

MMBM

AND

Public Prosecutor

**Court of Appeal of Brunei Darussalam
(Criminal Motion No. 2 of 2025)**

Before: Steven Chong, C.J., Lunn and Woolley JJA

Date of Hearing: 9th June, 2026.

Date of Judgment: 16th June, 2026.

Criminal Law-sentence- section 377(2) of the Penal Code, Cap. 22, carnal knowledge of boy under 14 years.

Appeal against total sentence of 33 years' imprisonment and 20 strokes on conviction after trial of two Charges; Boy A aged 10 years and Boy B aged 11 years.

Sentencing- conviction after trial; Judge erred/sentencing discretion miscarried in taking starting point of 24 years' imprisonment, reducing sentences to 17 years' imprisonment and 16 years' imprisonment and ordering the sentences to be served consecutively.

Court of Appeal sentenced afresh: 2017 amendment to section 377 (2)- increased maximum sentence of 30 years imprisonment, a minimum sentence of 15 years' imprisonment and not less than 12 strokes.

Orders: sentences of imprisonment and order Appellant subject to 20 strokes quashed. Sentence: 20 years' imprisonment and 12 strokes for the 1st Charge and 2nd Charge; 5 years' imprisonment and 3 strokes of sentence for 1st Charge consecutive to sentence of 20 years' imprisonment for 2nd Charge Total sentence: 25 years' imprisonment and 15 strokes.

Appellant in person.

DPP Ahmad Firdaus Bin Hj Mohammad and DPP Nurulatikah binti Haji Husaini for Public Prosecutor.

Cases cited in the Judgment:

AHF Bin Au v PP (Criminal Appeal No. 10 of 2023).

Mohammad Shouffee bin Adam v PP [2014] 2 SLR 998.

PP v Saiful Rizam bin Assim [2014] 2 SLR 495.

Saiful Irwan Bin Haji Simpol v PP and Md Faizal bin Rosli v PP (Criminal Appeal 10 of 2019; Criminal Appeal 36 of 2010)

PP v AHF Bin Au (Criminal Trial No. 13 of 2022). 12 August 2023

MZM Bin AT v PP (Criminal Appeal No. 15 of 2021)

Md. Shah Ali v PP MZM Bin AT v PP (Criminal Motion No. 26 of 2024), 18 June 2025.

Lunn, J.A.:

1. By a Notice of Appeal and a Petition of Appeal, filed on 7 October 2024, the Appellant appeals against the sentence imposed on him on 2 October 2024 by the Judge following his conviction

after trial on 12 August 2024 on two charges of offences contrary to s. 377(2) of the Penal Code, Cap. 22 (“the Act”) of carnal intercourse, each with a boy under the age of 14 years. The 1st Charge, committed sometime in 2020, was in respect of Boy A, aged 10 years at the time of the offence, and the 2nd Charge, committed sometime in 2019, in respect Boy B, aged 11 years at the time of the offence.

Sentence

2. The Judge imposed a sentence of 17 years’ imprisonment and 12 strokes of whipping in respect of the 2nd Charge and 16 years’ imprisonment and 12 strokes of whipping in respect of the 1st Charge. Having ordered that the sentences of imprisonment imposed in respect of the 1st and 2nd Charges to be served consecutively, the Judge ordered 8 strokes of whipping from the 2nd Charge to be served consecutively to the 12 strokes of whipping imposed in respect of the 1st Charge. Accordingly, the total sentence imposed on the Appellant was 33 years’ imprisonment and 20 strokes of whipping.

The trial

3. On being arraigned before the Judge on 22 October 2022 on the two Charges, the Appellant pleaded not guilty and maintained those pleas throughout the trial, including to amended Charge 1, until Judgment was delivered by the Judge on 12 August 2024. The Prosecution led its evidence, including the oral evidence of both Boy A and Boy B, in three days in July and August 2023. The Appellant gave evidence on 9 November 2023. Submissions of the parties and the Reply of the Prosecution having made on 27 December 2023, 27 January 2024 and 17 February 2024 respectively, Judgment was delivered on 12 August 2024.

Grounds of appeal

4. In his Grounds of appeal, the Appellant submitted that, “...the sentence of whipping is too high and appeal for this case to be served simultaneously and be lightened.”

Reasons for sentence

In his reasons for sentence, the Judge identified the facts relevant to sentence.

