

**Gunasekaran Marunggapan [D1]
Sahayaraj Soosai [D2]
Pandian Arunakiri [D3]
R. Mohan Raj Rengadas [D4]**

AND

Public Prosecutor

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 4 of 2007)**

**Before: Power, P; Mortimer and Davies, JJ.A.
10th November, 2007.**

Sentence – Culpable homicide not amounting to murder attack by armed group resulting in death – 4 years clearly not excessive – appeals dismissed.

DPP Hj Nabil Daraina bin PD Hj Badaruddin for the Public Prosecutor assisted by DPP Suriana Radin.
Appellant in person.

Power, P.:

In this matter there were originally 5 defendants.

They were charged as members of an unlawful assembly one of whose members committed the offence of culpable homicide not amounting to the murder of SHAHUL SHARIF in prosecution of the common object of that assembly namely assault armed with dangerous weapons on JAKIR HUSSIN and some others which offence members of the assembly knew was likely to be committed in prosecution of such object contrary to s. 304(2) and s. 149 of the Penal Code.

The first 4 defendants who had clear records, are now appealing against sentences of 4 years imposed on them by Commissioner Hairol after plea. The fifth defendant, who is not appealing, received 5 years imprisonment on that charge and one year consecutive on the charge of possession of an offensive weapon.

The facts reveal that on 14th January at about 2200 hours D1 and D2 were drinking beer in the HADIMA RESTAURANT. They were asked by JAKKIR HUSSIN a restaurant worker to stop as it was a Muslim restaurant.

There was an argument, they left and went home where they met D3, D4 and D5. After discussion they armed themselves and went looking for JAKKIR HUSSIN intending to assault him.

He was not at the restaurant so they proceeded towards his home. On the way they met a party which included HUSSIN and the deceased. A fight ensued in which the deceased was stabbed in the heart by a knife D5 was holding at the time. The admitted facts state *“D5 did so without the intention of causing death to the deceased”* we cannot help but remark that the defendants were fortunate not to have been charged with murder.

Commissioner Hairol when sentencing noted that the defendants were remorseful, that they had clear records and that their actions involved “a high risk of serious injury.” He indicated that he would have imposed 6 years after trial.

Appellants contend and that the sentences were manifestly excessive and urge family consideration in mitigation. In our view they clearly were not. They were as an armed group looking for trouble, they found it and it resulted in the death of an innocent bystander.

The appeals are dismissed.

Power, P

Mortimer, J.A.

Davies, J.A.