

Awangku Ibrahim Bin Pengiran Badar

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 26 of 2020)**

Steven Chong, CJ
24 October 2020

Criminal law – Outraging modesty – Appropriate sentence – s.354 of the Penal Code

Appellant unrepresented.

DPP Nurul Fitri binti Kiprawi for the Public Prosecutor/Respondent.

Cases cited:

Aleem Al Fateh Bin Hj Abd Hamid v Public Prosecutor [2002] 2 JCBD 32

Mohamad Arif v Public Prosecutor [2010] 2 JCBD 320

R v Costen (1989) 11 Cr App R(S) 182

R v Stabler (1984) 6 Cr App R(S) 129

Sim Gek Yong v Public Prosecutor [1995] 1 SLR(R) 185

Steven Chong, CJ:

Introduction

This is a case of a sexual predator who preyed on a young schoolboy of fourteen (“*the victim*”).

On 18 July 2020 in the Magistrate’s Court the appellant pleaded guilty to the offence of outraging modesty contrary to section 354 of the Penal Code.

Magistrate Marzuki Bin Sabtu imposed a sentence of 3 years’ imprisonment with 2 strokes.

The appellant appeals against that sentence on the ground that it is excessive.

Facts

Shortly stated the facts were that on the late afternoon of 30 November 2019 the appellant, a 39 year old man, was driving his car at the vicinity of a school in Bandar Seri Begawan when he saw the victim in his uniform waiting alone near the playground. The appellant stopped his car and asked the victim why he had not gone home yet. The victim said he was waiting for his father to pick him up. The appellant offered to give the victim a lift. The victim accepted this offer and asked to be taken to his father's workplace.

Inside the car and on the way to the intended destination the appellant became "aroused" and while driving he used his left hand to "fondle" the victim's penis. The victim was "shaken" and "outraged" but did not protest as he feared being harmed by the appellant.

The appellant then drove to a secluded car park in Rimba where he stopped his car and forced the victim to pull down his trousers. The appellant then proceeded to fellate the victim. After that the appellant told the victim not to tell anyone about the incident. From Rimba the appellant drove to the workplace of the victim's father where the victim was dropped off.

Upon meeting his father the victim, who was visibly distressed and in tears, revealed the ordeal the appellant had subjected him to. A police report was immediately made.

By coincidence, several months later, when the victim was with his parents in Kampong Kapok he spotted the appellant going to his car near the shops. The victim informed his parents and they took photographs of the appellant's car and passed these to the police.

The photographs of the appellant's car led to his arrest by the police. After arrest the appellant admitted to the offence when he was questioned by the police.

Relevant factors to be considered in sentencing

Section 354 of the Penal Code provides for a maximum penalty of 5 years' imprisonment with whipping for the offence of outraging modesty.

In *Aleem Al Fateh Bin Hj Abd Hamid v Public Prosecutor* [2002] 2 JCBD 32, this court observed that in offences of this nature the public interest consideration is paramount and a severe sentence is necessary not only to deter but also to register society's disapproval of such depravity.

A severe sentence is also warranted where the indecent assault is of a serious nature and involves intrusion on the private part of the victim as was the case in *Mohamad Arif v Public Prosecutor* [2010] 2 JCBD 320.

On the above authorities it is evident that in determining the correct sentence for this kind of offence the court has to consider the following three aspects: (1) gravity of the offence; (2) public concern with sexual offences on young children; and (3) importance of deterrence.

Returning to the case against the appellant, notwithstanding his guilty plea and clear record, the aggravating factors that are present justifies the imposition of a severe sentence. First, the appellant is a sexual predator who exploited the vulnerability of a young victim. Second, the victim was only fourteen at the time. Third, the sexual assault was of a serious nature and involved intrusion on the private part of the victim.

The Magistrate decided on a starting point sentence of 3 years and 6 months reduced to 3 years for the guilty plea. I think the Magistrate was right to order a discount of less than the usual one third reduction afforded for a guilty plea because of the need for a deterrent sentence.

In *R v Costen* (1989) 11 Cr App R(S) 182 and in *R v Stabler* (1984) 6 Cr App R(S) 129 (followed by the Singapore High Court in *Sim Gek Yong v Public Prosecutor* [1995] 1 SLR(R) 185, Yong Pung How CJ), the English Court of Appeal held that in certain cases the circumstances may be such that any mitigating effect afforded by a guilty plea is heavily or even completely outweighed by the need for a deterrent sentence in the public interest.

The appellant urged the court to consider the hardship that his elderly mother would suffer in determining an appropriate sentence. She suffers from poor health and is dependent on him. Of course the court has sympathy for the appellant's mother but as I have said time and again, it is often the case that the imprisonment of an offender will cause hardship to his family but it cannot be one of the factors which can affect what would otherwise be the right sentence.

Conclusion

School children must be protected from sexual predators like the appellant. Lenient sentences will not deter. The sentence of 3 years and 2 strokes is neither excessive nor wrong in principle having regard to the aggravating circumstances highlighted and the appeal is dismissed accordingly.

DATO SERI PADUKA STEVEN CHONG
Chief Justice