(i) Family relationship

5. Of the family relationship between the Appellant and Boy A and Boy B, the Judge said,¹ “*The defendant is their uncle and from the evidence adduced, the Defendant was placed in a position of trust with respect to both victims.*”

In his evidence, Boy A testified that the Appellant was the younger sibling of his father, whereas Boy B testified that the Appellant was his mother’s youngest sibling. For his part, in his evidence, the Appellant confirmed those family relationships.

¹ Sentence at page 4.

(ii) Age of the boys

6. At the time of the commission of the respective offences, Boy A was aged 10 years and Boy B aged 11 years.²

(iii) Circumstances of the offences

7. Of the circumstances of the commission of the 2nd Charge, in respect of Boy B, the Judge said: *"The defendant physically constrained Boy B by hugging Boy B before proceeding to sodomise Boy B. The defendant also threatened... to leave Boy B behind if he tells anyone of what he did to Boy B."*³The judge did not advert specifically to the circumstances of the commission of the offence in the 1st Charge.
8. In his evidence, Boy A testified that on the night of the offence, the Appellant stayed overnight at his family home because of the prospective wedding of his aunt, the sister of his father and the appellant. Together with five of his siblings, he and the Appellant were sleeping in the living room. The Appellant having given him his phone he lay on his side watching a show with the appellant lying behind him. Then, the Appellant pulled down his pants and he felt the Appellant's penis entering his anus. Because he was scared he said and did nothing and fell asleep. In the morning, he felt pain in his anus, which was sticky. He washed himself. He did not tell anyone that day.⁴

Effect on the victims

9. The Judge noted that in respect of Boy A, the Court had received both a Victim Impact Statement and a Clinical Psychological Assessment by a clinical psychologist. Of the former, he noted that Boy A, *"expressed his relief and gratefulness that the court has chosen to believe his evidence."*⁵Further, that Boy A said that, *"he had to keep quiet and bury his emotions about what happened to him for fear of being intimidated by the Defendant. His uncle"*. Of the clinical psychologist's assessment, the Judge noted that Boy A was assessed to have intellectual ability within normal limits and that the opinion was expressed that, *"the alleged incident did not appear to greatly affect him anymore because he is relieved that he no longer has to keep it to himself, and he is believed by the court."* Further, that it was recommended, *"there being no further psychological intervention at this stage"*.⁶

Aggravating factors

10. Of the aggravating factors in the commission of the offences, the Judge described in some detail the aggravating factors identified by the prosecution, including: the age of the victim; the abuse of trust of an uncle with regard to his nephews; that there were repeated offences

² Sentence at page 2.

³ Sentence at page 4..

⁴ Notes of Proceedings, pages 20-26.

⁵Sentence at page 4.

⁶ Sentence at page 3.

against multiple victims; use of physical force and threats against Boy B; physical and emotional harm suffered by Boy A, as a direct consequence of the Appellant's actions.⁷

11. Of those circumstances, the Judge said:⁸

"The prosecution has rightly pointed out all the aggravating factors of the case. The offences that the Defendant committed are very serious offences and heinous as the victims are all young boys who had put their trust on the Defendant being their uncle. The defendant also took advantage of the victim's young age as they will be easily scared from making complaints on what he had done to them."

Clearly, the Judge accepted all the aggravating factors identified by the Prosecution.

Mitigating factors

12. Of the mitigation advanced by the Appellant, the Judge said that he, *"pleaded for consideration and leniency and minimum or lowest sentence and for the sentence to take effect from the day he was first remanded at the Police Station which was 21 August 2022."*⁹ For his part, the Judge noted, *"the Defendant is a first offender"*.¹⁰

13. In imposing sentence, having said that he had regard to all the mitigating factors and also the aggravating factors, the Judge added, *"the Defendant is a first offender and he pleaded not guilty."*¹¹

Seriousness of the offence

14. The Judge noted of s. 377(2) of the Act that by amendment to the provision, in 2017, the maximum sentence of imprisonment had been increased from 10 years' imprisonment to 30 years' imprisonment and a requirement imposed that the minimum sentence to be imposed was 15 years' imprisonment.¹² Of that, he said that the Prosecution's submitted that, *"demonstrates the very strict and serious approach taken by Brunei Darussalam towards the commission of such offences on young victims under the age of 14 years old."* For his part, the Judge said, *"...the Court views any offences against children or young persons very seriously and will not hesitate to impose heavy sentences."*¹³

The appropriate sentence for the offences

15. Of the sentences to be imposed for the two offences, the Judge noted that the Prosecution had drawn his attention to the Judgment of this Court in *AHF Bin Au v PP*¹⁴, of which it was asserted

⁷ Sentence at pages 3-4

⁸ Sentence at page 6.

