

Public Prosecutor

AND

Muhammad Nazirul Azmi Bin Masdi

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No. 44 of 2024)**

Pg Masni Pg Hj Bahar, Judge

Date of Sentence: 24 March 2025

Headnote: Section 293B of the Penal Code- Taking, distributing, showing, advertisement and access to indecent photograph of a child- Pleaded guilty- Section 13 A CPC- taken into consideration of outstanding offences- Deterrent Sentence.

DPP Hajah Siti Mu'izzah binti Haji Sabli for the Public Prosecutor.

Hj Mohamad Daud Bin Hj Ismail (M/S Daud Ismail & Company) for the Defendant.

Cases cited:

Public Prosecutor v Ravindra & Ors [1992] 3 CLJ (Rep) 426

Mohammad Shahrin bin Awang Zaini v Public Prosecutor (COA Criminal Appeal No. 10 of 2021)

Afindey bin Haji Mohammad Ali v Public Prosecutor (High Court Criminal Motion No. 57 of 2018)

Public Prosecutor v Mohammad Halil bin Bujang [Criminal Appeal No. 32 of 2020]

PP vs Mohd Rosdy bin Abdullah (HCCA No. 29 of 2000)

Public Prosecutor v Hj Karim bin Hj Yasim [1997] JCBD 42

Maimun binti Haji Omar v. PP [Criminal Appeal No. 1 of 2013]

Mohd Salleh bin Abdullah @ Ambrose Aban Anak Igah (Criminal Trial No 6 of 2014)

Public Prosecutor v Khairul Bashar [ICCT no 37 of 2021]

Mohammad Shahdon bin Mohammad Ramlee (ICCT No. 17 of 2015)

SENTENCE

Pg Masn, Judge:

Introduction:

1. The Defendant, Muhammad Nazirul Azmi bin Masdi, was initially faced with 4 counts of charges offence under Section 293A of the Penal Code (1st Charge), two charges for offence under Section 354 of the Penal Code (2nd and 3rd Charge) and one charge for offence under Section 293B of the Penal Code (4th Charge).
2. The charges and its penalty were read to the Defendant on the 13th February 2025. The Defendant pleaded not guilty to all the 4 charges. He is represented by Mr Hj Daud Ismail (DC).

3. Subsequently, on behalf of the Defendant, DC made several representations to the Prosecution. Prosecution agrees to reduce the charge to one count of charge, which is the additional 4th charge and accept to take into consideration of the 2nd charge pursuant to section 13A of the CPC which is charged for offence under section 354 PC.
4. Following that representation, DC agrees for the Additional 4th charge and its penalty to be read and explained to the Defendant. The Additional 4th charge and its penalty was read and explained to the Defendant in Malay language. Defendant told the court that he understood the charge and its penalty read and explained to him and he pleaded guilty.

Charge:

5. The Defendant pleaded guilty to the said charge:

Additional 4th charge:

*That you, on the 8th of January 2024, at about 2248 hours, in Brunei Darussalam, did distribute through a messaging platform called Telegram, twelve (12) indecent or obscene photographs of one **Miss X**, Female, 15 years old, D.O.B 23/05/2008), and you have thereby committed an offence punishable under Section 293B of the Penal Code, Chapter 22.*

Statement of facts:

6. The Prosecution applied for the Statement of facts to be read and explained to the Defendant. The DC informed the court that the Defendant has no objection. The statement of facts was then read and explained to the Defendant in court. The Defendant unequivocally admitted to the said statement of facts.
7. Defendant admitted to the following facts. Defendant admitted that he when he was employed as an office assistant at the Scouts Association Brunei Darussalam, he began a romantic relationship with 15-year-old Miss X, on the 28th June 2023. Their relationship, which began with text messages on WhatsApp, which progressed to include frequent phone and video calls.
8. Defendant admitted that as their relationship grew, the Defendant started requesting for obscene photographs of Miss X. Defendant agreed that Miss X rejected his request and that she sent decent photographs of herself to the Defendant. Defendant admitted that he insisted for Miss X's obscene photographs. Defendant agreed that Miss X still refused but eventually sent to him photographs of her chest area clothed. Defendant admitted that he was not satisfied by the photographs, he threatened Miss X that he will expose their sexual conversation messages. Miss X, due to fear, unwillingly sent two of her photographs to the Defendant; one photograph of her exposed breasts and the other of her breasts covered with a bra.

