

Public Prosecutor

AND

Mohammad Shahiman bin Mohd Yunos

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.39 of 2022)**

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge
12th April 2023

Criminal Law – Sentencing – Criminal intimidation with intent to cause alarm – threat of use of a knife and threat to kill – section 506 of the Penal Code, Cap 22 – 2 charges of assault against 2 different complainants – section 323 of the Penal Code – mischief by causing wrongful damage to property – section 426 of the Penal Code, Cap 22 – plea of guilty - first offender.

PO Mohammad Kamal Ariffin Bin Ismail for Public Prosecutor.
Defendant appears in person and unrepresented.

Cases cited:

Mohammad Hazman bin Awang Nasri v Public Prosecutor, Criminal Appeal No.1 of 2017, JCBD 165
Public Prosecutor v Adli bin Awang Abdullah (ICCT.No.3 of 2018)
Public Prosecutor v Mohd Azmil bin Amir (CR No.2 of 2020)
PP vs Mohammad Shahiful Rizal bin Awang Bakri, (Criminal Trial No 4 of 2019)
PP v Muhammad Danish Saifullah Bin Abdullah Anggau (ICCT No.43 of 2022)
Mohammad Noor Hazwani bin Joini v Public Prosecutor (Criminal Appeal No.48 of 2014)
Mohamed Abdul Malek Fazil bin Mohammed v Public Prosecutor (Criminal Appeal No.5 of 2017)

S E N T E N C E

Dk Hjh Norismayanti, Judge:

Mohammad Shahiman bin Mohd Yunos (the defendant) pleaded not guilty to four charges under the Penal Code on the 19th July 2022 and the matter proceeded to trial in January 2023. On the 28th March 2023, before the court proceeded to deliver a ruling on a prima facie case, the defendant informed the court that he wished to change his pleas. The four (4) charges were re-read to the defendant in Malay with the penalty explained and the defendant entered a plea of guilty to each and every charge against him.

The charges against the defendant reads as follows:

Amended 1st Charge:

“That you, on the 17th day of June 2022, sometime between 1800 hours and 2345hrs, at the vicinity of your house at No. 1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, Brunei Darussalam, had committed criminal intimidation on your girlfriend, one Dk Siti Aisyah Binti Pg Murah (F.27, 10/04/1995) by threatening to cause death or grievous hurt to her, to wit,

- i) by shouting to your sister, in the presence of your girlfriend to bring a knife; and*
- ii) by uttering the words “kalau ko berani, ku bunuh ko” towards your girlfriend,*

with intent to cause alarm to her, and you have thereby committed an offence punishable under section 506 of the Penal Code, Chapter 22.”

Penalty under section 506 of the Penal Code: Imprisonment for a term which may extend to 3 years, or with fine or with both; and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death, or with imprisonment for a term which may extend to 7 years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to 7 years, or with fine, or with both.

Amended Additional 2nd Charge:

“That you, on the 17th day of June 2022, sometime between 1800 hours and 2345hrs, at the vicinity outside of your house at No.1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, Brunei Darussalam, did voluntarily cause hurt to your girlfriend, one Dk Siti Aisyah Binti Pg Murah (F.27, 10/04/1995), to wit, by putting a head-lock on her with your left arm, pushing her face down and bringing her to the ground, and you have thereby committed an offence under Section 323 of the Penal Code, Chapter 22.”

Penalty under section 323 of the Penal Code: Imprisonment for a term not exceeding 3 years and fine.

3rd Charge (formerly 2nd charge):

“That you, on the 9th day of March 2022 at around 1505hrs, at the vicinity of your house at No. 1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, Brunei Darussalam, committed mischief by intentionally causing wrongful damage to property, to wit, the front windshield and right side-mirror of a green Toyota Corolla bearing registration number BU2880, that was parked at the vicinity of your said house, in the possession of Habib Ullah, by punching the front windshield with your hand and hitting right side-mirror with a metal rod, and you have thereby committed an offence under Section 426 of the Penal Code, Chapter 22.”

Penalty under section 426 of the Penal Code: Imprisonment for a term which may extend to 2 years, fine or both.

Additional 4th charge:

“That you, on the 9th day of March 2022 at around 1505hrs, sometime between 1800 hours and 2345 hours, at the vicinity of your house at No.1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, Brunei Darussalam, did voluntarily cause hurt to one Habib Ullah, by hitting him on his left thigh with a metal rod, and you have thereby committed an offence under Section 323 of the Penal Code, Chapter 22.”

The penalty is as stated above for the 2nd charge. After entering a plea of guilty on all 4 of the above-mentioned charges, the defendant also agreed to the Prosecution’s Statement of Facts. A conviction on all of the 4 charges was entered by the court accordingly.

