

Public Prosecutor

AND

Abdul Majid Bin Awang Haji Bini

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 22 of 2020)**

Steven Chong, CJ
9 September 2020

Criminal law – Publicly exhibiting obscene photographs – Criminal intimidation – Sentence – S.292(3)(a) and S.506 of the Penal Code

DPP Nurul Fitri Binti Kiprawi for the Public Prosecutor/Appellant.
Respondent unrepresented.

Case cited:

A.I. v Public Prosecutor [2004] 2 JCBD 185

Steven Chong, CJ:

On 9 July 2020 the respondent pleaded guilty to three charges under the Penal Code: two charges of publicly exhibiting obscene photographs contrary to section 292(3)(a)(1st and 3rd Charges) and one charge of criminal intimidation contrary to section 506 (2nd Charge).

The Magistrate sentenced the respondent to 6 months' imprisonment on each of the section 292(3)(a) offences to run concurrently and 2 months' imprisonment on the section 506 offence to run consecutively resulting in an aggregate sentence of 8 months' imprisonment.

This is the appeal of the Public Prosecutor against that sentence on the ground that it is manifestly inadequate.

The respondent and X who are in their 20s were in a relationship between 2018 and 2019 and they had a child together out of wedlock.

In September 2019 X ended the relationship as she felt “*emotionally abused*” by the respondent. But the respondent refused to accept X's decision and constantly pestered her with text messages via WhatsApp and iMessage which she ignored. This angered the respondent and he threatened to circulate naked photographs of X on Instagram.

Subsequently, in October 2019, the respondent carried out that threat by uploading three naked photographs of X on Instagram. X went to the police but no “*formal report*” was lodged and the respondent was given a “*stern warning*”.

Despite the police warning the respondent continued to contact X but she took no notice of him. This prompted the respondent in January 2020 to create four Instagram accounts under different names and upload naked photographs of X captioned “*Pay Sex \$100*”. The respondent also posted the name and personal details of X and tagged the name of the school where she was a teacher on the Instagram accounts.

The principal of the school saw the naked photographs of X on Instagram and informed her about them. X immediately contacted the respondent and told him to remove the naked photographs and the Instagram accounts.

In February 2020 the respondent persisted in contacting X via iMessage and when she did not reply to his messages he again threatened to circulate naked photographs of her. X reported the threat to the police. The respondent was then questioned by the police and he admitted to the act of intimidation. The police seized the respondent’s mobile phone to carry out investigations and he was released on bail.

While the respondent was on police bail he created another two Instagram accounts containing naked photographs of X and these were discovered by her on 4 July 2020. X made a police report and when the respondent was investigated he admitted responsibility for creating the two Instagram accounts.

The DPP submits that the sentences individually and in totality are unduly lenient having regard to the gravity of the offences.

I agree.

The Magistrate failed to give sufficient consideration to the aggravating features in the case. The respondent paid no attention to the “*stern warning*” from the police after he first posted explicit photographs of X online. Indeed, the respondent was emboldened to repeat the offences twice and he went further than the first occasion to cause harm to X by revealing her identity and place of work and portraying her as a prostitute.

These vindictive acts by the respondent were clearly calculated to humiliate and destroy the reputation of X.

In the circumstances I allow the appeal, quash the sentences of the court below and substitute the following sentences (reduction in sentences given for pleading guilty):

1st Charge: 12 months reduced to 8 months
2nd Charge: 12 months reduced to 8 months
3rd Charge: 18 months reduced to 12 months

The repetition of the offence justifies an increase in the sentence on the 3rd Charge: see *A.I. v Public Prosecutor* [2004] 2 JCBD 185.

Considering the overall criminality of the offences I order the sentences on the 1st and 3rd Charges to run concurrently and the sentence on the 2nd Charge to run consecutively.

In the result the Magistrate's sentence of 8 months is increased to one year and 8 months.

DATO SERI PADUKA STEVEN CHONG
Chief Justice