9. Defendant also admitted that a couple of weeks in their relationship, the Defendant requested to meet up in person. Defendant admitted picking up Miss X using his Mazda vehicle and went to a corner of a building where he parked his car. Defendant admitted that after he parked his car, he lifted Miss X's shirt, pulled down her bra and groped Miss X's breasts without her consent. Whilst doing so, the Defendant photographed his action of groping Miss X's breast using his Samsung Galaxy A12 mobile phone.
10. Defendant admitted that sometime between October and December 2023, the Defendant sold twelve (12) obscene photographs of Miss X on a messaging platform called Telegram in "*Group Brunei 18+*" in order to earn extra income.
11. The Defendant admitted he had distributed and sold Miss X's obscene photographs to about 30 customers where he charged them at the price ranging from BND10.00 – BND20.00. Defendant admitted that the mode of payment is via on line transfer into his Bank account number, XXXXXXXXXXXX62, at Bank Islam Brunei Darussalam (BIBD). The Defendant further admitted that he had received a total of about BND300.00 from selling Miss X's obscene photographs in Telegram.
12. This matter came was reported to the police when an individual noticed an advert in selling pornographic materials of young girls (one of which was Miss X) in Telegram. This concerned individual pretended to buy the pornographic materials and contacted the Defendant, who had an account name "*@Jemmey745*". Defendant admitted that confirmed to the said individual that he had several pornographic materials for sale; including materials of local young girls as young as 13 years of age. The said individual then informed the Defendant that he was interested to buy them. Following that, the Defendant charged the said individual the amount of BND20.00, which he then instructed to make the payment into his BIBD account number XXXXXXXXXXXX62. Following the payment, the Defendant then sent several photographs and videos of young girls including twelve (12) photographs of Miss X.
13. Police investigation managed to identify Miss X through one of the photographs; where she was wearing her school uniform. She was then called to the Women and Children Abuse Investigation Unit; where she was shown the photographs and immediately confirmed that those were her photographs which she only sent to her then boyfriend named "*Muhammad Nazirul Azmi*" (the Defendant). This identification led to the Defendant's arrest.
14. The Defendant was arrested and his mobile phone, Samsung Galaxy A12, was seized. It was sent to IT Forensic Unit for digital forensic examination. Following the examination, it was revealed that the said mobile phone contained a significant number of pornographic materials including the obscene photographs of Miss X. The analysis also confirmed that there was a Telegram application in the said mobile phone with an

account name “@Jemmey745”. Police also managed to confirm with BIBD that the account number XXXXXXXXXXXX62 belonged to the Defendant.

15. Defendant admitted that he confessed to the police being in possession of twelve (12) obscene photographs of Miss X included the ones he took himself as well as the photographs Miss X sent to him upon his request. He further admitted that all these photographs were stored in his mobile phone; which he then distributed for sale in Telegram for cash.

Antecedent:

16. Defendant has no previous conviction.

Section 13 A of the CPC:

17. Defendant also admitted for the offence under section 354 PC (the 2nd charge) to be taken into consideration pursuant to section 13A of the CPC.

18. Defendant admitted to the following:

*That you, sometime between October and November 2023, in Brunei Darussalam, did use criminal force onto one **Miss X** (Female, 15 years old, D.O.B 23/05/2008), to wit, by groping and licking her breasts and rubbing her genital area, intending thereby to outrage or knowing it to be likely that you will thereby outraged the modesty of the said Miss X, and you have thereby committed an offence punishable under Section 354 of the Penal Code, Chapter 22.*

19. Having admitted to the Statement of facts and agreed to the Section 13A CPC, the DC put forward a written mitigation on behalf of the Defendant.