The following is the Statement of Facts agreed by the defendant:

1. *The Defendant is a 25-year-old Bruneian male. He is single and currently works as a cleaner in RIPAS Hospital. The Defendant lives at house addressed at No.1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, in Brunei Darussalam.*

In relation to the Amended 1st charge and Amended Additional Charge

2. *The Defendant has been in a relationship with his girlfriend, one Dk Siti Aisyah Binti Pg Murah (F.27, 10/04/1995) (hereinafter referred to as “the Complainant”) for 6 months.*
3. *On the 17th June 2022 between 1800hrs and 2345hrs, the Defendant was with the Complainant at his house addressed at No.1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, in Brunei Darussalam. The Complainant asked for the Defendant to send her to RIPAS Hospital where her father will be waiting to pick her up. The Defendant then told the Complainant that he has no car to send her to RIPAS Hospital. The Complainant then went outside of the said house and tried to walk home on foot, which made the Defendant in a fit of rage. The Defendant then stopped the Complainant by putting a head-lock on her with his left arm, poked her eyes and brought her to the ground outside of the said house.*
4. *While on the ground, the Defendant then shouted to his sister who was inside her bedroom, to bring a knife in the presence of the Complainant who was still on the ground. Upon hearing the Defendant asking for a knife, the Complainant felt afraid for her safety. The Defendant then pulled the Complainant’s arm and dragged her back inside the house. The Defendant then uttered the words “kalau ko berani, ku bunuh ko” towards the Complainant. Upon hearing the Defendant’s threat, the Complainant felt even more afraid for her safety and pleaded the Defendant to send her back to RIPAS Hospital. The Defendant ignored the Complainant’s plea and eventually managed to send her back to RIPAS Hospital on the 20th June 2022. Subsequently the Complainant was picked up by her father.*
5. *The Complainant was then brought to the police station by her father to lodge a police report. This led to the Defendant’s arrest on the 21st June 2022.*
6. *During police investigations, the Defendant admitted to committing the offences stated in the Amended 1st Charge and Additional 2nd Charge.*

In relation to the 3rd charge (formerly 2nd charge) and Additional 4th Charge

7. *On the 9th March 2022 at around 1505hr, one Habib Ullah (hereinafter referred to as “the Complainant”) went to the Defendant’s house at No.1, Spg 415-73, Jalan Wasai Limuru, Tanah Jambu, in Brunei Darussalam using his green Toyota Corolla bearing registration number BU2880. The Complainant met the Defendant to ask about a Double DIN car stereo player that he bought from the Defendant previously. The Complainant told the Defendant the said car stereo player was not functioning. The Defendant instead asked the Complainant about a memory card inside the said car stereo player but the Complainant did not have it with him. This made the Defendant in a fit of rage and the Defendant punched the front windshield of the Complainant’s said Corolla car. The Complainant tried to pull out his phone to record the situation but the Defendant approached the Complainant with a metal rod obtained from the vicinity of his house and proceeded to hit the Complainant’s left thigh. The Complainant rushed into his said Corolla car and the Defendant then hit the right side-mirror of the Complainant’s said Corolla car with the said metal rod. The Complainant then left the said area and subsequently lodged a police report.*
8. *Police investigation led to the involvement of the Defendant.*
9. *During police investigations, the Defendant admitted to committing the offences stated in the 3rd Charge (formerly 2nd charge) and Additional 4th Charge stated in the charge sheet.*
10. *The loss suffered by the Complainant for the damages caused by the Defendant amounts to BND260.*
11. *On record, the Defendant has no record of previous convictions.*

Defendants’ plea in mitigation

The defendant asked for the court’s leniency in sentencing. The defendant submits that this is his first offence before the court and admits that the acts committed against Dk Siti Aisyah and Habib Ullah were due to his uncontrollable temper and emotions. The defendant is remorseful of his acts.

Sentencing Considerations

The court will first address the fact that the defendant had initially claimed trial to all four charges in this case. Trial proceeded and was heard over several days. A total of eight (8) prosecution witnesses testified and one (1) witness was recalled to give evidence in a *voir dire* hearing. Therefore, much time has been spent by the prosecution to prepare and conduct the trial of this case and had occupied valuable court time. Typically, if a plea of guilty was entered at the earliest opportunity by a defendant, the said defendant will be given a 1/3 discount on his final sentence. Unfortunately for the present case, the same cannot apply due to the foregoing reasons mentioned. Nevertheless, considering his guilty pleas albeit at a later stage in the proceedings, the court will afford some discount to reflect the guilty pleas accordingly.

Offences against Dk Siti Aisyah (complainant A)

The court will first address the offences committed against Dk Siti Aisyah (victim A), the defendant's girlfriend at the time. The offences committed against victim A occurred during the same time frame. The assault took place outside the defendant's house and in the midst of manhandling victim A to the ground during his assault, the defendant then shouted out to his sister to bring him a knife thereby causing victim A to fear for her safety. Immediately following that incident, the defendant dragged victim A back into his house where he then threatened to kill her if she dared to leave which cause her further alarm to fear for her life.

