

Public Prosecutor

AND

Adi Sutrio

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 26 of 2025)**

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

Date of Ruling: 4th August, 2026.

Headnote: Criminal Law — Sentence — s.509 Penal Code (Cap. 22) — Word, gesture, or act intended to insult the modesty of a woman — Appeal against sentence — Manifest inadequacy — Sentencing principles — Technology-facilitated invasion of privacy — Covert recording in place of expected privacy — General deterrence and denunciation — Aggravating and mitigating factors — Appellate guidance — Appropriate starting point — Appeal allowed

DPP Nurul Husna Aqilah Binti Abidin for the Appellant.
Defendant is absent and unrepresented.

Cases cited:

Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor (Criminal Appeal No. 17 of 2016)(Court of Appeal)

Hj Muhammad Nasiruddin v Public Prosecutor (Criminal Appeal No. 3 of 2011) (High Court)
Public Prosecutor v Sylvester Stanley Anak Giman (Criminal Trial No. 140 of 2025)(Magistrate's Court, Kuala Belait)

Statutes:

Section 282 Criminal Procedure Code

RULING

Muhammed Faisal, J.C.:

I Introduction

1. This is an appeal by the Public Prosecutor against the sentence imposed by the Magistrate upon the respondent following his plea of guilty to an offence contrary to *section 509 of the Penal Code*¹ (PC), Chapter 22.
2. The appeal is confined to sentence. The Public Prosecutor contends that the sentence imposed was manifestly inadequate and failed properly to reflect the seriousness of the offence. The respondent, having pleaded guilty before the Magistrate, has not challenged his conviction.
3. Although the appeal concerns the sentence imposed in a single case, its determination requires the Court to consider the proper sentencing approach for offences under *section 509 PC*. In particular, it becomes necessary to identify the principal sentencing objectives applicable to such offences, the aggravating and mitigating factors ordinarily relevant to the sentencing exercise, and the assistance to be derived from previous appellate authority before determining whether the sentence imposed in the present case warrants appellate intervention.

II Background

4. The respondent pleaded guilty before the Magistrate to an offence contrary to *section 509 PC*. After considering the circumstances of the offence together with the mitigating factors advanced on behalf of the respondent, the Magistrate adopted a starting point of four months' imprisonment. Credit was then given for the respondent's plea of guilty and other mitigating circumstances, resulting in a final sentence of ten weeks' imprisonment.
5. Being dissatisfied with the sentence imposed, the Public Prosecutor appealed on the ground that the sentence was manifestly inadequate.
6. Before the appeal could be heard, however, the respondent had completed the custodial sentence imposed by the Magistrate and was repatriated to his home country of Indonesia upon his release from prison. The Petition of Appeal was not served upon the respondent prior to his release and subsequent departure from Brunei Darussalam. Thereafter, despite reasonable efforts undertaken by the

¹ Section 509 Penal Code (CAP 22):- "Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with imprisonment for a term which may extend to 3 years and with fine."

Prosecution, including adjournments granted for the purpose of ascertaining the respondent's present whereabouts, service could not ultimately be affected.

7. The Public Prosecutor accordingly applied for the appeal to proceed in the respondent's absence pursuant to section 282 of the Criminal Procedure Code² (CPC), Chapter 7. Having considered the circumstances and being satisfied that reasonable attempts had been made to effect service without success, this Court permitted the appeal to proceed.
8. Although the respondent has already served the sentence imposed by the Magistrate and any substituted sentence will therefore have no practical effect upon him personally, the issues raised by the appeal remain matters of importance. The appeal concerns the proper sentencing approach for offences under section 509 PC, and it is therefore appropriate that the Court determine the appeal on its merits.

III Facts of the case

9. As previously stated, the facts giving rise to the charge are not in dispute. The respondent deliberately used his mobile telephone to record the complainant without her knowledge or consent whilst she was within the confines of the toilet. At the time of the recording, the complainant was entitled to expect complete privacy. The recording was made secretly and without permission from the complainant.
10. The respondent's conduct came to light following the complainant's discovery of the recording, whereupon the matter was reported to the authorities. The respondent was subsequently arrested, charged and ultimately entered an early plea of guilty before the Magistrate.

