

PUBLIC PROSECUTOR

AND

MOHAMAD FAIZAL BIN HAJI JAMIL

**(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.16 of 2024)**

Dk Hjh Norismayanti binti Pg Hj Ismail, Judge

3rd June 2024

Headnote: Sentencing – offence under section 325 of the Penal Code, Cap 22 - voluntarily causing grievous hurt – hitting face, head and upper body – injury of bruising and swollen eyelid – left eye subconjunctival hemorrhage – bruise to anterior side of body -- plea of guilty – history of previous conviction.

PO Nurul Husna Aqilah binti Hj Abdin for Public Prosecutor.
Defendant in person and unrepresented.

Cases cited:

Public Prosecutor v Hj Abdul Latif bin Hj Mohd Noor (Criminal Appeal No.10 of 2006)

Public Prosecutor v Mohammad Aidil Bin Mohd Yassin [2007] Vol.II JCBD 389

S E N T E N C I N G

Dk Hjh Norismayanti, Judge:

Brief Facts

1. Mohammad Faizal bin Haji Jamil ('the defendant') was first brought to court on the 14th May 2024 and was charged with one count of causing grievous hurt against his wife/complainant, one Fauziah binti Osman. The defendant plead guilty and agreed to the Statement of Facts as tendered by the prosecution.

The charge

2. The charge is as stated below:

"That you, on 27th April 2024, at about 2100hrs, No.31, Simpang 15-13, RPN Kampong Pandan Kuala Belait in Brunei Darussalam, did voluntarily cause grievous hurt to one Fauziah binti Osman (female, 29 years old), to wit, by hitting her face, head and upper body with a mobile phone so as to cause bruised, swollen ecchymosis of the left eyelid; left eye subconjunctival hemorrhage and bruised anterior side of her body so as to endanger her life, and you have thereby committed an offence punishable under section 325 of the Penal Code, Chapter 22."

The penalty prescribed is imprisonment for a term not exceeding 10 years and with whipping.

Statement of Facts

3. The defendant's victim is his own wife and at the time of the offense, the couple were separated and the couple's two children were essentially living with the defendant. On the 27th April 2024, the victim went to visit her children at the defendant's house No.31, Simpang 15-13, RPN Kampong Pandan in Kuala Belait in Brunei Darussalam. It was during the visit when the defendant starting accusing the victim of having an affair. In retaliation, the victim too questioned the defendant on his affair with another woman which enrage the defendant. The defendant then insisted to check the victim's phone but she refused and subsequently the defendant slapped her on the face and grabbed her mobile phone.
4. To access the phone, the defendant then asked the victim for her password. When the victim refused, the defendant twisted and bit her right hand which led her to reluctantly give him her password. The defendant then went through her texts. The defendant became more enraged when he found texts of the victim with another man. The defendant then slapped and hit the victim several times all over her head and body using the hand and the mobile phone. As a result of the ongoing assault, the victim fell to the ground helplessly. The defendant did not stop his assault but continued his assault by kicking the victim on her left side and abdomen. The defendant also stepped on the victim's left arm, shoulder and left flank for a few seconds.
5. The defendant only stopped his aggression when he heard his parents returning to the house. He left the victims to go downstairs. The victim tried to escape but the defendant caught her and forced her into his room. Once in the room the defendant again questioned her about her affair and she refused to answer, the defendant proceeded to attack her by hitting her on the head using the mobile phone and slapped her on the face again.
6. Eventually, the victim was brought to the police station by her mother who was contacted by the other man who had told her about the assault. The victim was sent for a medical examination at the hospital and the medical examination report dated 28 April 2024 categorized her injuries as grievous hurt resulting from blunt trauma. Further, according to the Statement of Facts, the victim is still recovering from her injuries as of the 14th May 2024. The prosecution also tendered photos showing the injuries suffered by the victim. This eventually arrested on the 28th April 2024 and he admitted to his assault of his wife as described above.

Previous record

7. It also turns out that the defendant has a recent record for assault under section 323 of the Penal Code. The assault was also against the same victim and he was convicted in March 2024. For that offense, the defendant was sentenced to a fine of \$2,500 in default of 3 months imprisonment. He was granted a grace period until the 29th June 2024 to settle the fine. The defendant has yet to settle the fine.

