

Public Prosecutor

AND

MABO

**(High Court of Brunei Darussalam)
(Criminal Trial No. 11 of 2024)**

Muhammed Faisal bin PDJLD DSP Kol(B) Hj Kefli, J.C.

Date of judgment: 4th July, 2026.

*Headnote: Criminal Law — s. 376(3)(c) Penal Code — Rape by a person of trust or authority —
Complainant below age of 14*

DPP Hajah Siti Mu'izzah Binti Haji Sabli for Public Prosecutor.
Defendant is present and unrepresented.

Statutes:

Section 236B(1) Criminal Procedure Code

Section 236C(2)(a) Criminal Procedure Code

JUDGMENT

Muhammed Faisal, J.C.:

I Introduction

1. The defendant, a 34-year-old male faces a single charge of committing rape upon his daughter, contrary to section 376(3)(c) Penal Code, Chapter 22¹. He pleaded not guilty and claims trial. This is the decision of the court on that matter.

II The Charge

¹ S.376(3) Whoever commits rape against a woman under 14 years of age –
(c) is in a position of trust or authority towards her or is in a person with whom she is in a relationship of
dependency,
shall be punished with imprisonment for a term of not less than 15 years and not more than 30 years and whipping
with not less than 12 strokes

2. The Charge is reproduced below:

“That you, on the 6th September 2024, inside a toilet of a house (address redacted), in Brunei Darussalam, being a person in a position of trust or authority, to wit, the father to one Miss X, did commit rape against the said Miss X, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(3)(c) of the Penal Code, Chapter 22”

III The Law

3. It is for the prosecution to prove its case against the defendant. This burden of proof remains with the prosecution and does not shift.
4. It is also for the prosecution to prove its case, beyond a reasonable doubt. If it fails to attain this level of prove i.e. fails to prove its case beyond a reasonable doubt, this court shall return a verdict of not guilty.
5. Section 375 Penal Code reads:

“375. A man is said to commit “rape”, who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions —

- a. against her will;*
- b. without her consent;*
- c. with her consent, when her consent has been obtained by putting her in fear of death or of hurt;*
- d. with her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is, or believes herself to be, lawfully married;*
(da) with her consent, when the man is in a position of trust or authority towards the woman or is a person with whom the woman is in a relationship of dependency;
- e. with or without her consent when she is under 14 years of age.*

Explanation 1 — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Explanation 2 — A person consents if she agrees by choice, and if she has the freedom and capacity to make that choice.

Explanation 3 — A person does not consent the sexual intercourse is induced by the abuse of a position of trust or authority.”

6. Section 134A Evidence Act reads:

“Any requirement whereby at a trial it is obligatory for the court to give a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is —

(a) an alleged accomplice of the accused; or

(b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.”

IV Agreed Facts

7. By virtue of Section 117C of the Criminal Procedure Code, Chapter 7, the Prosecution and the Defence agree as follows:

1) *The Defendant is a 34-year-old Bruneian male and is currently unemployed. He is married to one (Name redacted) and has 6 children, including one (name redacted) (F.10).*

2) *The family resides at house addressed (address redacted), in Brunei Darussalam (“the said house”).*

3) *On the 8th of September 2024, the Defendant's brother had a wedding ceremony at Impiana Jaya Complex, Kiulap; which was attended by relatives as well as the Defendant's family including one of his daughters named (name redacted) (“Miss X”). At the material time, Miss X was hanging out with her aunt, one (name redacted) (F.17), her mother's sister.*

V Prosecution’s Case

Miss X Testimony

8. She was 11 years old when she appeared before this court. After questioning her, I find her competent to testify under oath; she clearly demonstrates the maturity to understand the solemnity of the oath and the obligation to speak truthfully without fabrication.

9. Miss X gave evidence via live video link.² The prosecution relied also on video recordings³ of Miss X interview on the 9 September 2024 (Exhibit P14) with W/CPL

² Section 236B(1) Criminal Procedure Code (CPC) “Notwithstanding any provision of this code or of any other written law, but subject to the provision of this section, a person, other than the accused, whether within or outside Brunei Darussalam, with the leave of the court, give evidence to a live video or live television link at any inquiry, trial, appeal or other proceedings if the court is satisfied that it is expedient in the interest of justice to do so.”