⁹ Sentence at page 2.

¹⁰ Sentence at page 6.

¹¹ Sentence at page 6.

¹² Sentence at page 4.

¹³ Sentence at page 6. A

¹⁴ *AHF Bin Au v PP* (Criminal Appeal No. 10 of 2023).

that, “the Court of Appeal upheld the aggregate sentence of 30 years’ imprisonment and 20 strokes, remarking that the sentence was not manifestly excessive notwithstanding the appellant’s guilty plea.”¹⁵ Of that, the Judge said that the Prosecution submitted, “that a sentence much higher than that imposed in the AHF Bin Au case is warranted and justified considering that the Defendant’s conviction in the present case is not upon guilty plea, but rather following a trial, wherein the young child victims had endured the ordeal of reliving the traumatic incidents when having to give evidence at trial.”¹⁶ In conclusion, the Prosecution invited the imposition of, “a global sentence of not less than 30 years’ imprisonment and a minimum of 12 strokes of whipping.”

Sentence

(i) Starting point

16. In determining the sentence to impose on the Appellant, the Judge said that he took a ‘starting point’ of 24 years’ imprisonment for each of the two offences.¹⁷

(ii) Deduction

17. Of the sentence to be imposed in respect of the 2nd Charge he said that he, “reduced it by 1/3 which is 8 years and deduct those eight years from the starting point which is 16 years [24-8 = 16]”. Of the sentence to be imposed in respect of the 1st Charge, the Judge said that he deducted, “7 years from the starting point which is 17 years [24-7=17].”¹⁸

18. The Judge gave no indication of why it was that he had determined it was appropriate to make any deduction from the sentence he identified as the starting point.

(iii) Sentence: concurrent/consecutive/totality

19. In determining whether the two sentences should be served concurrently or consecutively and having regard to the totality principle of sentence, having referred to the Judgments of the Court of Appeal of Singapore in *Mohammad Shouffee bin Adam v PP*¹⁹ and *PP v Saiful Rizam bin Assim*,²⁰ the Judge said:²¹

“It is evident that the two offences are distinct offences where the date, place and victims are different. I have highlighted the seriousness of the offences, the society and Court’s abhorrence of any sexual offence against children, young and vulnerable and most importantly amongst others, the need to protect the society especially children, young and vulnerable from these predators. This Court is satisfied that it is justifiable and appropriate and proportionate that the two sentences [First Charge and Second Charge] are to run consecutively with each other...”

¹⁵ Sentence at page 5.

¹⁶ Sentence at page 5.

¹⁷ Sentence at page 7.

¹⁸ Sentence at page 7.

¹⁹ *Mohammad Shouffee bin Adam v PP* [2014] 2 SLR 998.

²⁰ *PP v Saiful Rizam bin Assim* [2014] 2 SLR 495.

²¹ Sentence at page 7.

The Appellant's Submissions

20. In his written Submissions, the Appellant said that he agreed with the decision of the Court and expressed his regret for his actions. Having reminded the Court that he was a “*first offender*”, he invited the Court to reduce the sentence of 33 years’ imprisonment and the imposition of 20 strokes, asserting that they were “*extremely excessive and too high*”.

The Respondent's submissions

Amendments to the Penal Code: 2017

21. In the Respondent’s written Submissions, Mr. Ahmad Firdaus submitted that the amendments to the Penal Code in 2017 in respect of section 377, “represents a marked and deliberate legislative shift in approach. It significantly increased the penalties for such offences and introduced a distinct and considerably more severe sentencing regime specifically for offences committed against persons under the age of 14 years.”²²

22. Mr. Ahmad Firdaus invited the Court to regard the sentences imposed for offences contrary to section 377 of the Act prior to the 2017 amendments as of little assistance given the, “*contrast between the old and new sentencing regimes.*”²³ *In the absence of sentencing precedents, he invited the Court to have regard to the Judgment of this Court in AHF v PP, of which he said, “the Court of Appeal upheld the aggregate sentence of 30 years’ imprisonment and 20 strokes of whipping, specifically remarking that the sentence was not manifestly excessive, notwithstanding that the Appellant had entered a guilty plea.”*²⁴

23. The Respondent submitted that, notwithstanding the fact that the Judgment concerned sentences in rape, it was relevant to the instant appeal, given that both section 376 and section 377 of the Act were amended by the same legislative instrument in 2017. They shared the same statutory maximum of 30 years’ imprisonment. For offences concerning persons under 14 years of age, section 376(3) and section 377(2), “prescribing identical mandatory minimum of 15 years imprisonment and not less than 12 strokes of whipping”. In consequence, it was submitted:²⁵

“The sentencing frameworks under both provisions are therefore materially similar. Furthermore, AHF Bin Au also involves two distinct offences against a victim under 14 years.”

