

MOHAMMAD HAZMAN BIN AWANG NASRI

AND

PUBLIC PROSECUTOR

(High Court of Brunei Darussalam)
(Criminal Appeal No 1 of 2017)

Hairol Arni Majid, J.

13th May 2017

DPP Vuina Song and DPP Dk. Hazirah Pg. Yussof for Appellant
Respondent in person

Cases cited:

Ramanethan Yogenderan v Public Prosecutor [1995] 2 SLR [R] 471

Amen Akhbar v Abdul Hamid [1983] 3 SLR (R) 54

Public Prosecutor v Mohammad Liton Mohammad Syed Malik [2008] 1

SLR

PP v Abdul Herwan Mohammad Jaya (Magistrate's Court,
BSB/CC/65/2017

PP v Hj. Muhammad Dhiyaulhaq Bin Hj. Ariffin (Magistrate's
Court BSB/CC/134/2016

PP v Sunardi Bin Haji Ibrahim (HCCA No. 10 of 2013)

J U D G M E N T

The respondent pleaded guilty to one count of Criminal Intimidation under section 506 of the Penal Code, Chapter 22 and was sentenced to a fine of \$2,000 in default of which he is to serve two months' custodial sentence. Unsatisfied with the sentence the prosecution / appellant appealed and sought for a custodial sentence.

According to the statement of facts, on the 10th January 2017, the respondent was with his wife and children in a car driven by the respondent at a petrol station in Kg. Kapok, Muara. While in the queue, the respondent thought that a petrol station attendant was staring at his wife. On reaching the front of the queue, the respondent parked his car and asked the attendant to fill the car. Taking out a metal rod from his driver's seat inside the car and repeatedly hitting the doors of his car at the same time asking the attendant why he was staring at the respondent and his wife. He then alighted from the car and approached the attendant with the metal rod still on his hand and directing the same at the attendant's face uttering repeatedly the word "do you want to die". He drove off and threw \$3 out of his car window for the payment of the petrol. Alarmed by the incident, the attendant lodged a police report which led to the arrest of the respondent the same day.

The summary of the prosecution submission is this. Firstly, this was on unprovoked violence in that the respondent behavior stem from the fact that he felt that the complainant had been staring at his wife and this prompted his action. Secondly, the respondent has uttered the words "do you want to die" to the complainant and this threat was accompanied with the use of a metal rod against a vulnerable victim. Thirdly, the prosecution sought for deterrence sentence by imposing a custodial sentenced consistence with the previous sentences precedent of the court.

For the purpose of the court in assessing its sentences, it is important to understand what are the elements of the offence of criminal intimidation. For a conviction under this section, firstly the prosecution has to satisfy that the accused must have threaten the victim with injury to his or her person and secondly, the threat as such must have intended to cause alarm to the victim.

The issue in most cases is whether for an offence of criminal intimidation to be made out, is there a necessity for the prosecution to show that the victim was actually threatened. The short answer to this is "No".

In the case of *Lee Yoke Chong v Public Prosecutor* [1964] MLJ 138, the court held that the offence of criminal intimidation lay in the intend and not the effect behind the threat. The fact that the victim was not actually alarmed by the threat to throw acid on his face was a mitigating factor in the sentence.

In *Ramanathan Yogenderan v Public Prosecutor* [1995] 2 SLR [R] 471 and *Amen Akhbar v Abdul Hamid* [1983] 3 SLR (R) 54, the court endorsed the ratio in *Lew Yoke*

Chong's case and said the effect of the threat on the victim was not relevant for the purpose of the offence of criminal intimidation.

In *Public Prosecutor v Mohammad Liton Mohammad Syed Malik [2008] 1 SLR*, the Court of Appeal has this to say on the matter;

“the fact of the threat on the victim is not entirely irrelevant, but would assist the court in determining whether the alleged offender in fact had intention to commit the offence of criminal intimidation. If for example, the threat is uttered in circumstances in which no reasonable person in the victim’s shoes could have apprehended alarm, that would be a factor for even a strong factor that could be invoked by the accused to support the argument that he did not have the requisite intention to commit the offence. If, however there is such an objective basis for apprehension present, then it would not matter if the victim did not in fact, apprehend alarm as a result of the threat.”

The sentencing trend for offence under section 506 of the Penal Code appear to be that the court is consistent in imposing a custodial where the threat had been serious and accompanied by use of a weapon or blunt instrument of sort.

In *PP v Abdul Herwan Mohammad Jaya (Magistrate’s Court, BSB/CC/65/2017)*, the Magistrate Court passed a custodial sentence of two months on the defendant after a plea of guilty for pointing a “parang” at his wife and for threatening her with injury after she had cooked his giant tiger prawns. In *PP v Hj. Muhammad Dhiyaulhaq Bin Hj. Ariffin (Magistrate’s Court BSB/CC/134/2016)*, the defendant was sentenced to three-month custodial sentence on a plea of guilty under Section 506 of the Penal Code for threatening his mother with injury by pointing a knife causing her to be alarmed. In *PP v Sunardi Bin Haji Ibrahim (HCCA No. 10 of 2013)*, the respondent in this case pleaded guilty to two charges under section 506 of the Penal Code for threatening two police officers on Facebook and was sentenced in the Magistrate’s Court to a fine of \$4,000 or 4 months’ custodial sentence in default. On appeal, the High Court substituted the sentence with 6 months’ custodial sentence each to run concurrently.

On the fact before the court, it is obvious that the threat was directed at the petrol attendant with the intention to cause him alarm. In fact, before me the respondent repeated his frustration against the complainant for seemingly ‘staring’ at his wife, every time he and his wife were at the station. There is no doubt that workers who are on the service frontlines are more likely to be vulnerable to criminal violence or intimidation from public as such there is a need for them to be protected from difficult or unruly public who are on the receiving end of their

service. It is not in the public interest for violent conduct of sort to go get punish with a fine. I believe that a custodial sentence is clearly warranted in this case in order to deter and serve as a warning to like-minded person who might resort to violence.

Accordingly, I allow the appeal of the prosecution and quashed the Magistrate's sentence of a fine against the respondent and substitute it with a custodial sentence of two months. The imprisonment term is to take effect from today.

Dato Paduka Hairol Arni Majid
Judge, High Court