IV Issues for Determination

11. Having considered the Petition of Appeal and the written submissions filed on behalf of the Public Prosecutor, the issues arising for determination are:
 - i. whether the Magistrate erred in principle, or otherwise imposed a sentence that was manifestly inadequate, by adopting a starting point of four months' imprisonment;

² Section 282 CPC:- (1) If, at the hearing of the appeal, the respondent is not present and the Judge is not satisfied that the notice of appeal was duly served upon him, the Judge shall not make any order in the matter of the appeal adverse to or to the prejudice of the respondent, but shall adjourn the hearing of the appeal to a future day for his appearance, and shall issue the requisite notice to him for service.

(2) If the service of such last-mentioned notice cannot be effected on the respondent the Judge shall proceed to hear the appeal in his absence

- ii. what relevance should properly be attached to the decision of the Court of Appeal in *Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor*³ when determining the appropriate sentence for an offence under *section 509 PC*; and
- iii. if appellate intervention is justified, what sentence ought properly to have been imposed.

V The Magistrate's Sentencing Approach

- 12. Before considering the issues arising in this appeal, it is appropriate to examine the sentencing approach adopted by the Magistrate.
- 13. Having considered the circumstances, the Magistrate concluded that the seriousness of the offence, together with the aggravating factors present, pointed towards a strong public interest in the imposition of an immediate custodial sentence. She therefore rejected any sentence other than one of imprisonment.
- 14. In determining the appropriate length of the custodial sentence, the Magistrate considered the authorities cited by the Prosecution. In particular, reference was made to *Public Prosecutor v Sylvester Stanley Anak Giman* (MCCT/KB/140/2025), in which a substantially heavier sentence had been imposed. She distinguished that decision on its facts, observing that the offence in *Sylvester Stanley* involved repeated acts of recording women in a public toilet over multiple occasions, together with evidence of a deliberate modus operandi. By contrast, the present case involved a single incident and there was no evidence that the respondent had engaged in similar conduct on previous occasions. The Magistrate therefore concluded that a lower sentence was warranted to reflect the overall criminality.
- 15. The Magistrate also considered the decision in *Hj Muhammad Nasiruddin v Public Prosecutor*⁴, which involved the surreptitious recording of a victim while she was showering. She noted that, on appeal, observations were made concerning the appropriate starting point for that offence and regarded that decision as providing guidance in determining the present sentence.
- 16. Having regard to those authorities, together with the aggravating and mitigating circumstances of the present case, the Magistrate adopted a starting point of four months' imprisonment. Credit of one-third was then afforded to the respondent for his early plea of guilty and the other mitigating factors advanced on his behalf, resulting in a final sentence of ten weeks' imprisonment.

³ *Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor* (Criminal Appeal No.17 of 2016) (CA)

⁴ *Hj Muhammad Nasiruddin v Public Prosecutor*⁴ (Criminal Appeal No. 3 of 2011) (HC)

VI Sentencing under Section 509 of the Penal Code

17. *Section 509 PC* criminalises conduct intentionally directed at insulting the modesty of a woman⁵. The prohibited conduct is broadly defined and encompasses words, sounds, gestures, the exhibition of objects, as well as intrusion upon a woman's privacy, provided such conduct is accompanied by the requisite criminal intent⁶. The breadth of the section necessarily means that any offence may vary considerably in both seriousness and culpability.
18. At one end of the spectrum are relatively isolated acts involving offensive words or gestures. At the other end are deliberate acts of sexual humiliation or intrusion upon privacy committed against vulnerable victims or in circumstances involving planning, persistence or abuse of trust. The criminality of offences falling within this section therefore exists along a broad band.
19. It follows to every that sentencing under *section 509 PC* cannot ordinarily be reduced to a single tariff or fixed starting point applicable case. Rather, the appropriate sentence must always be determined by reference to the offender's culpability, the harm caused or intended to be caused, and the particular circumstances of the case.

VII Sentencing Objectives

20. The sentencing objectives applicable to offences under *section 509 PC* are not materially different from those governing other criminal offences. However, having regard to the nature of the conduct criminalised by the section, certain objectives will ordinarily assume greater significance.
21. First, general deterrence will usually be of considerable importance. Offences under this section commonly involve deliberate and intentional conduct directed at humiliating, sexually intimidating or violating the dignity of a woman. Sentences imposed by the courts must therefore serve to discourage others from engaging in similar conduct by making clear that such actions will attract meaningful penal consequences.
22. Secondly, denunciation is an important sentencing consideration. Conduct intended to insult the modesty of a woman strikes at her dignity, privacy and personal security. The sentence imposed should therefore reflect society's condemnation of such conduct and affirm that behaviour of this nature will not be tolerated.

