

PUBLIC PROSECUTOR

AND

MM BIN O

(High Court of Brunei Darussalam)
(Criminal Trial No. 5 of 2023)

Muhammed Faisal bin PDJLD Kol (B) DSP Hj Kefli, JC
22nd May, 2024.

Headnote: Criminal law – sentencing – section 2 of the Unlawful Carnal Knowledge Act CAP 29 –
plea of guilty after commencement of trial

PO Hjh Atiyyah Azzahra POKLSDSLJ Awg Hj Abas binti Hj Abas for the Public Prosecutor.
Defendant In Person and Unrepresented.

Case cited:

Narawi bin Haji Yahya and Public Prosecutor (Criminal Appeal 35 of 2012)
R v Taylor and others [1977] 64 Cr App. R. 183

Statutes:

Section 2 of the Unlawful Carnal Knowledge Act CAP 29
Section 376(2)(c) of the Penal Code CAP 22
Section 186 of the Criminal Procedure Code

SENTENCING

Muhammed Faisal, J.C.:

I. INTRODUCTION

The Defendant initially faced 2 charges; one under section 2 of the Unlawful Carnal Knowledge Act CAP 29 (UCK) and a charge under section 376(2)(c) of the Penal Code CAP 22 (PC).

Trial commenced on the 20th May 2024. Before proceedings began, the Prosecution applied for the 2nd charge under section 376(2)(c) PC to be withdrawn and the Defendant be discharged not amounting to an acquittal (DNAA), pursuant to section 186 of the Criminal Procedure Code (CPC). 2 witnesses were called for the 1st day of hearing.

However, on the 21st May 2021, the following day of trial, saw the Defendant pleading guilty to the remaining charge. Today is for sentencing.

Today, is the return date for his sentencing for the alternative charge.

II. CHARGES

The charge is reproduced, below:

1st Charge

That you, sometime in February 2022 inside a house addressed at F14, 1st Floor, Room 2, Battalion 3, Lumut Camp in Brunei Darussalam did have unlawful carnal knowledge with a girl under the age of 16 years old, to wit, Miss A (female, 15 years old, DOB: 13/12/2006), and you have thereby committed an offence punishable under Section 2 of the Unlawful Carnal Knowledge Act, Cap 29.

III. FACTS

At the time of the offence the Defendant resided on the 1st floor of building F14, room No.2 at the Battalion 3, Lumut Camp, Brunei Darussalam. The Defendant resided at the said address with his family which included Miss A. Miss A is the daughter of the Defendant's older brother. At the time of the offence, Miss A was only 15 years old.

Sometime in February 2022, the Defendant and Miss A were alone in the kitchen of the home. They were just conversing with each other when the Defendant ask Miss A if she wanted to have sexual intercourse with him. Miss A refused to answer and remained silent. The Defendant was persistent and repeatedly asked her the same question until she eventually gave in.

The Defendant then lowered Miss A's trousers and did the same to his own trousers. He then asked Miss A to lay on the floor where he then proceeded to insert his penis into her vagina. As he was having sexual intercourse with Miss A, he was afraid that somebody would enter the kitchen, so he stopped and they left the kitchen separately.

On 19th February 2023, tired of the Defendant's sexual demands, Miss A confided in her mother of what happened between Miss A and the Defendant. Her mother is divorced from Miss A's father and has remarried. She brought Miss A to Tutong Police Station to report the matter, on the same day.

Pursuant to police investigations on 27th February 2023, the Defendant admitted that sometime in February 2022 he had sexual intercourse with Miss A despite knowing that she was under 16 years old at the time.

IV. MITIGATION

The Defendant has pleaded guilty and is a first offender. He is the youngest of a family of 8 children. He is unmarried and has no children of his own. He does state that, before being remanded he takes care of his mother, but now she is with his brother.

He does not have a regular job; he only collects and sells scrap metal for an income. Mostly he helps his family members doing chores.

He is remorseful of his actions and pleas for a lenient sentence and as well as for the court to take into consideration that he had been in remand since March 2023.

V. AGGRAVATING FACTORS

This is a relationship between blood relative; the victim is the Defendant's biological niece. The Defendant has, admitted during the brief trial, that he had taken care of the victim since she was small. I reiterate what the learned DPP has said during submission that this is gross breach of trust.

Not only is she a blood relative, the victim was only 15 years old when the Defendant had sexual intercourse with her. By the Court's reckoning, he would have been about 36 years old at that time.

VI. CASE LAW

I refer to *Narawi bin Haji Yahya AND Public Prosecutor* (Criminal Appeal 35 of 2012).

In this case the Appellant claimed trial to two charges of having unlawful carnal knowledge with an underaged girl contrary to section 2 of the Unlawful Carnal Knowledge Act.

After the trial had commenced, the appellant pleaded guilty to the two charges. He was sentenced to 2 years' imprisonment and one stroke on each count, the sentences of imprisonment to be consecutive and the strokes to be cumulative, resulting in a total of 4 years and 2 strokes. In dismissing the Appellant's appeal against the consecutive order of the Magistrate, the High Court stated the two charges occurred in 2 separate occasions.

The appellant here also asked for a probation order. In dismissing the application, Steven Chong J, in his ruling stated:

“There is a wide spectrum of guilt which is covered by the offence of having unlawful sexual intercourse with a girl under 16. At one end of the spectrum is the youth who starts off with a virtuous friendship with a girl under 16 ending in a sexual relationship. At the other end of the spectrum is the man who sets out deliberately to seduce an underaged girl for sex. The court is justified in treating the latter offence more seriously than the former offence: see R v Taylor and others [1977] 64 Cr App. R. 183.”

I believe this is relevant to the matter in hand; the spectrum of guilt will slide closer to latter end of spectrum, as explained in *Narawi bin Haji Yahya*.

VII. OTHER CONSIDERATIONS

Even though the Defendant had pleaded guilty, he had done so after the commencement of trial, with 2 witnesses being called, one of whom is the complainant herself. Acknowledging the Defendant’s right to claim trial and face his accuser, nonetheless, he has placed the complainant through the process of relieving her experience in court. It is still fresh in the court’s mind, of how distressed and uncomfortable the complainant was, when giving her testimony and during cross examination. It would not be in the public interest, that the defendant to benefit for a full discount in sentencing, for pleading guilty after trial commenced.

VIII. SENTENCE

Had the Defendant opted to plead guilty at an earlier opportunity, all things being equal, he would have qualified for the minimum sentence of two years. That would, equate to a sentence of possibly 3 years after trial.

However, given the facts of this case, and the useful guidelines in *Narawi bin Haji Yahya*, my starting point for the Defendant’s sentence would be that of 4 years imprisonment and 3 strokes. Rather than the practice 1/3 discount for a guilty plea, I reduce his sentence by ¼.

XI. ORDER

The Defendant is sentenced to 3 years’ imprisonment and 3 strokes.

Sentence is backdated to the date of institution of proceedings.

MUHAMMED FAISAL BIN PDJLD Kol (B) DSP HJ KEFLI
Judicial Commissioner