2021)

Public Prosecutor V Kasim Bin Omar (Court of Appeal Criminal Appeal No. 11 of 2021)

Statute:

Section 354 of the Penal Code

JUDGMENT

Muhammed Faisal, J.C.:

I Introduction

This is an appeal of the prosecution against the sentence imposed upon the defendant/respondent by the magistrate.

The respondent faced a single charge under section 354 of the Penal Code. He was convicted after trial and sentenced to 8 months' imprisonment. Punishment for an offence under this section is "*...imprisonment for a term not exceeding 5 years and whipping.*"¹ At the time of conviction and sentence he was 63 years old, thus not subjected to whipping².

The appellant contends that the sentence of 8 months' imprisonment is manifestly inadequate particularly given the fact that the conviction followed a full trial.

II Background facts

On the morning of October 23, 2023, at around 9:00 AM, Miss X, a 23-year-old woman, boarded a freelance taxi service, commonly known as a "*teksi sapu*" operated by the respondent, a 62-year-old man. The vehicle was a Mitsubishi Mirage (BAS 2418)

As the journey progressed, the respondent dropped off other passengers one by one. Eventually, Miss X found herself alone in the car with him. It was at this moment that his behaviour changed. The respondent began engaging her in conversation, making inappropriate remarks that made her uncomfortable and uneasy.

While driving, he reached over and rubbed her right thigh in a circular motion—four times—from her upper knee to her upper thigh. Miss X felt a surge of fear but was trapped in the moving vehicle, unable to escape or stop what was happening. As the car continued down the road, she remained tense and anxious.

When they finally reached her destination, she wasted no time opening the door to exit the vehicle. But just as she was stepping out, the respondent took the opportunity to touch her buttocks. This second violation left her shaken.

Overwhelmed with shock and distress, Miss X hurried away from the car and ran to her office in tears. Her colleagues noticed her emotional state and witnessed her distress first hand. The encounter left a lasting impact on her—she developed a fear of using public transport, something she had relied on for commuting, and found herself uneasy around men following the incident.

The respondent's actions were later reported, leading to his conviction for outraging the modesty of Miss X under Section 354 of the Penal Code.

III Charge

The defendant's charge is as follows: -

¹ S.354 Penal Code CAP 22

² S.258 Criminal Procedure Code CAP 7

“That you, on the 23d day of October 2023, at about 0900 hours, inside a Mitsubishi Mirage vehicle bearing registration number BAS 2418, at the vicinity of Bandar Seri Begawan, in Brunei Darussalam, did use criminal force onto one Miss X (Name redacted, D.O.B 29.07.2000. F.23 years old), to wit, by rubbing her right thigh four (4) times and thereafter touching her buttocks, intending thereby to outrage or knowing it to be likely that you will thereby outrage the modesty of the said Miss X, and you have thereby committed an offence punishable under Section 354 of the Penal Code, Chapter 22.”

IV Grounds of Appeal

The appellant focus on the argument that the sentence imposed on the respondent was inadequate and unduly lenient.

1. The Sentence is Inadequate Given the Nature of the Offence

Section 354 of the Penal Code carries a maximum penalty of 5 years' imprisonment and whipping. Cases submitted shows that sentences for similar offences range between 6 months and 5 years, depending on the severity of the act. The respondent's conduct of repeated touching of the victim's thigh and buttocks warranted a higher sentence than what was imposed.

2. Aggravating Factors Were Not Given Due Weight

There were several aggravating factors that justified a harsher sentence.

The respondent was operating a freelance taxi service, and the victim was alone and trapped in his vehicle when he took advantage of the situation. The respondent took advantage of the situation and exploited the vulnerability of the victim at that moment in time.

This was a repeated act; the offence was not a single instance but occurred in two stages—first, the rubbing of the victim's thigh, then the touching of her buttocks.

Psychological harm to the victim; the victim was deeply distressed, ran to her office in tears, and later developed a fear of public transport and men.

