

Mohamad Noor Hazwani Bin Joini

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No 48 of 2014)

Hairol Arni Majid, J.
28th May, 2015.

Criminal Case – Appeals against sentence, causing hurt (section 323 of the Penal Code) – guilty plea - appropriate sentence.

Appellant In Person.

DPP Siti Nurjauinah Hj Kula for Public Prosecutor/Respondent.

Cases cited in the Judgment:

Hj Junaidi Abu Bakar v Public Prosecutor (Criminal Appeal No. 65 of 2003)

Pengiran Haji Zainudin Pg Haji Md. Jassin v Public Prosecutor [Criminal Appeal No. 20/2013]

Public Prosecutor vs Irwan Mawardi Hj Hussein [BSB/MCCT/2357/2011] (unreported)

Public Prosecutor vs Mohammad Readuan Moxsin [HCCT No. 18/2005]

Public Prosecutor vs Md. Nur Hakeem @ Eddyismandi bin Ali [ICCT No. 22/2013]

Public Prosecutor vs Norariffin Mohd Julaihi (MCCT No. 1382 of 2005 unreported)

Public Prosecutor vs Othman Hj Saidin [1999] 1 JCBD 231

Public Prosecutor v Pham Van Huan [ICCT No. 22/2011]

J U D G M E N T

Hairol Arni Majid, J.:

The appellant was convicted on his own plea on 3 counts of causing hurt to his wife contrary to section 323 of the Penal Code Chapter 22. He was sentenced to 6 month custodial sentence each on the first and the second charge and 8 months on the third. The Magistrate ordered for the sentences on the first and second charges to be served

concurrently but consecutively to the third; making a total of 14 months custodial sentence.

The background of the case is as per the statement of facts which are as follows:

1. The defendant is a local citizen of Brunei Darussalam. At the time of the offence, the defendant was unemployed and married to Seimah Binti Serudin/Jemaludin, F31 years, NRIC No. 00-297276 (Yellow). They have been married for about 6 years and they have three children together.
2. On the 11th November 2014, sometime in the afternoon, the defendant and his wife were at their home at No 127E, Kg Peramu, Mukim Peramu in Brunei Darussalam. At that time, the defendant approached Seimah outside their bedroom and questioned her about her work leave. During their conversation, the defendant was not satisfied with Seimah's explanation and he went into a rage. He started punching Seimah's left arm and Seimah's back repeatedly. Seimah tried to avoid but she was only able to bow down as she felt pain and there were blood coming out of her left ear. The defendant who was still angry at the time kept hitting Seimah because he was still not satisfied with Seimah's answer. The defendant continued kicking Seimah's back and both thighs repeatedly. The defendant also used an ambi pure bottle to hit Seimah's back and used a screwdriver to poke Seimah's left arm and Seimah's back. The argument continued throughout the night of 11th November 2014 and after 12 a.m. on the 12th November 2014 where the defendant proceeded to hit Seimah's head and hit Seimah's left ear repeatedly before he stopped on the 12th November 2014 at dawn.
3. After the defendant stopped hitting and left her, Seimah was in pain and she was feeling weak. Nevertheless, the defendant approached Seimah again on the 13th November at about 1430 hours at their home and accused Seimah of having an affair with another man. Despite Seimah tried to tell the defendant that she did not have any affair, the defendant started hitting and kicking her arms, her left ear, her back and Seimah's head repeatedly. The defendant also threw an ambi pure bottle and his handphone towards Seimah. The defendant then stopped and threatened Seimah that after he wakes up, he would beat her. The defendant then left Seimah and went to sleep.
4. Seimah decided to run away together with her kids to her in laws house where she was brought to the hospital and the hospital reported the matter to the police station.
5. She was medically examined by Dr Shehryar Orakzai on the 13th November 2014. Her injuries are set out in the medical report dated 22nd November 2014. As a result of the incident, Seimah also had to undergo surgery for her left ear. Her medical report on her surgery is set out in the medical report dated 22nd November 2014 by Dr. Sara Ninan.

6. Upon investigation, defendant admitted to the offence as charged and he has no previous conviction.

Before me, the appellant pleaded for the sentences to be substituted to fines. He said he has been offered to work at Hyatt Catering Services and that the custodial sentence would obviously mean his dismissal.