⁵ *Supra* at No.1

⁶ *Supra* at No.1

23. Thirdly, the courts must have regard to the protection of women and the maintenance of public confidence in the administration of justice. Women are entitled to go about their daily lives free from conduct intended to humiliate, intimidate or degrade them. Sentences should reinforce that expectation and demonstrate that the criminal law affords meaningful protection against such conduct.
24. Rehabilitation remains a relevant sentencing objective, particularly where the offender is of previous good character, the action committed is isolated, genuine remorse has been demonstrated, and there are realistic prospects of reform. However, depending upon the seriousness of the offence, rehabilitative considerations may properly yield to the greater demands of deterrence and denunciation.

VIII Aggravating Factors

25. The seriousness of offences under *section 509 PC* will necessarily depend upon the particular facts of each case. Although no exhaustive list can be formulated, the following factors will ordinarily aggravate sentence:
- a) where the victim is particularly vulnerable by reason of age, disability or other personal circumstances;
 - b) where the offender abuses a position of trust, authority or responsibility;
 - c) where the offence is planned or premeditated;
 - d) where the offence forms part of repeated or persistent conduct;
 - e) where the offence occurs in circumstances calculated to maximise the victim's humiliation, including offences committed in public or in the presence of others;
 - f) where the offence causes demonstrable psychological harm, fear or distress to the victim;
 - g) where threats, intimidation or other coercive conduct accompany the offence; and
 - h) where the offender has previous convictions or a history of similar offences.
26. The presence or absence of any particular factor will depend entirely upon the circumstances of the individual case.

IX Mitigating Factors

27. Similarly, the following factors will ordinarily mitigate sentence:
- a) an early plea of guilty;
 - b) genuine remorse and acceptance of responsibility;
 - c) previous good character and the absence of relevant antecedents;
 - d) cooperation with the investigating authorities;
 - e) youth or other personal circumstances properly affecting culpability;
 - f) good prospects of rehabilitation; and

g) any other mitigating circumstance properly recognised by law.

28. The weight to be accorded to each mitigating factor will necessarily vary according to the facts of the particular case.

X The Relevance of *Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor*

29. The Appellant places considerable reliance upon the decision of the Court of Appeal in *Mohammad Ehsan*⁷. It is therefore necessary to consider the relevance of that decision to the present appeal.
30. The Court of Appeal was concerned with the propriety of the sentence imposed upon an offender convicted, amongst other offences, of an offence under *section 509 PC*. In considering that sentence, the Court of Appeal concluded that the sentence imposed by the trial judge, namely a starting point of one year's imprisonment reduced to eight months following the offender's plea of guilty, was not open to appellate criticism.
31. That decision is plainly of considerable assistance. It demonstrates that, on the particular facts before the Court of Appeal, a starting point of one year's imprisonment for an offence under *section 509 PC* fell well within the proper exercise of the sentencing discretion.
32. However, in my respectful view, the decision should not be understood as establishing a fixed sentencing tariff or mandatory starting point applicable to every offence under *section 509 PC*. The Court of Appeal did not purport to formulate general sentencing guidelines for offences under that section. Rather, it concluded that the sentence imposed in that particular case was entirely proper having regard to the facts before it.
33. Equally, the factual context of *Mohammad Ehsan* cannot be overlooked. The offence under that section formed part of a broader course of serious sexual offences involving the same victim. Those surrounding circumstances inevitably informed the assessment of the gravity of the offence and the appropriateness of the sentence imposed.
34. Nevertheless, *Mohammad Ehsan* remains the only decision of the Court of Appeal available to this court directly considering the appropriateness of a sentence imposed under *section 509 PC*. As such, it is an important appellate authority and provides a valuable sentencing comparison. Whilst each case must ultimately be determined on its own facts, sentencing courts should have due regard to the guidance that may

⁷ *Supra* at No.3

properly be derived from that decision when determining the appropriate sentence under *section 509 PC*.

XI Application to the Present Appeal

35. Having discussed the general principles applicable to sentencing under *section 509 PC*, it is now necessary to consider the particular facts of the present appeal.

