

Public Prosecutor

AND

Peter Jun Peteros Sasuman

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 6 of 2026)**

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

Date of Ruling: 4th July, 2026.

Headnote –

- *Criminal Law — Sentence appeal — Prosecution appeal against sentence — Manifest inadequacy — Principles governing appellate intervention*
- *Criminal Law — Outraging modesty — Section 354 Penal Code (Cap. 22) — Sentencing principles*
- *Criminal Law — Sentencing — Departure from guideline sentence — Requirement for reasons — Aggravating factors justifying higher starting point*

DPP Jordan Tiah Teck Chun for the Appellant.

Mr. Czar Calabazaron of Messrs Rudi Lee, Annie Kon & Associates for the Respondent.

Cases cited:

Public Prosecutor v Normajili bin Napir (Criminal Appeal No. 16 of 2009)(High Court)

Pg Tuah bin Pg Hj Kula v Public Prosecutor (Criminal Appeal No. 5 of 1993)(High Court)

Harpal Singh v Public Prosecutor (Criminal Appeal No. 28 of 2015)(High Court)

Public Prosecutor v Hapandi bin Tahir (Criminal Appeal No. 24 of 2024)(High Court)

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 of outrage modesty under *section 354 of the Penal Code, Chapter 22*.

2. The sole issue before this Court concerns sentence. The Respondent pleaded guilty to the charge. Accordingly, the only question is whether the sentence imposed by the Magistrate was manifestly inadequate and warrants appellate intervention.
3. The present appeal raises a broader question concerning sentencing under *section 354 of the Penal Code*. In particular, this Court is invited to consider the continued application of the guideline laid down in *Public Prosecutor v Normajili bin Napir (Criminal Appeal No. 16 of 2009)* and whether, in appropriate cases, a higher starting point may be justified by aggravating features beyond those ordinarily contemplated in that authority.

II The Charge

4. The Charge is as follows:

Amended Charge

"That you, sometime on 27 September 2025 at about 1500hrs, at Sima Wellness Centre located at 1st Floor, Block C, Unit No. 1, Bangunan Begawan Pehin Dato Hj Mohd Yusof, Kampong Kiulap Gadong, in Brunei Darussalam, did use criminal force, intending to outrage, or knowing it to be likely that you will outrage the modesty of one Mr. X [Name and age redacted], to wit, by rubbing your hand against his bare inner right thigh and bare scrotum four (4) times and you have thereby committed an offence punishable under section 354 of the Penal Code, Chapter 22."

5. *Section 354 Penal Code* provides for imprisonment for a term which may extend to five years and shall also be liable to whipping.

III Background Facts

6. The Respondent was employed as a massage therapist at a wellness centre. The complainant attended the establishment for a massage session lasting approximately two hours. During the massage, the complainant had removed his clothing and was unclothed, save for a towel covering parts of his body. The complainant did so in the belief that this was part of the massage procedure and in reliance upon the Respondent's professional role.
7. The admitted facts disclose that during the course of the massage, the Respondent rubbed the complainant's bare inner thigh and bare scrotum on four occasions. There was direct skin-to-skin contact. The Respondent had also asked inappropriate personal questions and, towards the end of the session, lowered the towel covering the complainant's genital area.
8. The complainant felt uncomfortable and disturbed by the incident and subsequently lodged a police report.

IV Proceedings Below

9. The Respondent pleaded guilty at the earliest opportunity and had no previous convictions.
10. In her sentencing grounds, the Magistrate carefully identified a number of aggravating factors, including:
 - a) the repeated touching of intimate areas;
 - b) direct skin-to-skin contact;
 - c) the vulnerability of the complainant, who was unclothed;
 - d) abuse of trust arising from the Respondent's professional position as a massage therapist;
 - e) the inappropriate questions asked during the massage; and
 - f) the lowering of the towel exposing the complainant's genital area.
11. The Magistrate further held that a strong message had to be sent to those working in the massage industry and recognised the importance of deterrence.
12. Having regard to the decision in *Public Prosecutor v Normajili bin Napir*, she adopted a starting point of nine months' imprisonment and, after taking into account the plea of guilt and mitigation, imposed a sentence of six months' imprisonment and one stroke of whipping.

V The Appellant's Position

13. The Appellant submits that the sentence imposed was manifestly inadequate.
14. It was argued that while the Magistrate correctly identified the aggravating features, insufficient weight was ultimately accorded to them.
15. It is submitted that the present case is materially more serious than the ordinary case contemplated in *Normajili* because of the following factors:
 - a) repeated touching on four occasions;
 - b) direct skin-to-skin contact with the complainant's scrotum;
 - c) the complainant being unclothed and vulnerable;
 - d) abuse of professional trust;
 - e) the lowering of the towel; and
 - f) the commission of the offence under the guise of legitimate treatment.
16. The Appellant argues that these aggravating features justify a higher sentencing starting point than that adopted in *Normajili*. They clarified during submissions that the appeal was not directed at the Magistrate's findings of fact. Rather, the challenge was directed principally at the starting point adopted.