Based on the facts and circumstances of the case, the court is of the view that the sentence should reflect the gravity of the offence and it is in the public interest that a deterrent custodial sentence be imposed with respect to both of the 1st and 2nd charge against the defendant especially where there is an established relationship between the defendant and victim A and it is not unreasonable to believe that victim A placed her care and trust on the defendant to keep her safe and secure. The nature of a section 506 offence is a serious one which is not to be taken lightly and the seriousness is reflected in the penalty prescribed which falls under the 2nd limb specifically to address aggravated acts of criminal intimidation which includes the threat to cause death or grievous hurt.

Case Law

In determining the appropriate sentence, the court refers to the views of Dato Paduka Hj Hairol Arni bin Hj Abdul Majid, J. who stated that the sentencing trend for offences under section 506 of the Penal Code would be consistent with the imposition of a custodial sentence “...where the threat had been serious and accompanied by use of a weapon or blunt instrument of sort” (see *Mohammad Hazman bin Awang Nasri v Public Prosecutor*, Criminal Appeal No.1 of 2017, JCBD 165). This supports the court's view that the sentence should reflect the gravity of the offence. The court will look into the following cases to assess the appropriate sentence to impose in the present case.

In *Public Prosecutor v Adli bin Awang Abdullah* (ICCT.No.3 of 2018), a sentence of 6 months' imprisonment for criminal intimidation under section 506 of the Penal Code was given to a defendant who threatened the complainant via WhatsApp by stating “*If there is no law, I would have killed you already*”. The court also refers to the case of *Public Prosecutor v Mohd Azmil bin Amir* (CR No.2 of 2020), where the defendant plead guilty to 5 charges under the Penal Code. The defendant and the complainant are husband and wife. Two of the charges were for section 506 offences involving (i) the defendant's threat to burn down the family home via WhatsApp and (ii) the defendant's threat to poison the water tank of the family home via WhatsApp text. The Magistrate sentenced the defendant to 6 months' imprisonment for each charge and was to be served concurrently. The matter was later sent up for revision and the Chief Justice was of the view that the 6 months' imprisonment sentence on each charge was unduly lenient. The honourable Chief Justice was of the view that a sentence of 1 year's imprisonment for each charge would be appropriate.

In *PP vs Mohammad Shahiful Rizal bin Awang Bakri*, (Criminal Trial No 4 of 2019), the defendant plead guilty to 5 charges. The 3rd and 5th charge were for section 506 offences by threatening to cause death. For the 3rd charge the defendant threatened to kill the complainant with the use of a machete and he was sentenced to 48 months reduced to 32 months' imprisonment. For the 5th charge, the defendant also threatened to kill the same complainant with the use of a machete. For that, the defendant was sentenced to 24 months reduced to 16 months. In the case of *PP v Muhammad Danish Saifullah Bin Abdullah Anggau* (ICCT No.43 of 2022), the defendant plead guilty to an alternative charge under section 506 of the Penal Code where he threatened to kill his elder brother by pointing a knife and uttering the words "I'll hack you". The defendant was sentenced to 12 months reduced to 8 months' imprisonment on the count of his guilty plea and clear record.

Based on the above-mentioned cases, the sentencing range is between 6 to 12 months' imprisonment for a section 506 offences with sentences of 12 months and above to be considered where the threat to cause death involves the use of a weapon as well as the gravity of the offence involved. Therefore, the court should assess the appropriate sentence on a case to case basis.

1st charge

In the present case, after putting complainant A in a head lock, pushed her face down and made her fall to the ground (2nd charge), the court reiterates that the defendant then threatened victim A of the use of a knife (when he shouted to his sister to bring him a knife) and then dragged her back into his house where he threatened to kill her. In considering the appropriate sentence, the court is of the view that this case must be distinguished between cases involving threat of death via WhatsApp texts and cases involving the use of a weapon. In the present case, the threat was made in the complainant's presence and not over a telecommunication device and therefore the impact of the threat to the complainant was immediate and the alarm caused to the victim would have felt more severe. Even though the incident did not involve an actual physical knife and no physical injuries were sustained but the court is of the view that the threat was no less real for the victim as the threat took place immediately after the physical altercation between her and the defendant.

Based on the aforesaid considerations, the court takes a starting point of 15 months' imprisonment. The sentence is reduced to 12 months' imprisonment to reflect the defendant's plea of guilty and clear record.