The prosecution/respondent concedes that the sentences imposed by the court below were on a high side.

In the case of *Hj. Junaidi Abu Bakar v Public Prosecutor* (Criminal Appeal No. 65 of 2003) the Appellant Court upheld the sentence of one month custodial sentence of the appellant for assaulting a defenseless woman, causing injuries as a result. The High Court adopting the principle enunciated in *Public Prosecutor vs Othman Hj Saidin* [1999] 1JCBD 231 states that where the offences involve physical violence with the victim sustaining injury a custodial sentence should be the appropriate sentence. In this case a one month sentence imposed by the lower court was upheld by the High Court.

In *Public Prosecutor vs Norariffin Mohd Julaihi* (MCCT No. 1382 of 2005 unreported) the defendant convicted on 3 counts under section 323 of the penal Code for hitting his wife on 3 separate occasions received a total of 7 months imprisonment.

However in cases where there had been hurt caused against the victim involving no serious injuries. The lower court had imposed fines and compensation instead of a custodial sentence; see *Public Prosecutor vs Irwan Mawardi Hj Hussein* [BSB/MCCT/2357/2011] (unreported), *Pengiran Haji Zainudin Pg Haji Md. Jassin v Public Prosecutor* [Criminal Appeal No. 20/2013], *Public Prosecutor vs Md. Nur Hakeem @ Eddyismandi bin Ali* [ICCT No. 22/2013].

In case where the defendant is convicted of multiple charges. One of which is under section 323 of the penal, understandably the court looking at the overall sentence would be more inclined to pass a slightly lower sentence taking into consideration the totality of the sentence imposed. In *Public Prosecutor vs Mohammad Readuan Maksin* [HCCT No. 18/2005], the court imposed after trial a sentence of 6 months imprisonment for an offence under section 323, amongst other sentences which also involved rape, kidnapping and robbery.

In *Public Prosecutor v Pham Van Huan* [ICCT No. 22/2011] the court passed a sentence of 2 months imprisonment on a plea of guilty for section 323 of the Penal Code. The other charge being the more serious one under section 326 of the Penal Code i.e. grievous hurt.

In *Public Prosecutor vs Norariffin Mohd. Julai* [MCCT No. 1382/2005], where there had been multiple charges, the defendant was sentenced 7 months after trial on 3 counts under section 323 of the Penal Code.

Based on the above cases, I agreed that the sentences imposed in this case were excessive given that the appellant had pleaded guilty. Had the sentences were imposed after trial, I believe they would have been justified.

On record the appellant is a first offender and prior to this has a clean record. One cannot ignore the fact that this was a ferocious attack on a defenseless woman, as a result of which she had to undergo surgery to her left ear. She suffered multiple bruises.

It is a cardinal principle of sentencing that the court should take into account when considering the gravity of offence, and the appropriate sentence, the consequence to the victim. The court must redress the victim grievances by imposing an appropriate sentence in order to assuage or relieve the feeling of the victim, his family and friends so that there is no excuse for them to exact their own retribution. However, having considered those points, the court must consider sentences which reflects or commensurate to the offence committed, having considered the circumstances of the case as a whole.

Considering there were 3 charges against the appellant, I believe the starting point taken on the 1st charge of 9 months reduce to 6 months was excessive. The Magistrate would then fall into the trap of having to order the 2nd sentence to be served concurrently to the 1st to avoid the total sentence being too excessive, as was in this case.

I believe a starting point of 3 months custodial reduced to 2 months is appropriate for the 1st charge. Also, a sentence of 2 months imprisonment for the 2nd charge and a starting point of 6 months for the 3rd reduced to 4 appropriate in the circumstance of the case. All the sentences to be served consecutively totalling 8 months.

Accordingly, I substitute the sentences imposed by the court below to the following:

1st charge: 2 months imprisonment
2nd charge: 2 months imprisonment
3rd charge: 4 months imprisonment

All the sentences to be served consecutively making a total of 8 months.

Since there had been an order for the earlier sentence to be stayed pending this appeal, I order that the custodial sentence be served with effect from today.

Dato Paduka Hairol Arni Majid
Judge, High Court