VI The Respondent's Position

17. The Respondent submits that the sentence imposed was within the permissible sentencing range and was not manifestly inadequate. Reliance was placed upon *Normajili and Kang Byong Dug v Public Prosecutor (Criminal Appeal No.21 of 2022)*, it being argued that the Magistrate faithfully applied the existing guideline.
18. They further contend that the prosecution seeks to create new sentencing categories not recognised in Brunei law, particularly in relation to skin-to-skin contact.
19. It is submitted that appellate intervention is only justified where the sentence imposed falls outside the range of sentences reasonably open to the sentencing court.

VII The Law

20. The principles governing appellate intervention in sentencing are well established; an appellate court will not interfere merely because it might itself have imposed a different sentence. Intervention is justified only where:
 - a) the sentencing court acted upon a wrong principle;
 - b) material factors were overlooked;
 - c) immaterial factors were taken into account; or
 - d) the sentence imposed is manifestly excessive or manifestly inadequate.
21. Sentencing is not a precise calculation; a range of sentences may properly be open to a sentencing court, and appellate restraint remains an important principle. At the same time, appellate courts have an important role in ensuring consistency, proportionality and the principled development of sentencing law.
22. It is against these principles that the present appeal falls to be determined.

VIII Case Law and Authorities

23. Both parties relied upon a number of authorities. It is therefore necessary to examine them in chronological order.

Pg Tuah bin Pg Hj Kula v Public Prosecutor

24. In *Pg Tuah bin Pg Hj Kula v Public Prosecutor (Criminal Appeal No. 5 of 1993)*, the offender held the complainant's hand and pinched her cheek with the intention of outraging her modesty.
25. Referring to his comments *Subki bin Ibrahim v P.P. (Criminal Appeal No. 13 of 1992)* Chief Justice Roberts in *Pg Tuah* reiterated that:

"A serious view is taken in Brunei of offences against section 354 of the Penal Code."
26. His Lordship further recognised that community values and standards in Brunei are relevant considerations when assessing the seriousness of offences against modesty.

27. The significance of *Pg Tuah* lies in establishing the principle that offences under section 354 Penal Code are viewed seriously in Brunei.

Public Prosecutor v Normajili bin Napir

28. The principal authority relied upon by both parties is *Public Prosecutor v Normajili bin Napir* (Criminal Appeal No. 16 of 2009).
29. In that case, the offender pleaded guilty to outraging the modesty of a 14-year-old girl by touching her buttocks.
30. Steven Chong, J (*as he was then*) observed that:

“Generally, a custodial sentence of 6 months would be appropriate in cases of outraging modesty involving any intrusion on the private parts of the victim even when the offender pleads guilty and has a clear record.”

31. The High Court further indicated that this would translate into a starting point of approximately nine months upon conviction after trial.
32. In my opinion, *Normajili* was intended to provide guidance in ordinary cases involving intrusion into private parts. It was not expressed as an inflexible tariff applicable irrespective of factual circumstances.
33. Sentencing under section 354 Penal Code is necessarily fact-sensitive and must account for varying degrees of culpability, harm and aggravation.
34. Accordingly, *Normajili* remains good law and continues to provide an important benchmark for sentencing under section 354.

Harpal Singh v Public Prosecutor

35. In *Harpal Singh v Public Prosecutor* (Criminal Appeal No. 28 of 2015), the offender sexually molested a female cashier by poking his penis against her lower back. He pleaded guilty and was sentenced to one year's imprisonment and two strokes of whipping.
36. The Court observed that the facts disclosed a serious sexual assault deserving severe punishment.
37. The significance of *Harpal Singh* lies in demonstrating that more intrusive conduct may justify sentences above those ordinarily contemplated in *Normajili*.

Kang Byong Dug v Public Prosecutor

38. In *Kang Byong Dug v Public Prosecutor* (Criminal Appeal No. 21 of 2022), the offender touched the victim's buttock while she was at work.
39. In *Kang*, Chief Justice Steven Chong held that sentencing courts should ordinarily be guided by *Normajili*. Importantly, he further observed that if there were factors warranting departure from *Normajili*, those factors should be clearly specified.
40. In this Court's view, *Kang* affirms two principles:
 - a) *Normajili* remains the general benchmark; and
 - b) departure from that benchmark is permissible where reasons are articulated.
41. Guideline judgments promote consistency and predictability in sentencing, but they should not become rigid formulas incapable of accommodating differing factual situations.