2nd charge

Next, the court refers to the physical altercation which is the basis of the 2nd charge. The defendant's assault was unprovoked and victim A was defenseless. Despite there not being any physical injury suffered, the victim had earlier testified that she suffered from pain on her neck and her body resulting from the headlock and the defendant pushing her face with his hand and using his leg to make her fall to the ground. With respect to sentencing, the usual range of sentences for assault charges range between fines and a custodial sentence depending on the gravity of the offence. The prosecution refers to the case of *Mohammad Noor Hazwani bin Joini v Public Prosecutor* (Criminal Appeal No.48 of 2014) where the

appellate judge noted that the lower court would normally impose a fine instead of a custodial sentence where the complainant suffered hurt but no serious injuries were involved. A custodial sentence would be considered in cases involving physical violence which results in physical injuries on the victim. In the present case, there is physical violence and pain suffered by the victim albeit no physical injury was caused. Nevertheless, the court finds it an aggravating factor that the defendant shouted out for a knife whilst the victim was still on the ground resulting from the assault. Taking into account the facts and circumstances of the overall incident, the court believes that a deterrent sentence is also warranted for the assault charge.

Based on the above considerations, the court takes a starting point of 6 weeks' imprisonment. The sentence is reduced to 1 month's imprisonment on the count of the defendant's guilty plea and clear record.

Offences against Habib Ullah (victim B) and his vehicle

For the 3rd and 4th charge, the defendant also admitted through his mitigation that his criminal acts were a result of his uncontrollable anger and emotions. Referring to paragraph 7 of the Statement of Agreed Facts, the defendant caused damages to the victim's car, a green Toyota Corolla when he punched the front windshield of the car (3rd charge). The defendant then used a metal rod to poke the defendant which hit his left thigh (4th charge). After victim B rushed into his car, the defendant proceeded to hit the right side-mirror of the car using the same metal rod (3rd charge). As a result of the damages to the car, victim B suffered a loss in the total sum of BND\$260. The court also takes into consideration that there is no medical evidence adduced and there is no noticeable physical injury sustained by the victim.

Overall, the court finds that the attack on victim B and the victim's car was unprovoked and unwarranted. The court is of the view that the defendant has a propensity to commit physical violence that should be deterred. The court considers the victim fortunate having managed to avoid any subsequent physical attack by rushing into the security of his car. The court does not hesitate to believe that the victim would have been open to further attack from the defendant had he not taken refuge in his car as the defendant then changed his focus to cause damage to the victim's car.

In assessing the sentence for the section 426 offence, the court takes into consideration the case of *Mohamed Abdul Malek Fazil bin Mohammed v Public Prosecutor* (Criminal Appeal No.5 of 2017) where the 1st defendant plead guilty to all 5 charges against him. Here, the court specifically refers to the 5th charge which was for smashing a car's window using a pair of scissors for which he was sentenced to 6 months imprisonment (reduced from 9 months). On appeal, the sentence was not disturbed. The penalty prescribed for section 426 offence is an imprisonment sentence not exceeding 2 years and fine or both. Considering the facts and circumstances of the present case and the need to impose a deterrent sentence, the court will take a similar approach on sentencing and adopt a starting point of 9 months' imprisonment. For his plea of guilty and clear record, the court reduces the sentence to 7 months' imprisonment.

For the section 323 offence, the court refers back to the case of *Mohammad Noor Hazwani bin Joini* and the cases cited therein as guidance. Despite that no physical injury was sustained, the defendant did use a metal rod in his attack on the victim and could have caused serious injuries if the victim did not manage to escape from further attack. The court believes that it is in the public's interest that a custodial sentence is imposed as opposed to a fine. The court therefore takes a starting point of 9 weeks' imprisonment, reduced to 7 weeks' imprisonment on the count of his plea of guilty and clear record.

Summary of sentence

1st charge: 15 months reduced to 12 months' imprisonment
2nd charge: 6 weeks' imprisonment reduced to 1-month's imprisonment
3rd charge: 9 months reduced to 7 months' imprisonment
4th charge: 9 weeks' imprisonment reduced to 1 month and 3 weeks' imprisonment

Totality principle

The overall consecutive sentence imposed above adds up to about 21 months and 3 weeks' imprisonment. The court takes into consideration the totality principle to ensure that the sentence imposed is appropriate and not manifestly excessive bearing in mind that there are two victims involved and the offences committed against each victim took place at different time periods. Having considered the gravity of the offence and the defendant's overall criminality, to ensure that the defendant serves the appropriate overall sentence, the court makes the following order:

The sentences for the 1st and 2nd charge are to run concurrently resulting in the total sentence of 12 months' imprisonment.

The sentences for the 3rd and 4th charge are to run concurrently resulting in the total sentence of 7 months' imprisonment.

Finally, the 2 sets of concurrent sentences are to run consecutively to one another. The final sentence for the defendant to serve is 1 year and 7 months' imprisonment. The sentence is to take effect from the date of conviction, 27th March 2023.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL
Judge, Intermediate Court