Mitigation:

20. DC urged the court to consider the following mitigating factors. There are:

- i. Plea of Guilty: Though not at the earliest opportunity, it saves court time and resources. Case precedents suggest a sentence reduction of one-third.
- ii. First Offender Status: The Defendant has no prior criminal record, making him more suitable for rehabilitation.
- iii. Personal & Family Circumstances: Aged 24, financially supporting his family, lost employment due to this case, and suffers from Diabetic Ketoacidosis requiring medical treatment.
- iv. Employment Record: Served diligently for nearly four years at Persekutuan Pengakap Brunei Darussalam, contributing positively to his community.

- v. Cooperation with Authorities: The Defendant admitted to his actions during police investigations, showing remorse.

Prosecution reply on Defendant's mitigation:

21. Prosecution submits that the Defendant's family hardships cannot be considered for leniency, as established in the case of ***Mohammad Shahrin bin Awang Zaini v Public Prosecutor (COA Criminal Appeal No. 10 of 2021)***. Similarly, the Defendant's medical condition, Diabetic Ketoacidosis, does not qualify as a mitigating factor for sentence reduction. As stated in the case of ***Afindey bin Haji Mohammad Ali v Public Prosecutor (High Court Criminal Motion No. 57 of 2018)*** where the court emphasize that ill health is only considered in exceptional cases involving terminal illness. The Defendant's medical report indicates the need for medication but does not suggest a terminal or untreatable condition. Therefore, no sentence reduction is warranted.

Court's Consideration:

22. DC cited the case of ***Public Prosecutor v Ravindra & Ors [1992] 3 CLJ (Rep) 426***, highlighting the guideline/principle used by the learned judge in sentencing. In that case the learned judge consider discount for plea of guilty. In addition to that, the learned judge also to consider similar offence in consideration of appropriate sentence so as there is no disparity of sentence amongst the accused of persons and the mitigating factors.

Guilty Plea and clear record:

23. Guilty plea is one of the mitigating factors considered by the court in sentencing. By pleading guilty at the earliest stage, the Defendant have saved the court and the prosecution time in undergoing through the whole trial and the trauma of the victim, especially if the case is sexual offence, of going through the ordeal of giving evidence.
24. I take note that the Defendant initially claimed trial to all the four (4) charges. However, I take into consideration that the Defendant made several representations to the Prosecution through the DC. After several representations, the Prosecution agrees and prefer one charge against the Defendant (the additional 4th charge) and accepts the Defendant's representation for the 2nd charge to be taken into consideration by virtue of section 13 A of the CPC.
25. The Defendant pleaded guilty to the said additional charge and the agreed for the 2nd charge to by doing so, the Defendant is still entitled to the one third off.

Sentencing Consideration:

Defendant's submission on Sentencing:

26. DC acknowledged that the maximum penalty under Section 293B of the Penal Code is 10 years imprisonment, a fine, or both. Case precedents suggest a starting sentence of three years, reduced for guilty pleas. DC urged the court to impose either:
- i. A lenient imprisonment sentence or
 - ii. A non-custodial sentence (community service)
 - iii. A bond of good behaviour under Section 263 of the Criminal Procedure Code.²²
27. The Defence also urged the Court not to impose whipping due to the Defendant's medical condition. This offence does not warrant for whipping. DC concluded by submitted to court to impose the most lenient possible sentence, emphasizing rehabilitation, remorse, and the Defendant's potential to contribute positively to society.

Alternative Sentence:

28. DC urged this court to consider an alternative sentence to custodial sentence which is either to release the Defendant on Bond on Good Behaviour under section 263 CPC or to be released the Defendant under Community Service pursuant to Section 5(1) of the Offender (Probation and Community Service) Cap. 220.