Defendant's plea in mitigation

8. The court now turns to the defendant's mitigation. The defendant did not help himself in trying to reason for his beating of his wife. It seems that he felt that he was justified in his actions. In light of his reasoning, he prayed for the most lenient sentence stating that he needs to care for his children.

Sentencing considerations

9. The court takes note that the defendant is a 40-year-old man, married to the victim and has two children. Without a doubt, the defendant's act of assault on his estranged wife is a form of domestic violence which is a growing concern in the society and before the court. It is not only the victim that suffers but the effects of such acts extends to family members as well. The defendant's violent assault towards his wife is to be considered nothing less than abhorrent. This was clearly an unprovoked attack against a defenseless woman. Despite his mitigation, the defendant does not appear to regret his actions but rather gave a reason for doing so. It is in the public interest that such perpetrators receive an appropriate sentence so as to discourage such violent behaviours, not only against individuals in general but against one's family members as well.
10. In considering the appropriate sentence, the court cannot ignore the fact that the defendant also has a previous conviction for assault under section 323 of the Penal Code. The conviction is also of particular significance as the victim in that case turned out to be his wife as well. His first conviction was fairly recent and clearly it did not teach the defendant a lesson. The fact that he received a sentence of a fine proved to the court that he was undeterred from committing further violence. His current charge is more aggravating, resulting in a more serious charge and the seriousness of the offense is clearly reflected in the penalty prescribed.
11. The court also looks at who the victim is in this scenario. It is expected for the husband to be seen as the main protector and father figure in the family, providing his family a sense of safety and security. But to the contrary, the defendant as the husband was a source of violence and was feared by his own wife. As the victim, she suffered significant injuries to her face, particularly her left eye which required further treatment at the hospital. The victim also suffered bruising to the front side of her body and also visible bruising on her right shoulder.

Plea of guilty

12. By pleading guilty to the charge, the defendant not only save the court and prosecution considerable time from going through a trial but also saved the victim from recounting the trauma she endured through her testimony before the court. In pleading guilty, the court will give credit to the defendant by reducing his sentence by a one third discount.

Case authorities

13. In deciding the appropriate sentence, the court will make references to a couple of cases and the sentences imposed. The first case is *Public Prosecutor v Hj Abdul Latif bin Hj Mohd Noor* (Criminal Appeal No.10 of 2006) which similar to the present case involves the husband as the perpetrator of the victim. The defendant *Hj Abdul Latif* assaulted his wife during an argument over a mobile phone. The defendant had punched and kicked the victim on the head and face. She was found to have suffered from (i) a lacerated wound to the underside of her lip, (ii) bleeding from her lower incisor teeth with a fracture of the alveolar bone and (iii) a contusion over the left side of her forehead and left upper cheek. On appeal, the Court of Appeal took a starting point of 21 months and based on the plea of guilty, reduced the sentence to 14 months imprisonment and added 1 stroke of the whip.
14. In *Public Prosecutor v Mohammad Aidil Bin Mohd Yassin* [2007] Vol.II JCBD 389, the defendant claimed trial to a charge under section 325 of the Penal Code. The complainant suffered from

several abrasions to her face and lip, a fracture to the nose and right index finger as a result of the offence. The defendant was sentenced to 12 months' imprisonment and 2 strokes of whipping but the sentence was reduced to 9 months imprisonment and 1 stroke on the count of a 2-year delay in prosecution.

15. In comparison to the present case, the gravity of the offence committed in the case of *Hj Abdul Latif* and *Mohammad Aidil* mentioned above are more severe in nature. In these two cases, the victims suffered from fractures either to the jaw bone, nose and right index finger. The court however does not mean to infer that the victim in the present case did not suffer significantly from the assault she endured. However, for sentencing purposes, the court believes that the appropriate sentence for the defendant should range within 12 to 15 months' imprisonment.
16. Taking into consideration the overall facts and circumstances of the present case and the defendant's previous conviction, the court finds that a starting point of 15 months' imprisonment and 2 strokes would be appropriate. For pleading guilty, the sentence is reduced to 10 months' imprisonment and 1 stroke. The sentence is to take effect from the date of conviction, 14th May 2024.

DK HJHH NORISMAYANTI BINTI PG HJ ISMAIL
Chief Magistrate