XII Aggravating Factors

36. The present offence contains a number of aggravating features which, in my opinion, substantially increase its seriousness.
37. First, the offence was plainly deliberate and intentional. It was neither impulsive nor inadvertent. The respondent's conduct was directed towards the complainant with the intention required by *section 509 PC*, namely to insult her modesty.
38. Secondly, the nature of the conduct was inherently degrading and intrusive. The offence was not confined to the use of offensive words or gestures but involved conduct calculated to violate the complainant's dignity and personal privacy. Such conduct strikes directly at the interests which *section 509 PC* seeks to protect.
39. Thirdly, the impact upon the complainant cannot be overlooked. Whilst the section does not require proof of physical injury, the absence of physical contact does not diminish the seriousness of conduct intentionally designed to humiliate or sexually intimidate another person. Psychological distress, embarrassment and fear are among the very harms against which the section is directed.
40. Finally, the Court must have regard to the need for general deterrence. Conduct of this nature is capable of undermining a woman's sense of security and dignity. Sentences imposed by the courts must therefore convey, both to the offender and to the public generally, that such conduct will attract meaningful punishment.

XIII Mitigating Factors

41. Against those aggravating considerations, the respondent is entitled to full credit for the mitigating circumstances properly recognised by law.
42. The respondent entered an early plea of guilty, thereby accepting responsibility for his conduct and avoiding the need for the complainant to give evidence. That plea also resulted in the saving of court time and resources.
43. I also accept that the Magistrate was entitled to take into account the respondent's personal mitigation, including the matters advanced on his behalf at the sentencing

hearing. There is no basis upon which this Court could conclude that those matters were overlooked or given insufficient consideration.

XIX Whether the Starting Point was Appropriate

44. The principal issue, therefore, is not whether the Magistrate identified the relevant aggravating and mitigating factors. In my opinion, she did.
45. Nor is there any disagreement with her conclusion that an immediate custodial sentence was required.
46. The present appeal turns instead upon whether the starting point of four months' imprisonment adequately reflected the seriousness of the offence when viewed against the applicable sentencing principles and the guidance available from previous authorities.
47. In arriving at that starting point, the Magistrate derived assistance principally from *Hj Muhammad Nasiruddin v Public Prosecutor* and distinguished the decision in *Public Prosecutor v Sylvester Stanley Anak Giman* on its facts.
48. She was entirely entitled to consider those authorities as factual comparators. Comparable cases frequently provide valuable assistance in promoting consistency in sentencing.
49. However, sentencing by comparison must ultimately remain subordinate to sentencing by principle. Whilst factual comparisons are useful, they cannot displace the Court's obligation to determine an appropriate sentence by reference to the statutory framework, the purposes of sentencing, the offender's culpability, the harm occasioned by the crime, and the guidance available from appellate authority.
50. In that regard, the subsequent decision of the Court of Appeal in *Mohammad Ehsan* assumes particular significance. Although, for the reasons already discussed, that decision should not be regarded as prescribing a fixed tariff for all offences under *section 509 PC*, it nevertheless represents the only case available concerning the appropriateness of a sentence imposed under that section. It therefore provides an important point of reference when assessing whether a particular sentence falls within the proper range.
51. Having regard to the seriousness of the present case, the sentencing objectives identified earlier in this judgment, and the guidance properly to be derived from *Mohammad Ehsan*, I am unable to conclude that a starting point of four months'

imprisonment sufficiently reflected the gravity of the offence. In my view, the Magistrate's starting point placed excessive weight upon factual comparison with earlier authorities and insufficient emphasis upon the broader sentencing principles applicable to offences under *section 509 PC*.

52. It follows that appellate intervention is justified and that this Court must proceed to determine the appropriate starting point before giving effect to the mitigating factors properly available to the respondent.

XV The Appropriate Starting Point

53. Having concluded that the Magistrate's starting point was manifestly inadequate, it remains for this Court to determine the appropriate starting point before giving credit for the respondent's plea of guilty and the mitigating factors properly available to him.
54. In undertaking that exercise, it is important to recognise that offences falling within *section 509 PC* encompass a wide spectrum of criminal conduct. The section criminalises conduct ranging from offensive words and gestures at one end of the spectrum to deliberate and calculated invasions of a woman's privacy at the other. It follows that the appropriate starting point must always reflect the particular nature and gravity of that particular case.
55. The present case falls towards the upper end of that spectrum.
56. This was not a case involving an impulsive remark, an isolated indecent gesture or other transient misconduct. Rather, the respondent deliberately used modern technology to surreptitiously record the complainant whilst she was within the confines of a toilet, a place where every person is entitled to expect complete privacy and personal dignity. The invasion of that privacy was neither accidental nor momentary. It was intentional, calculated and directed towards the creation of a visual recording of an intensely private occasion without the complainant's knowledge or consent.
57. In my opinion, offences of this nature require the courts to recognise the profound impact that technological developments have had upon criminal conduct falling within *section 509 PC*.
58. The widespread availability of mobile telephones and miniature recording devices has fundamentally altered both the means by which such offences are committed and the extent of the harm that they are capable of causing. Unlike a fleeting observation

or momentary act of voyeurism, a digital recording creates a permanent record capable of repeated viewing, duplication and, perhaps most significantly, dissemination to an unlimited audience within moments. Once created, the victim loses all practical control over the recording and may never know whether it has been retained, copied, shared or published.