³ Section 236C(2)(a) CPC “In such proceedings, a video recording of an interview which –

Trishatha Mashelano binti Prait (PW6). This is a consolidation of her evidence presented before this court.

10. She recounted that on September 2024 at the house of her grandparents in Bengkurong, where her family were staying, her father had sexual intercourse with her in one of the bathrooms.
11. On that day, Miss X, together with her younger sister (Miss Y) were having a bath together. Miss X had forgotten to lock the bathroom door. Her father, the defendant entered the bathroom wearing only shorts. He told Miss Y to leave the bathroom but Miss X was told to stay. Miss X was totally naked at that time.
12. The defendant instructed Miss X to scrubbed the bathroom floor. After some time, the defendant stood in front of Miss X, open the front of his shorts and told Miss X to suck his penis. The defendant then told Miss X to scrub his back and then to perform oral sex on him once again.
13. He then laid Miss X, who was still naked, on the floor of the bathroom and laid on top of her. The defendant proceeded to insert his penis into her vagina and to have sexual intercourse with her.
14. Miss X recounted that she felt pain in her vagina and cried. The defendant warned her to keep quiet as he did not want anyone else in the house to hear her cries. The defendant then ejaculated.
15. Miss X recollected at immediately after the incident, she felt pain in her private parts but did not see any blood.
16. She also said that this was the 3rd sexual encounter she had with her father; the 2 previous sexual encounters were in the previous year, at a hotel room and at her grandparents' home respectively.
17. Finally, Miss X who still loves her father despite what he did to her, is disappointed and sad of his actions.

The events leading to the discovery of the incident

18. PW4 is the aunt of Miss X. She was 18 years old when she gave evidence and currently is doing her A-Levels. Her elder sister is Miss X's mother.

(a) Is conducted between an adult and a child who is not an accused, (...) and

(b) ...

may, leave of the Court, be given in evidence ..."

19. On 8th September 2024, PW4 and her mother (PW5) attended a wedding reception. At that time, Miss X and her family were also present. During the wedding, Miss X took PW4 aside, telling that she had a secret to share.
20. This is what Miss X told PW4. While Miss X was cleaning the bathroom at her house and taking a bath with Miss Y; the defendant had entered the bathroom. The defendant told Miss Y to leave the bathroom. Miss X was then told to lick her father's penis. The defendant inserted his penis into Miss X's vagina. Miss X was in pain during the incident.
21. PW4 felt shocked and didn't know what to do. She recollected that Miss X looked afraid as she recounted the incident to PW4.
22. After the wedding on the way home, PW4 confided to her mother, PW5. Hearing her story, PW5 was very shocked and angry with the defendant. Miss X, who was also in the same vehicle, recounted the same story to her grandmother PW5.
23. While in the car, PW5 immediately Googled for JAPEM contact number. She immediately contacted JAPEM to file a complaint regarding this matter.
24. Discussions between the JAPEM officer and PW5 over the phone, culminated in immediate actions being conducted by the various authorities to ensure the safety of Miss X. At 3am the following day, PW5 was called by JAPEM officers to inform her that Miss X has been taken away by the Police and has been brought to the hospital for a medical examination.

Medical Examination

25. Dr Hnin Yu Khin (PW11) examined Miss X between the night of 9 September and early morning of 10 September 2024. She is as an Associate Specialist Obstetrician and Gynaecologist at the Department of Obstetrics and Gynaecology, Raja Isteri Pengiran Anak Saleha (RIPAS) Hospital.
26. Her examination of Miss X indicated there was mild erythema at the right side of vagina orifice; meaning that, there was redness at the said area, which could be caused by any blunt trauma or touch. To have this redness to be lasted for a few days, PW11 stated that there must have been a moderate pressure on the said area.
27. PW11 also stated that there was also some trace of thick white discharge around the vagina, which could be normal body discharge, or infection from previous sexual

intercourse or semen. Multiple swab and smear tests indicated that there were no spermatozoa identified on the smear and no evidence of sexually transmitted infections present.

