

Public Prosecutor

AND

Lisma Deti

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 35 of 2020)**

Harnita Zelda Skinner, Judge
20th June 2020

*Criminal law – guilty plea- sentence - section 28(1)(a) of the Children and Young Person Act-
assault of a child-domestic helper*

DPP Raihan Nabilah Hj Ahmad Ghazali for Public Prosecutor.
Defendant in person and unrepresented.

Cases cited:

Public Prosecutor v Mohammad Shahiful Rizal bin Bakari & Another (ICCT No. 1 of 2016)
Public Prosecutor v Suriah Bte Japar Buha (Criminal Trial No.7 of 2014)
Public Prosecutor v Halip Bin Mohammad Suhadi (Criminal Trial No.16 of 2017)
Public Prosecutor v Abdul Razak Jumaat (2013)2 JCBD 147
Public Prosecutor v Rahimi Hj Abdullah
Shamsul Awg Yahya v Public Prosecutor (Criminal Appeal No.4 of 2012)
Ghani Hj Sabtu v Public Prosecutor (Criminal Motion No.40 of 2013)

SENTENCE**Harnita Zelda, Judge:**

1. The defendant had pleaded guilty to one charge under section 28(1)(a) Children and Young Persons Act (Cap 219). The charge reads as follows:
2. Charge

“That you, sometime in the morning on the 18th day of May 2020, at No.3, Jalan 260, Simpang 5, Kg Perpindahan Rimba, in Brunei Darussalam, being a domestic helper having the care of a child (M 3 yrs, D.O.B 29/05/2017), did abuse him, to wit, by pressing his face down onto a mattress, hitting his face and throwing him onto a mattress and you have thereby committed an offence punishable under section 28(1)(a) of the Children and Young Persons Act, Chapter 219”

3. Penalty

The penalty is a fine not exceeding \$20,000, imprisonment for a term not exceeding 10 years with or without whipping not exceeding 10 strokes or both.

4. Background facts

The defendant agreed to the statement of facts that was tendered into court. The defendant is a 41 year old Indonesian national. She worked as a domestic helper at the complainant's address at No. 3, Jalan 60, Simpang 5, Kg Perpindahan Rimba, Gadong in Brunei Darussalam since 20th October 2019.

The incident took place in the morning of 18th May 2020 when the defendant was trying to put the victim to sleep. Seeing that the victim had not fallen asleep, the defendant pressed the said victim's face into the mattress whilst the said victim was lying down on his side. The defendant then proceeded to hit the said victim's face using her hand. The defendant then continued to stand the victim up in a standing position and proceed to lift him up and throw him onto the said mattress.

The complainant lodged a police report after she saw the whole incident on a CCTV footage the next day, 19th May 2020. The defendant was arrested by the police on the same day at 2340hrs.

In her police statement, the defendant admitted that she had abused the said victim as seen in the CCTV footage.

A physical examination was conducted on the said victim at RIPAS Hospital found that the said victim had mild redness over his left cheek. The said injuries were constituted as hurt.

On record, the defendant has no previous convictions.

5. Mitigation

The defendant said that she was remorseful and regretted her actions. She is a mother of 2 children and she is the breadwinner in her family. She said that she was stressed that the victim did not want to sleep as she had a lot of house chores to do that day. She was tired and fasting at the same time.

6. Authorities

In the case of *Public Prosecutor v Mohammad Shahiful Rizal bin Bakari & Another* (HCCT 1 of 2016) where Hon Justice Hairol Arni commented that "*It is very difficult to gain much assistance by way of comparison with other cases in this sort of offence. It is obvious that the court's approval on sentencing is on the basis that at one extreme there are offenders who deliberately and violently injured children for no reason of all and at the other, there are*

those who through pressure either from economic or domestic, falls into the trap and succumbed to violence and physical abuse. Either way, this is not an excuse". The Hon judge imposed a sentence of 8 months imprisonment for both defendants. A stoke of one whipping for the 1st defendant.

There are several cases which imposed sentences for child abuse cases. The type of abuse and ages of the victims varies.

Public Prosecutor v Rahimi Hj Abdullah

Public Prosecutor v Abd Razak Jumaat

Shamsul v Public Prosecutor

Ghani Hj Sabtu v Public Prosecutor

The learned DPP had referred to the case of *Public Prosecutor v Suriah Bte Japar Buha* (2014) where the Hon Chief Justice commented that *'The defendant by abusing the baby, was in breach of trust. As a 'domestic' servant she was entrusted by the baby's parents to look after their baby but instead the defendant spanked or beat for no good reason when the baby wanted attention. The baby, for obvious reason, being vulnerable, is the person who the defendant should protect and not abused'*". The Hon Chief Justice sentenced the defendant on 3 counts under section 28(1)(a) of the Children and Young Persons to a total of 4 years' imprisonment for abusing a 1 year and 8 months year old child.

In most household, parents will delegate their household chores and caring of their children to domestic helpers. The domestic have become an integral part of most household and if the employer have children then one of the primary responsibility is towards the needs of the children.

7. Present case

The victim is 3 years old at the time of the incident. It is obvious from the victim's age that he will not be able to understand that the defendant was stressed by his crying and refusing to sleep.

Furthermore, it was brought to the court's attention that the victim is diagnosed and treated for "*microcephaly, development delay and seizure disorder*" at the Child Development Centre. The prosecution tendered a follow up report dated 28th May 2020 of both the General Pediatric Clinic and the Children Development Center. The victim is currently under medication.

The only conceivable basis for the defendant rough –handling was to vent her frustration over the victim. The defendant ought to have been aware of the victim's medical condition and how vulnerable the victim was. Being a mother herself, the defendant ought to have the full understanding of caring for a child as solely entrusted by the victim's parents. She has a duty to take care of the victim and the complainant's other young children aged 4 and 1 year old.

It is fortunate that the victim had not suffered serious injuries. However, in view of the victim's medical condition, there is a possibility that the physical abuse might have an impact towards the victim emotionally and psychologically.

A deterrent sentence is called for in this instance to ensure that all domestic helper caring for a child and young person to give pause before resorting to inflicting physical abuse.

8. Sentence

The court takes a starting point of 2 year's imprisonment in considering the appropriate sentence. A one third discount for her guilty plea, mitigation and first conviction.

The defendant is to serve 16 months' imprisonment. The sentence will take effect from date of her remand.

HARNITA ZELDA SKINNER
Judge, Intermediate Court