Section 263 CPC:

29. DC submitted the case of ***Public Prosecutor v Mohammad Halil bin Bujang*** [Criminal Appeal No. 32 of 2020], where the Court invoke Section 263 of the Criminal Procedure Code replacing the fines imposed upon the Appellant at the Court below with the condition that the Appellant does not commit any offence within 1 year with effect from the judgment date.
30. In the case of ***Mohammad Halil bin Bujang***, the Appellate Court referred to the case of ***PP vs Mohd Rosdy bin Abdullah*** (HCCA No. 29 of 2000), in deciding *Mohammad Halil's* case. The Appellate Court stated that Section 263 of the Criminal Procedure Code (CPC) should only apply in exceptional circumstances. And in applying to invoke section 263 CPC, the court has to take into consideration of circumstances such as the offender's character, background, age, health, mental condition, or any extenuating circumstances related to the commission of the offense, rather than simply the time elapsed between convictions.

31. I refer to the case in ***Public Prosecutor v Hj Karim bin Hj Yasim* [1997] JCBD 42** where Roberts CJ opined that the court needs to consider the following for probation: *“the character, antecedents, age, health or mental condition of the offender, the trivial nature of the offence and to any extenuating circumstances under which the offence was committed.”*
32. In ***Mohammad Halil***’s case received three-years’ sentence for being a second offender for offence under section 6(b) of the MDA. Upon appeal, the Appellate Court noted the Pre-Sentence Report (PSR), which indicated that the Defendant had not engaged in any drug-related activities for the past ten years. The Appellate Court concluded that these circumstances constituted a significant extenuating factor.

Prosecution’s submission on sentencing:

33. Prosecution submits for custodial sentence, citing several aggravating factors:
- i. Threats and coercion: He forced the victim to provide obscene photographs and threatened to expose their conversation if she refused.
 - ii. Assault and photographing: He outraged the victim's modesty and photographed the act without her consent.
 - iii. Distribution of images: He sold the victim's private images to approximately 30 people online, causing potential humiliation and reputational harm.
 - iv. Financial gain: He profited from selling the images.
34. The Prosecution emphasize the seriousness of the crime and the need for a deterrent sentence, referencing the case of ***Mohammad Shahdon bin Mohammad Ramlee (ICCT No. 17 of 2015)*** as a relevant precedent, recommending a starting point of 6 years' imprisonment. The document concludes by requesting the court to consider their submission and sentence the Defendant accordingly.

Aggravating Factors:

35. Returning to this case, I find no extenuating factors; rather, there are significant aggravating factors arising from the facts of this case.
36. The Defendant, being an adult (23 years old), exploited the victim (a minor 15 years old) by threatening to expose their intimate conversations if she refused to produce obscene photographs. Additionally, during their first meeting, the Defendant led the victim to a secluded area of a building, where he forcibly lifted her shirt, pulled down her bra, and groped her breast without her consent. He recorded this assault using his Samsung Galaxy A12 mobile phone. Having recorded the assault, the Defendant distributed and

sold it in a platform that he created in Telegram at a price. Defendant sold it to 30 customers. Defendant benefitted the proceed of the sale as his extra income.

37. The offence committed by the Defendant cannot be said to be trivial. This action is serious in nature that it does not warrant the court to invoke Section 263 of the Criminal Procedure for the Defendant to be released on a Bond of Good Behaviour.

Community Service pursuant to Section 5(1) of the Offender (Probation and Community Service Chapter 220)

38. DC also urged this court to consider to impose Community Service pursuant to Section 5(1) of the Offender (Probation and Community Service Chapter 220).
39. Section 5(1) provides that *“Where a court before which an offender is convicted of an offence (not being an offence the sentence for which is fixed by law) is of the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to do so, it may, instead of sentencing him, make a probation order requiring him to be placed under the supervision of a probation officer or a volunteer probation officer for a probation period of not less than 6 months and not more than 3 years.”*
40. DC referred to the Court of Appeal case of ***Maimun binti Haji Omar v. PP* [Criminal Appeal No. 1 of 2013, Court of Appeal Brunei Darussalam]**, in which the Appellant was originally sentenced to a total of 4 years of imprisonment and BND\$6,000.00 in fines equivalent to 6 months of imprisonment. The court judiciously allowed the appeal, considering mitigating factors, and ordered the Appellant to serve 1 year of probation along with 100 hours of community service. DC urged asserts that the Defendant possesses an unblemished record, free of any prior criminal convictions or delinquencies.
41. In addition to that, DC also cited the case of ***PP v Muhammad Irfan bin Haji Muhamad Hisham (D2)* [Criminal Trial No. 11 of 2022]**, where ICJ Hazarena, exercised her discretion to grant a probation order under Section 5(1) of the Offenders (Probation and Community Service) Act, Chapter 220, which included a requirement for D2 to provide a security sum of BND\$1,000.00 for good behavior.
42. Each case has to be considered on its own merits. The two referred cases do not bore any similarity to the present case. The facts and circumstances are distinct from each other.