24. It is to be noted that sentence imposed on that Appellant followed his conviction of two charges of rape of a girl aged 11 years, contrary to s. 376(2)(b) of the Act on his plea of guilty, but only after a trial in which the victim had given evidence-in-chief. The Appellant in *AHF* pleaded guilty to an offence contrary to section 376(2)(b), which mandates a minimum sentence of 10 year’s imprisonment, not 376(3), which mandates a minimum sentence of 15 years’ imprisonment.

²² Respondent's Submissions at paragraph 14.

²³ Respondent's Submissions at paragraph 25.

²⁴ Sentence at paragraph 28.

²⁵ Respondent's written Submissions at paragraph 29,

Aggravating and mitigating factors

25. The Judge had been entitled to have regard to the aggravating factors in the commission of the offences. He had taken into account that the Appellant was a first offender, but in any event considerations that flowed from that fact were diminished by the seriousness of the offences. Secondly, the Appellant's expressions of remorse at this stage should not warrant a reduction in sentence.

Reduction in sentence

26. Having invited the Court to note the observations made in the Judgment of the Court delivered by Burrell, P. in *Saiful Irwan Bin Haji Simpol v PP and Md Faizal Bin Rosli v PP*²⁶ in respect of discounts to be afforded to a Defendant who is to be sentenced having pleaded guilty that, "a defendant who only pleads during his or her trial... deserves very little credit at all", the Respondent submitted that, given that the Appellant was convicted after a full trial he, "should not be entitled to any discount whatsoever."²⁷

Consecutive sentences and totality

27. The Judge had said that he had regard to the "one-transaction rule and the totality principle. [*Mohammed Shoufee bin Adam v PP [2014] 2 SLR 998*]."²⁸ He was correct to determine that it was appropriate for the sentences on the two charges to run consecutively, given that they were committed in respect of different victims, at different places, at different times and in different circumstances. The overall sentence imposed on the Appellant was appropriate and not manifestly excessive and the Court was invited to dismiss the appeal.

A consideration of the submissions

28. At the outset, the Court accepts the validity of the submission made by Mr. Ahmad Firdaus and acknowledges that the amendment to section 377(2) of the Act in 2017, in which the previous maximum sentence was increased from 10 years' imprisonment to 30 years' imprisonment together with the requirement of the imposition of a mandatory sentence of 15 years' imprisonment, was a determination by the Legislature that offences committed thereafter merited a much greater penalty than was available or imposed under the previous sentencing regime.

29. The Appellant was sentenced by the Judge only after he had convicted the Appellant on 12 August 2024 after a trial, the substantive hearing of which began on 17 July 2023. Throughout the trial the Appellant had maintained that he was not guilty, had cross-examined the victims on that basis and had given evidence to the same effect. In those circumstances, with the greatest of respect to the Judge it is very difficult to understand why the Judge stipulated a starting point, which is entirely unnecessary when sentencing a person convicted after trial.

²⁶ *Saiful Irwan Bin Haji Simpol v PP and Md Faizal Bin Rosli v PP* {Criminal Appeal No. 10 of 2019; Criminal Appeal No. 36 of 2010}

²⁷ Respondent's Submissions at paragraph 32

²⁸ Sentence, at page 7.

30. Even more difficult to understand is why the Judge afforded the Appellant a discount of sentence from that taken as the starting point. The Judge gave no explanation at all of why he had done so. There was no basis whatsoever for doing as he did. The discount afforded to the Appellant in respect of the 2nd Charge was one-third of that identified as the starting point of 24 years' imprisonment.