Public Prosecutor v Hapandi bin Tahir

42. More recently, in *Public Prosecutor v Hapandi bin Tahir* (Criminal Appeal No. 24 of 2024), the victim was trapped alone in a moving vehicle and subjected to repeated touching.
43. The Court emphasised the victim's vulnerability, the repeated nature of the offending conduct and the resulting psychological harm. The Court observed that a sentence in the region of twelve months represented the median sentence for offences of that nature before consideration of case-specific factors.
44. *Hapandi* demonstrates the continuing development of sentencing principles under section 354 Penal Code in response to differing factual circumstances.

XI The Emerging Sentencing Trend

45. Viewed chronologically, the authorities reveal a gradual development rather than a departure from established principles.
46. *Pg Tuah* established that Brunei takes a serious view of offences against outraging modesty.
47. *Normajili* established a general benchmark for cases involving intrusion into private parts.
48. *Harpal Singh* demonstrated that more intrusive conduct may warrant more severe punishment.

49. *Kang* reaffirmed the importance of *Normajili* while recognising that departure may be justified where reasons are given.
50. *Hapandi* further illustrates that aggravating circumstances may justify higher starting points.
51. The authorities therefore reveal an incremental movement in sentencing rather than any abrupt shift.

X The Present Appeal

52. Having reviewed the sentencing grounds, I am satisfied that the Magistrate carefully considered all relevant aggravating factors.
53. It therefore cannot be said that the Magistrate overlooked material considerations or acted upon a wrong principle. In that respect, the sentencing grounds were careful and well-reasoned.
54. The issue on this appeal is a narrower one. The question is whether the starting point of nine months adequately reflected the cumulative seriousness of the aggravating features present in this case.
55. In this Court's view, it did not.

XI Aggravating Features

56. Several aggravating features are present in this case.
57. First, the touching was repeated on four occasions.
58. Second, the touching involved the complainant's bare scrotum and inner thigh.
59. Third, there was direct skin-to-skin contact. I do not regard skin-to-skin contact as creating a separate sentencing category. Nevertheless, it remains relevant in assessing the degree of sexual intrusion.
60. Fourth, the complainant was unclothed and particularly vulnerable during the massage.
61. Fifth, the offence involved an abuse of professional trust. Persons who submit themselves for professional treatment necessarily place trust in those providing such services. The Respondent exploited that trust to gain access to intimate areas of the complainant's body.
62. Sixth, the inappropriate questions and lowering of the towel formed part of the surrounding circumstances and demonstrated escalating conduct.

XII *Normajili* as Guideline, Not Tariff

63. *Normajili* remains good law, however it was never intended to operate as an inflexible tariff applicable irrespective of factual circumstances.
64. Sentencing under *section 354 Penal Code* remains fact-sensitive.
65. Accordingly, where aggravating features exist, including abuse of trust, exploitation of vulnerability, repeated acts or significant sexual intrusion, a sentencing court may be justified in adopting a higher starting point, provided reasons are clearly articulated.
66. Such an approach preserves the authority of *Normajili* while allowing sentencing principles to develop incrementally.

XIII Determination of the Appropriate Starting Point

67. The Appellant urged this Court to adopt a higher sentencing benchmark for offences of this nature. The Court accepts that the present case falls outside the ordinary class of cases contemplated in *Normajili*. However, sentencing developments should ordinarily proceed incrementally and consistently with existing authority.
68. The authorities reveal an observable progression in sentencing under section 354. *Normajili* established the ordinary benchmark. *Harpal Singh* recognised more severe punishment for more intrusive conduct. *Kang Byong Dug* reaffirmed the need to respect guideline authorities while permitting principled departures. *Hapandi* further demonstrated that aggravating circumstances may justify higher starting points.
69. In my view, a suggested starting point of eighteen months' imprisonment would represent too abrupt a departure from the existing line of authorities. Conversely, retaining a starting point of nine months would insufficiently reflect the gravity of the present offence.
70. A starting point of fifteen months' imprisonment and three strokes of whipping appropriately reflects both the seriousness of the present offence, the surrounding circumstances of the offence and the gradual development of sentencing principles under section 354 Penal Code.
71. Such a sentence preserves continuity with existing authorities while ensuring that the punishment imposed remains proportionate to the particular facts of this case.
72. At this point, I pause to emphasise that the present decision should not be understood as criticism of the Magistrate's approach. She carefully identified and analysed the relevant aggravating factors. The present appeal turns not upon any error of

principle, but upon the proper calibration of sentence in light of the cumulative weight of those aggravating circumstances.

XIV Sentence

73. Applying a reduction of one-third for a guilty plea, the appropriate sentence is:
- a) ten months' imprisonment; and
 - b) two strokes of whipping.

XV Order

74. The appeal against sentence is allowed. The sentence of six months' imprisonment and one stroke of whipping imposed by the Magistrate is set aside.
75. In substitution, the Respondent is sentenced to ten (10) months' imprisonment; and two (2) strokes of whipping.
76. The sentence of imprisonment shall take effect from the date ordered by the court below.



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