59. Even where there is no evidence that any recording has in fact been distributed, the continuing possibility that it may be disseminated at any time is itself capable of causing enduring anxiety, humiliation and psychological distress. The harm caused therefore extends well beyond the moment at which the recording is made.
60. These considerations materially increase both the offender's culpability and the seriousness of his actions. They also underscore the importance of general deterrence. The courts must respond in a manner that reflects not only the grave invasion of personal dignity occasioned by such conduct but also the increasing prevalence of technology-facilitated sexual offences. Women are entitled to expect that places such as toilets and changing facilities remain spaces of complete privacy, free from the fear that they may be secretly recorded.
61. I have considered the authorities referred to by the Appellant, including *Hj Muhammad Nasiruddin v Public Prosecutor*, *Public Prosecutor v Sylvester Stanley Anak Giman* and the decision of the Court of Appeal in *Mohammad Ehsan*. Whilst each provides assistance within its own factual context, none should be regarded as prescribing a fixed tariff applicable to all offences under *section 509 PC*. Sentencing remains an exercise requiring the Court to evaluate the gravity of the offence of the particular case brought before it.
62. Offences involving the covert recording of women in places where they are entitled to the highest expectation of privacy warrant a significantly more robust sentencing response than has hitherto been reflected in some earlier authorities. The combination of deliberate planning, the abuse of technology, the creation of a permanent visual record, and the continuing risk of dissemination places offences of this nature amongst the most serious forms of criminality ordinarily encountered under this section.
63. Having regard to the statutory maximum sentence of three years' imprisonment, the seriousness of the present matter, the sentencing objectives identified earlier in this judgment, and the need for sentences that adequately reflect both deterrence and denunciation, I consider that the appropriate starting point in the present case is one of fifteen months' imprisonment.

64. This starting point is not intended to establish a fixed tariff for all offences under *section 509 PC*. It reflects the particular gravity of offences involving the covert recording of a woman within a place where privacy is expected to be absolute. Less serious cases under this section will inevitably attract lower starting points, whilst exceptionally grave cases may justify even greater sentences, always subject to the particular facts of the individual case.
65. Having identified the appropriate starting point, I now turn to consider the reduction properly to be afforded for the respondent's plea of guilty and the mitigating circumstances present in this case.

XVI Conclusion and Disposition

66. For the reasons set out above, I am satisfied that the appeal must be allowed.
67. Whilst the Magistrate correctly recognised that the seriousness of the defendant's action, requiring the imposition of a custodial sentence and carefully considered the authorities placed before her, I have concluded that the starting point of four months' imprisonment did not adequately reflect the gravity of the present offence. In particular, it did not sufficiently recognise the importance of general deterrence and denunciation in cases involving the covert recording of women in places where they are entitled to the highest expectation of privacy, nor did it adequately reflect the enhanced seriousness of such offence in the digital age.
68. Having regard to the maximum sentence prescribed, the sentencing principles discussed, the aggravating and mitigating features of the present case, and the guidance properly to be derived from the relevant authorities, I consider that the appropriate starting point was one of fifteen months' imprisonment.
69. Giving full credit for the respondent's early plea of guilty and the mitigating circumstances properly available to him, I would have reduced that starting point by one-third. The sentence that ought properly to have been imposed was therefore one of ten months' imprisonment.
70. Accordingly, the appeal is allowed and the sentence imposed by the Magistrate is set aside. In its place, I substitute a sentence of ten months' imprisonment.
71. I recognise, however, that by the time this appeal came before the Court, the respondent had already completed the sentence imposed by the Magistrate and had been repatriated to his home country. The substituted sentence therefore has no

practical effect upon the respondent personally. Nevertheless, that circumstance does not diminish the importance of determining this appeal. It is in the public interest that sentencing principles governing offences under *section 509 of the Penal Code* be clarified so as to promote consistency, fairness and transparency in future cases.

72. The appeal is therefore allowed.



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