43. In the former case of **Maimun binti Haji Omar**, the appellant made restitution and there was a delay in prosecution, which led the Appellate Court considered as extenuating factors. In the latter case, **Muhammad Irfan bin Haji Muhamad Hisham (D2)**, the Defendant pleaded guilty to an alternative charge offence under section 380 PC. The Court invoked her discretion to impose Probation and Community service having satisfied that the Defendant.
44. As mentioned above, I do not find any extenuating factor arising out from this case. The Defendant's age is not an extenuating factor. Unlike **Muhammad Irfan**, he was 18 years old when he committed the car theft. The Defendant is 23 years old and the victim was only 15 years old.

Custodial Sentence:

45. I am of the view that a custodial sentence is imperative to mark the gravity of the offence and to protect young girls from such perversion. reflect the seriousness of the offence.

Penalty:

46. The penalty for offence under section 293 B PC, warrants the maximum penalty of 10 years' imprisonment.
47. DC cited the case of **Mohd Salleh bin Abdullah @ Ambrose Aban Anak Igah (Criminal Trial No 6 of 2014)** where Dato Paduka Steven Chong J considered a "starting point" of 3 years appropriate, and reduced the sentence to 2 years in view of the mitigation and, in particular, the guilty plea entered in the first instance. In this case there was no coercion on the victim or distribution of the indecent photographs. Unlike the present case, there is an element of coercion and distribution of the victim's obscene photographs and the video for sale.
48. DC also cited the case of **Public Prosecutor v Khairul Bashar [Intermediate Court of Brunei Darussalam] [Criminal Case No. 37 of 2021]** involving an offense under Section 293B of the Penal Code, Judge Harnita Zelda Skinner also considered a starting point of 3 years' imprisonment. A deduction of one-third was applied, resulting in a sentence of 2 years' imprisonment for each charge.
49. Prosecution urged the court to impose a starting point of 6 years citing the case of **Mohammad Shahdon bin Mohammad Ramlee (ICCT No. 17 of 2015)**. In this case, the Defendant is facing a total of 18 charges, and amongst the charges were six (6) charges under Section 293B (1) of the Penal Code where he recorded his sexual encounters with the victims without their consent and a charge under Section 293B(1)(b) of the same for distributing videos of his sexual encounters with the victims to the school as well as their friends. The Defendant manipulated victims through deceit and threats, building

relationships before committing the offences. The court also noted that there was physical contact with the victims, which was recorded and later distributed. In determining the sentence, the Judge stressed the importance of protecting young and vulnerable individuals, stating that sexual exploitation of young persons must be deterred. As a result, the Defendant received an initial sentence of 6 years' imprisonment, later reduced to 4 years for both offences under Section 293B (1) and Section 293B(1)(b) of the Penal Code.

50. In this present case, there was coercion, threat and outraging the modesty of the victim and widespread of distribution of the victim's obscene pictures of the victim to 30 people for financial gain. I agree with the prosecution that the Defendant's act has amplifying the harm and exposing the victim to humiliation and distress. This justified a strong deterrent sentence.

Sentence:

51. For the said reason, I am inclined to follow the starting point of 6 years' imprisonment as a starting point reduced to 4 years' imprisonment.

52. I order for the sentence to run from the date of the Defendant was remanded.

PG MASNI PG HJ BAHAR
Judge, Intermediate Court