31. As noted earlier, the Judge's attention had been drawn by the Prosecution to the Judgment of the Chief Justice in *AHF*, which submissions he referred to in his reasons for sentence. In criticising as "too generous" the reduction of 20% from the starting point taken for sentence afforded by the Judge to the Appellant, who pleaded guilty only after the victim of two charges of rape had given evidence-in-chief, the Chief Justice said:²⁹

"Minimal credit, if any, may be given to an offender for a guilty plea where the victim of the offence has given evidence. In this case it was only after the victim had given a detailed account of the rape incidents in her evidence in chief that the appellant pleaded guilty."

Clearly, those observations applied in the sentencing of this Appellant. With the greatest respect to the Judge, clearly his discretion in sentencing miscarried.

Starting point: 24 years' imprisonment

32. In stipulating a starting point of 24 years' imprisonment for each of the two charges the Judge gave no explanation of how he had determined that to be the appropriate sentence. Clearly, the Judge was mindful that the 2017 amendments to section 377(2) of the Act provided not only for a maximum sentence of 30 years' imprisonment but also that the sentence for an offence was to be not less than 15 years' imprisonment. He said so in his reasons for sentence.³⁰

33. The submission of the Prosecution to the Judge, which he quoted in his reasons for sentence, that, "a sentence much higher than that imposed in the *AHF Bin Au* case is warranted and justified considering that the Defendant's conviction in the present case is not upon guilty plea, but rather following a trial, wherein the young child victims had endured the ordeal of reliving the traumatic incidents when having to give evidence at trial" was misconceived.

34. The girl victim in that case had given evidence-in-chief and, thereby "*endured the ordeal of reliving the traumatic incidents*". Indeed, in sentencing in that case the Judge noted that the trial had to be stopped several times to allow the victim to compose herself. The girl had given evidence in the morning and afternoon of one day and the whole of the morning of the following day.³¹ Then, the Appellant indicated he wished to plead guilty and the proceedings were adjourned. Following the pleas of guilty, she did not resume her evidence.

35. The offences committed in *AHF* were two rapes, contrary to section 376(2) of the Act, of a girl aged 11 years. in circumstances of a breach of trust by the Appellant, who was a close friend

²⁹ *AHF Bin Au v PP*, at page 3.

³⁰ Sentence at page 4.

³¹ Sentencing: *PP v AHF* (Criminal Trial No. 13 of 2022). 12 August 2023.

of the victim's brother and permitted to visit the family home frequently. In the first rape, the victim was taken to the Appellant's mother's home. In the second rape she was raped in a bathroom in her own home. The Judge took a starting point of 18 years' imprisonment for Charge 1 and 20 years' imprisonment for Charge 2, and imposed sentences of 14 years and 4 months' imprisonment with 12 strokes and 16 years' imprisonment with 12 strokes respectively.

36. Obviously, the starting point of 24 years' imprisonment taken by the Judge in the instant appeal was, "much higher than that imposed in the AHF case".
37. Following the legislative amendments of 2017 to the provisions of section 376 of the Act, in our Judgment in *MZM Bin AT v PP*³² this Court provided guidelines for sentencing for an offence contrary to section 376(2) of incestuous rape, stating that the starting point to be taken for sentence was 18 years' imprisonment and 15 strokes. Of course, a guideline is not a straitjacket. The fact that rape is incestuous is conduct of a very grave breach of trust.
38. In our Judgment in *Md. Shah Ali v PP*³³ in allowing an appeal against the imposition of a sentence of 25 years' imprisonment and 20 strokes on the Appellant, following his plea of guilty to a single charge of rape of a girl aged 12 years, contrary to section 376(2)(b) of the Act, in which the Judge had taken a starting point of 30 years' imprisonment, the Court had regard to the Judgment in *AFH* and determined that the appropriate starting point for sentence was 18 years' imprisonment. Having afforded the Appellant a one-third discount for his plea of guilty, this Court substituted a sentence of 13 years and 4 months' imprisonment.
39. We are satisfied that assistance can be gained by this Court in having regard to the guideline sentence stipulated in *MZM*.
40. Carnal intercourse against the order of nature, contrary to section 377(2) is an offence that can be committed against a male or a female. The same maximum sentence of 30 years' imprisonment is provided for that offence and for the offence of rape, contrary to section 376(2). However, the mandatory minimum sentence for the latter offence is 10 years' imprisonment and 12 strokes, whereas it is 15 years' imprisonment and 12 strokes for the former offence.
41. Having regard to the range of sentence available, to the Judge from the mandatory minimum sentence of 15 years' imprisonment to the maximum of 30 years' imprisonment, in determining the starting point for sentence of 24 years' imprisonment, the Judge stipulated a sentence that was 9 year's imprisonment more than the minimum sentence and only 6 years short of the maximum sentence.
42. Notwithstanding having had regard to all the aggravating factors of the commission of the offence, nevertheless we are satisfied that the starting point for sentence stipulated by the Judge of 24 years' imprisonment was itself manifestly excessive.

