

Mohamad Yusof Bin Haji Latif

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 10 of 2016)**

Dato Seri Paduka Hj Kifrawi, C.J.
22nd September, 2016.

Criminal law – Sentencing – Voluntary causing hurt – Section 323 of the Penal Code.

Appellant In Person.
DPP Sharon Yeo for Public Prosecutor.

J U D G M E N T

Dato Seri Paduka Hj Kifrawi, C.J.:

The Defendant was charged on 14/4/2016 as follows:

1st Charge

That you, on 8th April 2016 at about 1930 hours at the vicinity of Sungai Bunga Car Park in Brunei Darussalam did voluntarily caused hurt to one Siti Rafiah Bte Awg Hj Rusli (F 29 years old) to wit, by strangling her on her neck and you have thereby committed an offence punishable under section 323 of the Penal Code, Chapter 22.

2nd Charge

That you, on 8th April 2016 at about 1935 hours at No.7C Jambatan 3, 1 Kg Perpindahan Sungai Bunga in Brunei Darussalam did voluntarily caused hurt to one Siti Rafiah bte Awg Hj Rusli (F 29 years old) to wit, by pulling her hair and you have thereby committed an offence punishable under section 323 of the Penal Code, Chapter 22.

The Defendant pleaded guilty and admitted the following Statement of Facts:

‘Statement of Facts

1. The defendant is a 29 year old Malay man who is married to Siti Rafiah bte Awg Hj Rusli (F 29 years old)(The Complainant). Both the defendant and the complainant has been married for 7 years and have 3 children. At the time of the offence both complainant and the defendant were living at No.7C, Jambatan 3, Kg Perumahan Sungai Bunga in Brunei Darussalam.
2. On 8th April 2016, at about 1900 hours, the defendant and the complainant went to a sundry shop to collect money from the shopkeeper from the sales of tomatoes that the defendant planted. At the shop, the shopkeeper told the defendant that he is unable to provide him with the money. This made the defendant angry, and once both the defendant and the complainant arrived at the Sungai Bunga car park at about 1930 hours both the complainant and the defendant alighted from the car, the defendant suddenly strangled the complainant on her neck until the complainant had difficulty breathing and told her not to cry, otherwise it will hurt more. This cause the complainant to feel hurt.
3. At about 1935 hours after arriving home at No.7C, Jambatan 3, Kg Perumahan Sungai Bunga, both defendant and complainant went to their room, the defendant who was still angry at the incident, pulled the complainant's hair. As a result of this, the complainant felt hurt. The defendant told the complainant that if she made a report, he will take away her children and he will kill her and their children.
4. After the defendant calmed down, he fell asleep. At about 0915 hours the next day, the complainant went to the central police station to lodge a report. The complainant was taken to RIPAS hospital where she was examined by Dr Abd Majid J, who examined her at about 1114 hours on 9th April 2016 and concluded that there were tenderness in the neck, face and head but did not note any bruises. Dr Abd Majid constitute the injury as hurt caused by blunt trauma.
5. Through police investigation, the defendant was questioned and he admitted that he had caused the complainant hurt by strangling the complainant on her neck until she had difficulty breathing and also admitted that he pulled her hair.
6. On record, the defendant does not have any previous conviction.

The Magistrate convicted the Defendant as charged and sentenced him on 18/4/2016 as follows:

- 1st Charge: \$1,500 in default 3 months imprisonment.
 2nd Charge: \$1,500 in default 3 months imprisonment.

Total \$3,000 in default 6 months imprisonment.

The Defendant was ordered to pay the fine within 3 months.

The Defendant appealed to this court for the fine to be reduced and that he be given longer time to pay the fine. He said his source of income from a farm has been stopped. He said that is his only source of income to pay the fine. Nevertheless, he managed to get \$2000 from his wife and \$1,000 he borrowed from parents.

The Magistrate has rightly taken into consideration the mitigating circumstances of this case namely:

- (i) The Defendant is a first offender and has a clear record;
- (ii) A one off offence;
- (iii) The Defendant pleaded guilty and thus has shown genuine remorse. He apologized and wanted his wife back.
- (iv) The Defendant's wife suffered tenderness but no injuries were noted.

Unfortunately, he was very violent towards his wife. I do not find the sentence to be manifestly excessive or wrong in principle. Defendant to pay fine totalling \$3,000 in default 6 months imprisonment.

DATO SERI PADUKA HJ KIFRAWI BIN DATO PADUKA HJ KIFLI
Chief Justice