28. She also confirmed that no obvious cut or tear on the vulva, vagina, hymen, perineum, and anus were detected.
29. Her findings are recorded in the Police 9 Medical Examination Report dated 9 September 2024 (Exhibit P20).
30. It is also her evidence that vagina penetration/sexual abuse could neither be excluded nor confirmed because there was no obvious cut or tear on the patient's hymen.
31. When asked in cross examination, she stated that it could still possible for penetration to occur but not resulting in tear to the hymen. The fact that there was no obvious cut or tear on Miss X hymen does not necessarily mean that there was no sexual abuse.

Defendant's Ordinary Statement and Caution Statement

32. After a *voir dire* hearing, the defendants Police 22 Ordinary Statement, dated 11 September 2024 and Caution Statement dated 11 September 2024 were ruled to be recorded voluntarily and subsequently tendered as evidence. They are marked as Exhibit P22 and Exhibit P23, respectively.
33. In Exhibit P22, the defendant admitted to having oral sex and sexual intercourse with Miss X, in their bathroom, on the 6 September 2024. His narration in Exhibit P22, closely follows the narration of events as told by Miss X in Exhibit P14. Although the defendant's version in Exhibit P22 is shorter than the detailed story Miss gave in Exhibit P14, both their narrative run along the same line with similar inflection points.
34. In Exhibit P23, the defendant admitted to committing rape against Miss X.

VI Prima Facie

35. At the end of the prosecution's case, I ruled that there was a prima facie case against the defendant against the single charge that he faced.
36. Understanding his options, the defendant opted to give sworn evidence.

VII Defence Case

37. As stated above, the defendant gave evidence under oath. He called his wife, Dw2 as his only witness.
38. His defence is a mixture of denial of committing the offence, an admission to committing a lesser offence (as opposed to rape), challenging the credibility of Miss X and other family members who came forward as witnesses, questioning the competence of the police investigating the case and that any confession was obtained under heavy duress.
39. He repeatedly stated in court that he did not rape Miss X, but readily admitted to committing outraging modesty against her. He never disputed that he was in the bathroom together with Miss X and Miss Y (initially). He even admitted to committing several sexual acts upon Miss X. In court, he stated that he had inserted his finger into her vagina, rubbed his private part onto Miss X and told her to perform oral sex.
40. Central to his defence is the total retraction of his prior confession, which he claims is legally invalid and irrelevant because it was obtained under intense duress. The defendant contends that he was subjected to a severe psychological attack and repetitive pressure by the investigating officer, CPL 4967 Hj Mohd Aliuddin bin Hj Juma'at (PW8), which induced a state of heavy stress.
41. He asserts that he merely parroted the investigator's version of events and told his wife prior to surrendering that he would falsely agree to whatever the police and the victim claimed solely out of a sense of desperation and love for his child. He argues that his confession stands completely uncorroborated, noting a glaring absence of any independent secondary witnesses to validate the Investigating officer's findings.
42. The defendant challenges the credibility, competence, and motives of the prosecution's key witnesses. He accuses the PW8 of acting dishonestly, violating standard police operating procedures, and creating separate interrogation environment at the hospital to intentionally isolate him from his wife.
43. In his defence, he flags a critical timeline anomaly, questioning why PW8 ordered him to report to the Gadong Headquarters on September 11, 2024, when the official written notice clearly specified September 12, 2024.
44. Regarding S/SGT 4256 Hj Jeffry bin Hj Jumat/Suhaili (PW10), who recorded the Caution Statement, the defendant argues that the officer acted negligently by blindly using charges based entirely on PW8's instructions without conducting a detailed, independent research or questioning the defendant properly.