³² *MZM Bin AT v PP* (Criminal Appeal No. 15 of 2021)

³³ *Md. Shah Ali v PP MZM Bin AT v PP* (Criminal Motion No. 26 of 2024), 18 June 2025.

43. In the result, with respect, we are satisfied that, the Judge's discretion in sentencing miscarried. In those circumstances, it falls to this Court to sentence afresh.

Sentence

44. Having regard to the aggravating factors identified by the Judge, in particular that a measure of force was used by the Appellant on Boy B in the commission of the offence the subject of the 2nd Charge, we are satisfied that the appropriate sentence for that Charge is 20 years' imprisonment and 12 strokes. Although the fact that the 1st Charge in respect of Boy A was the subsequent commission of the same offence against another nephew in different circumstances, it was committed without any element of the force used against Boy B. Having regard to those competing factors, we are satisfied that the appropriate sentence is also 20 years' imprisonment and 12 strokes.
45. We turn next to the issue of whether the sentences are to be made consecutive, or partly consecutive and concurrent having regard to considerations of the appropriate totality of sentence.
46. Given that the two offences are distinct and separate, involving different victims, it is appropriate that the Court consider making the sentence of imprisonment imposed on one charge consecutive to the sentence of imprisonment imposed on the other charge. However, it is immediately apparent that, on a consideration of totality, it is appropriate that only part of the sentence in respect of Charge 1 is to be made consecutive to the sentence of imprisonment imposed in respect of Charge 2. Having regard not only to the Appellant's overall culpability but also to the fact that at the time of the commission of the offences, the Appellant had no previous criminal convictions and that he is now 34 years of age, we are satisfied that it is appropriate to order that 5 years' imprisonment of the sentence imposed in respect of one charge is to be ordered to be served consecutively to the sentence of 20 years imprisonment imposed in respect of the other charge. Consistent with that approach, it is appropriate to order that 3 strokes only of the sentence imposed in respect of the 1st Charge be ordered to be inflicted on the Appellant consecutively to the 12 strokes to be inflicted on him in respect of the 2nd Charge.

Conclusion

47. For the reasons that we have given, we allow the appeal and quash the sentences of imprisonment imposed by the Judge of 17 years' imprisonment in respect of the 2nd Charge and 16 years' imprisonment in respect of the 1st Charge, the order that those terms of imprisonment be served consecutively and the order that a total of 20 strokes be inflicted on him. We make no order in respect of the judge's order that he receive 12 strokes in respect of each of the Charges, that being the requisite minimum of s. 377(2).
48. In their place, we impose a sentence of 20 years' imprisonment in respect of the 2nd Charge and 20 years' imprisonment in respect of the 1st Charge and we order that 5 years of the term of imprisonment imposed in respect of the 1st Charge be served consecutively to the sentence of imprisonment imposed in respect of the 2nd Charge. 15 years of the term of imprisonment imposed in respect of the 1st Charge is to be served concurrently to the sentence of 20 years

imprisonment imposed in respect of the 2nd Charge. Accordingly, the total sentence imposed on the Appellant is 25 years' imprisonment and 15 strokes.

Counsel for the Prosecution's duty in sentencing

49. At the Hearing, in response to our enquiry as to why he had not informed the Judge at some point in the oral delivery of sentence, after the judge had identified a starting point from which he proceeded to afford a discount of one-third on one of the Charges, that it appeared that the judge was sentencing on the basis of an early plea of guilty to the Charges and not on conviction after full trial, Mr. Firdaus said that the DPP did not do so during the oral delivery of sentence out of respect for the Court and, by the end of sentencing, it was decided that the global sentence was not wrong. The Notes of Proceedings state that another DPP was standing in for Mr. Firdaus. With respect, whilst acknowledging the counsel was placed in an invidious position, it was nevertheless counsel for the Prosecution's duty during or immediately after the oral sentencing to inform the Court respectfully that it appeared that sentence was proceeding on the wrong factual basis.



DATO SERI PADUKA STEVEN CHONG, C.J.



LUNN, J.A.



WOOLLEY, J.A.