The significant age gap; the respondent was 62 years old, while the victim was 23, reinforcing the power imbalance.³

3. The Magistrate Erred by Applying an Undue Sentencing Discount

The court wrongly applied a one-third reduction in the sentence. A one-third reduction is typically given to defendants who plead guilty early because it spares the victim from

³ Public Prosecutor V Mohammad Shahdon bin Mohammad Ramlee (ICCT Criminal Trial No. 17 of 2015)

testifying. The respondent claimed trial, forcing the victim to relive the ordeal during court proceedings. No such discount should be given when a full trial takes place.

4. Precedents Show Harsher Sentences for Similar Cases

In *Public Prosecutor v Normajili Bin Napir*⁴, a guilty plea for touching a 14-year-old girl's buttock resulted in 6 months' imprisonment and one stroke of the cane—suggesting a higher starting point of 9 months for cases that go to trial.

In *Hamdani bin Hj Muhin v Public Prosecutor*⁵, a security guard who groped a victim's breasts was sentenced to 1 year and 2 strokes after trial.

In *Sgt 3983 Haji Nora'afbillah bin Ahmad v Public Prosecutor*,⁶ a man convicted after trial for pressing himself against a woman was sentenced to 1 year and 1 stroke.

In *Kang Byong Dug v Public Prosecutor*,⁷ a guilty plea for touching a woman's buttock resulted in 7 months' imprisonment, suggesting that a conviction after trial should attract at least 12 months as a starting point.

V Discussion

It is clear from the case laws cited that a 12-months' imprisonment is the median sentence of an offence of this nature, before looking into the specifics of each case.

In this case, the victim was vulnerable, being alone in a moving car. Thereafter, the respondent's conduct was deliberate, as he waited until they were alone. Finally, as a result of his actions, the victim had suffered psychological harm, evident in her fear of transport and men.

I would however disagree that the gap in age is an aggravating factor. It would be relevant if the victim was a teenager or a young child but she is an adult and the respondent a senior citizen. What is more relevant, in this case, in my view is the fact that the victim was trapped in a moving car. That being the case, the age disparity not a factor to consider.

I do not have any issue with the magistrate's starting point of 12 months. I believe that this is a fair assessment of all the facts and factors relating to the respondent's case. If anything, I would dare to say that she could have gone a bit higher to that of 15 months as a starting point.

I do however take issue with the magistrate awarding one-third discount; it was wrongly applied. It is only available for cases where defendants have pleaded guilty before trial. In

⁴ Public Prosecutor V Normajili Bin Napir (High Court Criminal Appeal No.16 of 2009)

⁵ Hamdani bin Hj Muhin V Public Prosecutor (CA Crim App No.13 of 2000)

⁶ Sgt 3983 Haji Nora'afbillah bin Ahmad@Ja'afar V Public Prosecutor (High Court Criminal Appeal No.27 of 2020)

⁷ Kang Byong Dug V Public Prosecutor (High Court Criminal Appeal No.21 of 2022)

this case the respondent was convicted after trial. Even then, under specific circumstances, there are cases where no discount in sentence may be afforded even after a plea of guilty (*see Kasim Bin Omar AND PP⁸ and PP V Mohammad Syafwandi Bin Mustafa⁹*).

In any event, a sentence of 8 months would be manifestly inadequate, given the nature and circumstance of how the offence was committed. The court appreciate that our society has an abhorrence to the kind of behaviour and actions committed by the respondent; it undermines trust at a personal level as well as leads to a sense of insecurity of public safety.

The respondent brought to the court attention his age and his various ailments, due to his age. He also highlighted the plight of his family, now that he has been incarcerated. These facts, in my opinion, do little to mitigate his position.

VI Court Order

The magistrate sentence of 8 months' imprisonment is set aside. It is substituted with 12 months' imprisonment.

No discount is afforded as he was convicted after trial.

Sentence to commence with the date ordered by the court below.

MUHAMMED FAISAL BIN PDJLD KOL (B) HAJI KELI
Judicial Commissioner

⁸ Kasim Bin Omar AND PP CA Crim App No.10 & 11 of 2021

⁹ PP V Muhammad Syafwandi Bin Mustafa (High Court Criminal Trial No. 5 of 2024)