

Public Prosecutor

AND

APO L/CPL 6009 Noorependy Bin Haji Sabli

**(High Court of Brunei Darussalam)
(Criminal Trial No. 9 of 2021)**

Hj Abdullah Soefri bin POKSM DSP Haji Abidin, J.C.

8th February 2021

*Criminal law – 3 charges for rape u/s 376(1) and 376(2) of Penal Code – 1 charge u/s 377C of Penal Code
– Plead guilty on first day of trial – victim of tender age – consecutive sentence – Total of 30 years’
imprisonment and 24 strokes of whipping*

Cases referred to:

R v Ball (1951) 35 Criminal Appeal R. 164

Chu Tiong vs PP (2001) 3 SLR 425

PP vs Ibrahim bin Haji Anggas (CT No.6 of 2007)

PP and Mohamad Ratino bin Abdullah Litoh (CT No.12 of 2014)

PP vs Awg I bin A (CT No.8 of 2005)

Ahmad bin Hj Ibrahim vs PP (CA No.8 of 2004)

Mohammad Amirol bin Haji Abdul Razak and PP (CA No.12 of 2016)

DPP Raihan Nabilah binti Haji Ahmad Ghazali for Public Prosecutor.

Defendant in person.

SENTENCING

Hj Abdullah Soefri, J.C:

The Defendant was first brought before this Court on 13th October 2021 where he pleaded not guilty to all the four charges that were preferred before him. The hearing for the case was fixed from 6th December 2021 until 14th December 2021 and his bail application was dismissed and he was remanded in Maraburong Prison since then.

On the first day of the trial, on the 6th December 2021, the Defendant indicated that he would like to change his pleas to all the charges from pleading not guilty to guilty. All the charges and penalties were read to him again by the Court Interpreter in Malay language and he understood the charges and penalties and entered guilty pleas to all the charges.

Statement of facts was read and explained to the Defendant by Court Interpreter in Malay and it was found out that the date in paragraph 8 of the statement of facts was not consistent with the date in charges 2 and 3.

The Prosecution applied for the date in the additional 2nd charge to be changed from “*between 2016 to 2017*” to “*between 2015 to 2016*” and the date in paragraph 8 to be changed from “*2016 to 2018*” to “*2015 to 2016*”. 3rd charge remains the same.

The amended additional 2nd charge and penalties were read to the Defendant which he understood and maintained his guilty plea.

The Defendant also agreed and admitted to the statement of facts including the amended paragraph 8.

THE CHARGES

Amended 1st Charge

That you, on 28th July 2021 at about midnight, inside a vehicle model Hyundai Grand 110, bearing registration number BAP5771, in the vicinity of an abandoned electric substation in Kampong Katok in Brunei Darussalam, did commit rape one Miss X (F.15, D.O.B 18/01/2006) by having sexual intercourse with the said Miss X without her consent, and you have thereby committed an offence punishable under section 376(1) of the Penal Code, Chapter 22.

Penalty under section 376(1) of the Penal Code

Imprisonment for a term which may extend to 30 years and whipping.
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Amended Additional 2nd Charge

That you, sometime between 2015 and 2016, at night time inside a vehicle in the vicinity of Tungku Mc Farm in Brunei Darussalam, for the purpose of obtaining sexual gratification, did intentionally show an obscene video of a male and female having sexual intercourse to Miss X (F.14, D.O.B 18/01/2006) a person under 16 years of age, and you have thereby committed an offence punishable under section 377C of the Penal Code, Chapter 22.

Penalty under section 377C of the Penal Code

Imprisonment for a term not exceeding 5 years, fine or both.
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Additional 3rd Charge

That you, sometime between 2015 and 2016 at night time, inside a vehicle in the vicinity of Tungku Mc Farm in Brunei Darussalam, did commit rape on one Miss X (F.15, D.O.B 18/01/2006) a woman under the age of 14 years, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(2) of the Penal Code, Chapter 22.

Penalty under section 376(2) of the Penal Code

Imprisonment for a term of not less than 8 years and not more than 30 years and shall also be punished with whipping with not less than 12 strokes.

Additional 4th Charge

That you, sometime in 2015 at night time inside a vehicle in the vicinity of Tungku Mc Farm in Brunei Darussalam, did commit rape on one Miss X (F.15, D.O.B 18/01/2006) a woman under the age of 14 years, by having sexual intercourse with her without her consent, and you have thereby committed an offence punishable under section 376(2) of the Penal Code, Chapter 22.

Penalty under section 376(2) of the Penal Code

Imprisonment for a term of not less than 8 years and not more than 30 years and shall also be punished with whipping with not less than 12 strokes.