45. He also dismisses the medical testimony of PW11, labelling her findings as mere assumptions that fail to offer verified physical confirmation of the alleged crime.
46. The defendant asserts that testimony of Miss X, a child, was inconsistent. He leans on the favourable character evidence from his own family to demonstrate the lack of absolute proof against him. The defendant emphasises that during cross-examination, the victim changed her answers and failed to remember details accurately, showing no fear or trauma when recounting normal family activities. He suggests that Miss X narrative was highly coached and arranged behind the scenes by other family members.
47. Conflictingly, the defendant's own favourable character is supported by his PW5 and PW4, both of whom testified that he was a kind father who never neglected or beat his family, with PW5 explicitly stating she does not believe the allegations.
48. Backing this, the defendant's wife, DW2, testified that their child behaved completely normally, never complained of bodily discomfort within the alleged timeframe, and that her husband only agreed to surrender himself after reaching a breaking point from police intimidation.
49. Consequently, the defendant maintains that the case is built entirely on forced confession rather than real, clear evidence, demanding a total rejection of the prosecution's arguments.

VIII Court Findings

50. The linchpin of this case is of course the testimony of Miss X. I find her testimony in court (via video link) and that of the video (Exhibit P14) most compelling. She was calm and thoughtful when giving her evidence in court. She calmly deflected questions that were posed to her by the defendant during cross examinations. Her demonstrations, by using the anatomic dolls, of what the defendant asked her to do and what the defendant committed to her, was clear and precise.
51. One must also bear in mind that the interview conducted by PW6 on Miss X was only days after the incident. Miss X mind is as clear as it can possibly be, concerning the facts of the offence, without the usual erosion of memory due to the passage of time. That being said, with respect to the incident of the charge, I find that her account in the video recording being clear, coherent and can be understood.
52. Put side by side, both complement each other. I totally reject the defendants attempts to discredit her consistency when giving evidence.
53. The testimony of PW4 supports Miss X. Miss X told her that Miss X father had sexual intercourse with Miss X, only days after the incident had happened. What PW4 told to the court is consistent with the evidence and testimony Miss X. I have no reason not to accept her evidence.
54. During the *voir dire* hearings, I find that the statements (Exhibits P22 & P23) of the defendant were recorded voluntarily, without any elements of oppression. The defendant was given every opportunity to amend or add on to his statements. He clearly understood what was explained to him and understood the consequences and implication of reducing his signature upon the statements, thereby agreeing to their contents. It is hard for me to fathom any reason why, after reading the contents of the statement, the defendant would agree to sign, unless he accepts the facts inside.
55. To be fair to the defendant, upon his persistent position of attempting to recant his statement, due to undue pressure place upon him, I considered the merits of his arguments very closely. After due consideration, I ultimately have to place to one side his attempts to discredit his admissions; to repeat, he had every opportunity beforehand to change his story, not once but twice, as 2 statements were recorded. Furthermore, I cannot see, on second inspection, any impropriety, be it by way of conduct or procedurally, from the recording officers.

56. As I stated above in paragraph 33, the narrative in both Exhibit P22 and Exhibit P14 ran along the same lines with similar inflection point. I can only draw a single conclusion to this similarity; that is, Miss X was telling the truth in Exhibit P14, and that the defendant admitted to his wrongdoing in Exhibit P22.
57. PW11's evidence I consider as being neutral, meaning that it could support either narrative. She admitted as much. In her examination, PW11 found that the hymen of Miss X was still intact but some laceration and bruising in the area of Miss X genital. Her assessment could have support both the prosecution's narrative of the defendant having sexual intercourse with Miss X and that of the defendant, where he claims that he only inserted his finger into Miss X vagina. Her testimony confirms that an object was inserted into Miss X vagina.

IX Conclusions

58. For the reasons stated above, I am satisfied that the prosecution has proven the charge against the defendant, beyond a reasonable doubt.
59. The defendant has failed to raise any reasonable doubt on the prosecution's case against him.
60. I find him guilty as charge and convict him, accordingly.

MUHAMMED FAISAL BIN PDJLD KOL(B) DSP HAJI KEFLI
Judicial Commissioner