

Public Prosecutor

AND

Setiyadi Saputro

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 27 of 2015)**

Abdullah Soefri POKSM DSP Hj Abidin, ICJ
18th November, 2015.

Criminal law – Causing grievous hurt with machete – Guilty plea – Appropriate sentence – Section 325 of the Penal Code.

DPP Dk Siti Nurul Fairuz Bte Pg Rosli for Public Prosecutor.
Defendant In Person.

Cases cited in the Sentence:

Chua Tiong Tiong v Public Prosecutor [2001] 3 SLR 425
Public Prosecutor v Muhammad Zuhairie Bin Yunos [2011] 1 JCBD 28
Public Prosecutor v Sumet Ob-Orm [2008] 1 JCBD 55
R v Howells (and other appeals) [1999] 1 All ER 50, 54

S E N T E N C E

Hj Abdullah Soefri, ICJ:

Setiyadi Saputro pleaded guilty to causing grievous hurt by a machete contrary to section 326 of the Penal Code. The maximum sentence for this offence is an imprisonment for a term which may extend to 15 years and with whipping.

The charge is as follows:

Charge

That you, on 6th day of October 2015 sometime between 1000 hours and 1020 hours, at the vicinity of Water Treatment Plant, Kumbahan, Pandan, Mumong, Kuala Belait in Brunei Darussalam, did voluntarily cause grievous hurt to one Savari Muthi Irudayam (aged 53 years old) by means of a machete, an instrument for cutting, and you have thereby committed an offence punishable under section 326 of the Penal Code, Cap.22.

Penalty for an offence under section 326 of the Penal Code, Cap.22 Imprisonment for a term which may extend to 15 years and with whipping

Statement of Facts

The Defendant admitted to all the 'Statement of Facts' in which the particulars of the commission of offences have been set out. The admitted 'Statement of Facts' are as follows:

Statement of Facts

1. The Defendant is an Indonesian male. He has been in Brunei for over 10 years and worked under Surati Construction Sdn Bhd as a labourer.
2. On 6th October 2015 at around 1000 hours, the Defendant was at his work place at Water Treatment Plant, Kumbahan, Pandan Mumong, Kuala Belait in Brunei Darussalam where he was cutting grass using a machete.
3. While he was cutting the grass, one of the general workers at the said workplace, Savari Muthu Irudhayam (the Complainant) told him to cut the grass on other places around the vicinity.
4. The Defendant who felt overwhelmed with his work then became angry at the Complainant. He subsequently lost his temper and as the Complainant was bending over looking at the ground, the Defendant then hacked the Complainant's head with the said machete.
5. The Complainant then screamed for help as blood gushed out from his head before he fell onto the ground, leaving him unconscious.
6. The Defendant then walked away and left the said vicinity to go to a river nearby where he threw the machete in the river in order to dispose of the evidence.
7. The Complainant who had lost consciousness was then rushed to the hospital by his colleague who heard the scream. The police was then subsequently called which led to the arrest of the Defendant.
8. During police investigation, the Defendant admitted that he was angry at the Complainant for asking him to do more work and as such he had used the machete – an instrument for cutting, to hack him on his head.
9. As a result of the blow from the machete, the Defendant had caused serious injuries to the Complainant, where according to the medical report (attached herewith), he had lost considerable amount of blood and had to be extensively monitored at the Suri Seri Begawan Hospital in Kuala Belait.

10. Upon medical examination, the Complainant suffered very deep lacerated wound over the right ear extending up to the frontal bone area, a lacerated wound over the occipital bone measuring about 12 cm and a fractured skull bone. These injuries constitute as grievous hurt.

11. On record the Defendant has no previous convictions.

MITIGATION

In his mitigation, the Defendant told the Court that he pleads for lenient sentence as he has a wife and a child. He told the Court that the reason for committing the offence was to show his frustration because his salary was never raised after working for 10 years. He also told the Court that he had done every task that they asked him to do.

He told the Court on that fateful morning he started work at 7 am cleaning the meeting room and after he had cleaned the room he went to throw the rubbish and went to the storeroom where they asked him to clean the fence. The complainant came and scolded him and brought him to the water treatment plant and called him 'cow' and laughed. The Defendant told the Court that this angered him and the incident took place.

The Defendant seek forgiveness and admitted that this is his mistake and informed the Court that he has been remanded in Jerudong Prison for nearly 1 month.

SENTENCING CONSIDERATIONS

The Court has to look into various factors in determining the appropriate sentence. In the case of **Chua Tiong Tiong v 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 **R v Howells (and other appeals) (1999) 1 ALL ER 50**, 54 Bingham LCJ commented that,

"Courts should always bear in mind that criminal sentences are in almost every case intended to protect the public, whether by punishing the offender or reforming him, or deterring him and others, or all of these things. Courts cannot and should not be unmindful of the important public dimension of criminal sentencing and the importance of maintaining public confidence in the sentencing system".

The facts of the case are very disturbing and the Court takes following aggravating factors into account:

1. The attack was unprovoked.
2. The Defendant used a machete.
3. The Defendant disposed the incriminating evidence into the river.
4. Grievous injuries inflicted.

The Court takes into account the following mitigating factors:

1. The Defendant pleaded guilty promptly.
2. The Defendant is a first offender.
3. The Defendant is remorseful.

Having taking into account of all these factors, the question now, what is the most appropriate sentence?

In the case of ***Public Prosecutor v Sumet Ob-Orm* [2008] 1 JBD 55** where the facts of the case is the defendant in seeking revenge for an earlier argument went to the victim's bedroom armed with a kitchen knife. Seeing the victim asleep, the defendant attacked him on the head with the knife causing a fracture to his skull. The victim also suffered fractures to his right elbow and left index finger when he attempted to shield himself by raising his arms. After the assault, the Defendant fled the scene and threw the knife into the river.

The learned Judge Dato Steven Chong took a starting point of 5 years and 5 strokes after considering the gravity of the injuries inflicted with the use of dangerous weapon, in particular, to the head of the victim. The learned Judge imposed a sentence of 3 years and 3 strokes after having regard the Defendant's remorse reflected in his admission to the police and guilty plea at the first opportunity and his clear record.

In another case ***Public Prosecutor v Muhammad Zuhairie Bin Yunos* [2011] 1 JCBD 28** where the learned Judicial Commissioner Barnett imposed a sentence of 9 years for an offence under section 326 of the Penal Code. He considered that the attack was *"unprovoked, frightening and almost fatal. The consequences for the victim, Mrs Molloy, will probably be with her forever. It was an attack upon an isolated person, a female, who was entitled to feel safe, being as she was in the presence of a security guard."*

The Defendant in this case has a clear record but has not pleaded guilty of the said charge.

In our present case, the Defendant has informed the Court that he has a wife and a child that are depended on him. It is inevitable that they will suffer hardship without the Defendant's support. This Court will adopt the sentencing in ***Public Prosecutor v Sumet Ob-Orm*** case as the facts are nearly similar and believes that a starting point of 5 year and 5 strokes to be appropriate.

Having taken into account, all the mitigating factors, the sentence shall be 3 years and 3 strokes.

The imprisonment sentence will take effect from 13th October 2015.

HJ ABDULLAH SOEFRI
Intermediate Court Judge