STATEMENT OF FACTS

The statement of facts as admitted by the Defendant is in the following terms:

1. The defendant is a male, Malay, Bruneian national aged 41 years old. He is married with three children. At the time of the commission of the offences, the Defendant had been serving in the Royal Brunei Police Force for the past 22 years.
2. On 2nd August 2021, a police report was lodged by one Norlila Nisa bte Mohd Mohsin (F.38) regarding the rape of her daughter, Miss X by the Defendant. Miss X's father is the Defendant's first cousin.
3. On 3rd August 2021, the Defendant was arrested by the police.

In respect of the Amended 1st Charge:

4. During the course of the police investigations, it transpired that on 28th July 2021, sometime in the evening, the Defendant had asked Miss X to accompany him to buy fuel for his Hyundai Grand 110 vehicle, bearing registration number BAP 5771. Miss X was reluctant but her mother insisted for her to go with the Defendant. At the time, Miss X was the only passenger in the Defendant's vehicle.
5. At about midnight on 28th July 2021, the Defendant drove to an abandoned area in Kampong Katok. The Defendant parked the vehicle and suddenly took off Miss X's trousers and underwear. He then removed his own trousers and inserted his penis into Miss X's vagina. The Defendant had sexual intercourse with Miss X without her consent. After having committed rape on Miss X, the Defendant then drove Miss X back home.
6. On 29th July 2021, Miss X confided in her mother about the aforesaid rape incident. She also revealed to her mother that she had been a victim of the Defendant's sexual acts since she was 9 years old.

In respect of the Additional 2nd and 3rd Charges:

7. Police investigations further discovered that Miss X had been raped by the Defendant on a number of occasions. The Defendant, whom was a relative of Miss X's father, was a frequent visitor at their house and he would always ask permission to bring out Miss X.
8. Investigations revealed that sometime between 2015 to 2016 in the evening, the Defendant obtained permission from Miss X's parents to take Miss X out. The Defendant then drove Miss X to a secluded area in the vicinity of Tungku Mc Farm. The Defendant then asked Miss X to watch an obscene video on his phone of a female and male having sexual intercourse.

9. As Miss X watched the video, the Defendant touched her body and the Defendant became aroused. He suddenly undressed Miss X by taking off her trousers and underwear, and inserted his penis into her vagina. The Defendant had sexual intercourse with Miss X without her consent. Miss X did not resist as she feared for her own safety. Thereafter, the Defendant drove Miss X back home and told her not to tell anyone about the incident.

In respect of the Additional 4th Charge:

10. Further investigations found that Miss X was first raped by the Defendant sometime in 2015, at the tender age of 9.
11. Sometime at night in 2015, having obtained permission from Miss X's parents to take her out, the Defendant drove them to a secluded area in Mc Farm, Tungku in Brunei Darussalam using his car. The Defendant parked his car and began touching Miss X's breasts and private part. He then undressed Miss X by pulling off her trousers and underpants, thereafter inserting his finger into her vagina.
12. He then removed his trousers until Miss X could see his penis. He slid on a condom onto his penis and subsequently inserted his penis into Miss X's vagina. Miss X cried from the immense pain she felt as the Defendant inserted his penis into her vagina. At the tender age of 9, Miss X did not resist as she was unsure of what was being done to her and the Defendant had sexual intercourse with Miss X without her consent. The Defendant told Miss X not to tell her parents of the incident. At the time, Miss X did not report to anyone including her parents about her being raped by the Defendant.

In respect of all Charges:

13. Upon the Defendant's arrest on 3rd August 2021, he was investigated on the rape incidents reported against him. During investigations, he admitted to raping Miss X since she was 9 years old. He also admitted to showing Miss X obscene videos on his phone while groping her breasts and private parts. He admitted that he then had sexual intercourse with Miss X without her consent. In his statement, the Defendant further admitted that he last had sexual intercourse with Miss X, without her consent on 28th July 2021.
14. On record, the Defendant has no previous convictions in Brunei Darussalam.

MITIGATION

In his mitigation, the Defendant pleaded for a lenient sentence and for all the sentences to run concurrently.

He also informed the Court that he is married and his wife is unemployed. He has three children aged between 4 years and 9 years old.

He also in the court extended his apology to the victim for what he did to her and reiterated that he has his responsibility to look after his parents, wife and children.

SENTENCING SUBMISSION BY PROSECUTION

The Prosecution highlighted aggravating factors in the present matter which are as follows:-

1. Tender age of the victim;
2. Gross Breach of Trust; and
3. Repeated rapes.

The Prosecution also submitted several previous cases of similar nature that have been decided by the Appellate Courts as guidelines. Cases referred are as follows:-

- a. *Public Prosecutor and Mohamad Ratino bin Abdullah Litoh* (CT No.12 of 2014)
- b. *Public Prosecutor vs Awg I bin A* (CT No.8 of 2004)
- c. *Ahmad bin Hj Ibrahim vs Public Prosecutor* (CA No.8 of 2004)
- d. *Mohammad Amrol bin Haji Abdul Razak and Public Prosecutor* (CA No.12 of 2016)

The Prosecution also referred to her submission of the case of ***Public Prosecutor and Ibrahim bin Haji Anggas (CT No.6 of 2007)*** as the guideline as a discount to those who plead guilty entered on the first day of the hearing.

SENTENCING CONSIDERATION

The court has to look into various factors in determining the appropriate sentence. In the case of ***Chu Tiong vs Public Prosecutor (2001) 3 SLR 425***, the High Court stated:

“There are four pillars of sentencing; retribution, deterrence, prevention and rehabilitation. Criminal Courts play their part by ensuring that the sentences of offenders mirror these pillars. The sentence imposed on the appellant not only served to punish him, it sought to deter potential offenders, through fear of punishment, and to influence offenders who have been appropriately sentenced not to offend again”.

In the case of ***R v Ball (1951) 35 Criminal Appeal R. 164***, Hillberry, J., laid out the guiding consideration which this court also took into consideration. Learned Hillberry, J., stated:

“In deciding the appropriate sentence, a court should always be guided by certain considerations. The first and foremost is the public interest. The criminal law is publicly enforced, not only with the object of punishing crime, but also in hope of preventing it.

A proper sentence, passed in public, serves the public interest in two ways. It might deter others who may be tempted to try crime as seeming to offer easy money on the supposition, that if the offender is caught and brought to justice, the punishment will be negligible. Such sentence may also deter the particular criminal from committing a crime again, or, induce him to turn from a criminal to an honest life”.

CONCLUSION

A quote from the Convention on the Rights of the child.

“For every child, every right”

Universally, everyone knows that a child needs to be protected especially from being sexually exploited. It is every child's right to be protected. It is in the interest of everyone that every vulnerable person especially a child to be given protection and for them to be given the sense of security and feel safe especially from predators and paedophiles just like the Defendant.

Predators and paedophiles like the Defendant need not only be punished but also need to be rehabilitated and deterred from committing such offence.

The punishment imposed on him will also serve as a deterrent to others (predators and paedophiles) from committing such offence which is exploiting vulnerable persons and child for their own sexual gratifications.

The offences that the Defendant had committed are very serious offences indeed. The Defendant has exploited a child of the tender age of 9 years when it first started. It happened not once but several times until the last when the child was 15 years old.

I agree with the Prosecution that there is a gross breach of trust whereby the victim is the niece of the Defendant.

As in the charge, the rape occurred three times once in 2015, once in between 2015 and 2016, and the third in 2021.

Another aggravating factor is that the Defendant is a member of the Royal Brunei Police Force who is supposed to uphold justice and to ensure the safety of others and to protect others. Instead, he did the opposite.

I agree with the Prosecution that for offence under section 376(1) which is the 1st charge the starting point is 12 years.

I agree with the Prosecution that for offence under section 376(2) which is the 3rd charge and 4th charge that the starting point is between 15 to 18 years.

I also agree with the Prosecution that for offence under section 377C, which is the amended additional 2nd charge that the sentence is in the range of 12 to 18 months.

Having said all of the above and taking into account all the mitigating factors and aggravating factors, the Court impose the following sentence:

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| 1st charge under section 376(1): | Starting point of 12 years. |
| 2nd charge under section 377C: | Imprisonment sentence of 12 months. |
| 3rd charge under section 376(2): | The starting point of 15 years. |
| 4th charge under section 376(2): | The starting point of 15 years. |

Taking into account that the Defendant has pleaded guilty and has a clean record, the Court deducts the following starting points:

1st charge: 12 years deduct 3 years = 9 years.

3rd charge: 15 years deduct 5 years = 10 years.

4th charge: 15 years deduct 5 years = 10 years.

Taking into account that the Defendant repeatedly committed the offences on a child of tender age and there is a need to deter and warn others and paedophiles from committing such offences the Court is satisfied and it is justified that all the sentences are to run consecutively.

1st charge: 9 years and 8 strokes.

2nd charge: 1 year.

3rd charge: 10 years and 12 strokes.

4th charge: 10 years and 12 strokes.

Total sentence will be 30 years and as to whipping will be 24 strokes as the strokes for 3rd and 4th charges to be consecutive and to be concurrent to the strokes of the 1st charge.

Thus, the Court imposes an imprisonment sentence of 30 years and 24 strokes with effect from 4th August 2021.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner