

Public Prosecutor

AND

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(Intermediate Court of Brunei Darussalam)
(Criminal Trial No.62 of 2022)

Dk Hjh Norismayanti Pg Hj Ismail, Judge
10th December 2022

Sentence – 3 charges – outraging modesty by a person in a position of authority – Section 354B of the Penal Code – plea of guilty – clear record.

DPP Nurul Fitri binti Kiprawi for Public Prosecutor.
Defendant in person and unrepresented.

Cases cited:

Zainal Abidin bin Hj Md Hashim v Public Prosecutor (COA Criminal Appeal No.8 of 2016)
Pg Shamri bin Pg Hj Metussin v Public Prosecutor (COA Criminal Appeal No.20 of 2017)
Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor (COACM No.17 of 2016)
Public Prosecutor v JBJ [2014] Vol 1 JCBD 211

S E N T E N C E

Dk Hjh Norismayanti Pg Hj Ismail, J.:

Introduction

1. This case involves the repulsive act of outraging modesty on 3 teenage girls by a father (the Defendant) towards two of his own daughters and a niece. The defendant is faced with 3 charges under section 354B of the Penal Code and plead guilty before this court on the 14th November 2022. The court will continue to view this type of sexual assaults as reprehensible in the society and the sentences imposed by the court should reflect the seriousness of the offence and also deter the accused from reoffending and at the same time deter potential offenders.

Charges

2. The charges involved are as laid out below:

Amended 1st charge:

“That you, sometime during midnight on the 28th October 2022, inside a bedroom of a house located at No.4, Simpang 9, Jalan Wasai Limuru Utara, RPN Kg Meragang, in Brunei Darussalam, whilst being in a position of trust, to wit the father of one Miss X (female, 15 years old), did assault the said Miss X, to wit, by reaching out your hand to touch Miss X's breast and pulling her hand to touch your private part, intending thereby to outrage, or knowing it likely that you will thereby outrage the modesty of Miss X, and you have thereby committed an offence punishable under Section 354B of the Penal Code, Chapter 22.”

Amended 2nd charge:

“That you, sometime between January and February 2022, at about 2022, at about midnight, inside a bedroom of a house located at No.4, Simpang 9, Jalan Wasai Limuru Utara, RPN Kg Meragang, in Brunei Darussalam, whilst being in a position of trust, to wit the father of one Miss Y (female, 17 years old), did assault the said Miss Y, to wit, by touching Miss Y's private part while she was sleeping, intending thereby to outrage, or knowing it likely that you will thereby outrage the modesty of Miss Y, and you have thereby committed an offence punishable under Section 354B of the Penal Code, Chapter 22.”

Amended 3rd charge:

“That you, sometime between October and November 2020, at about 2022, at about midnight, inside a bedroom of a house located at No.4, Simpang 9, Jalan Wasai Limuru Utara, RPN Kg Meragang, in Brunei Darussalam, whilst being in a position of trust, to wit the uncle of one Miss Z (female, 15 years old), did assault the said Miss Z, to wit, pressing your penis onto her buttocks, intending thereby to outrage or knowing it likely that you will thereby outrage the modesty of Miss Z, and you have thereby committed an offence punishable under Section 354B of the Penal Code, Chapter 22.”

Penalty

3. Section 354B of the Penal Code carries a penalty of imprisonment for a term not less than 3 years and not more than 10 years and with whipping.

Summary of facts of the offences committed

4. The Defendant is a 43-year-old Brunei national. He is married and have a total of 6 children. The Defendant has been living apart from his wife since June 2022 and is currently living with all his children at No.4, Simpang 9, Jalan Wasai Limuru Utara, RPN Kg Meragang whilst his wife has moved back to her parents' house.
5. 1st charge: Sometime during the night on the 8th October 2022, the Defendant woke Miss X (the Defendant's fourth child) who was sleeping in her room with 2 of her younger siblings. After asking Miss X to massage his foot, he told her to lie down beside him. The

Defendant then showed Miss X a pornographic video from his mobile phone and then told Miss X to have sex with him. Miss X refused. The Defendant then proceeded to touch her breast but Miss X slapped it away. He then grabbed Miss X's hand and pulled it towards his manhood. Miss X pulled her hand away and immediately ran out of the room. In short, due to her fear of the defendant at the time, Miss X ran out of the house and eventually sought help another villager's house. Miss X informed the house owner Asmadi Bin Asmad that her father tried to sexually assault her. Asmadi and his wife then brought Miss X to the police to lodge a report and the Defendant was arrested the next day. During the police investigations, it was discovered that the Defendant also sexually assaulted Miss Y and Miss Z.

6. Amended 2nd charge: Miss Y (the Defendant's second child) was sexually assaulted sometime in January and February 2022. At the time of the incident, Miss Y was sleeping in her bedroom with Miss X. She suddenly woke up and suddenly saw and was in shock at seeing her father touching her private part. When the Defendant realized that Miss Y had woken up, he stopped what he was doing and left the room. Miss Y informed her mother about the incident and the Defendant was confronted by his wife about it. The Defendant however simply said that he was drunk at the time.
7. Amended 3rd charge: Miss Z is the Defendant's niece and at the time of the incident, she was sleeping over at the Defendant's house. The incident occurred sometime between October and November 2020 when she was sleeping in her cousin's bedroom. The Defendant had entered into the bedroom and laid down next to Miss Z. He then pressed his penis onto Miss Z's buttocks repeatedly. At the time, Miss Z could feel the Defendant's penis was erected and she proceeded to scream as loud as she could. Miss Z managed to get away from the Defendant and her scream woke up the household. Miss Z in her sobbing and traumatized state then told the Defendant's wife what the Defendant did to her. When confronted, the Defendant pretended not to know anything and went back to sleep in his bedroom.

Defendant's mitigation.

8. The Defendant sought for the court's leniency in sentencing, stating that he has young children to care of. He did not express any form of remorse or regret for his actions. He merely explained that he committed the offences as he was not getting any loving attention from his wife.

Sentencing considerations

9. The court will always view sexual offences such as the outraging modesty of teenage girls as serious offences which would attract a deterrent sentence. Particularly in relation to

the present charges where the Defendant is the father of two of the victims and the uncle of the third teenage girl, a person in a position of trust or authority in their household. There is no doubt that the defendant's acts were despicable and abhorrent in the eyes of the society and the sentence imposed should reflect the Defendant's overall culpability.

10. The court also considers the Defendant's clear record and his plea of guilty to all three charges. For the guilty plea, the court will usually apply a one third reduction of the sentence. By pleading guilty, at first instance, the Defendant saved Miss X, Y and Z the ordeal of testifying in open court and thus saved the court and prosecution valuable time.
11. In considering sentence, the court bears in mind that as a father, the Defendant is the head of the family and should be responsible for providing safety and the sense of security for his family members especially within the confines of their own home. Instead, the Defendant took sexual advantage of his vulnerable children and niece and provided the court with an excuse that is just simply unacceptable. It is not surprising that due to the trauma suffered by the victims that the said victims will ever see the Defendant the same way ever again.

Case authorities

12. The prosecution submits that in most cases the court would impose the minimum prescribed mandatory sentence of 3 years imprisonment with whipping for accused who enters a plea of guilty and higher sentences are imposed for Defendants who were found guilty after trial. Reference is made to the case of *Zainal Abidin bin Hj Md Hashim v Public Prosecutor* (COA Criminal Appeal No.8 of 2016) where the Defendant plead guilty to 3 charges under section 354B of the Penal Code where the victims were two of his own daughters. He was sentenced to 3 years imprisonment and 2 strokes of the whip for each charge and the judge ordered for the sentences to run concurrently except for 6 months and 1 stroke to run consecutively. The Court of Appeal upheld the sentences stating that the sentence was unimpeachable. The court also takes into consideration in the sentences imposed in the case of *Pg Shamri bin Pg Hj Metussin v Public Prosecutor* (COA Criminal Appeal No.20 of 2017) and *Mohammad Ehsan Niezam bin Abdullah v Public Prosecutor* (COACM No.17 of 2016) cited by the prosecution in her written submission.
13. The court further refers to the case of *Public Prosecutor v JBJ* [2014] Vol 1. JCBD, 211. The case involved a father taking advantage of his 11-year-old daughter by rubbing her clitoris and inserting his finger into her vagina. The High Court imposed a sentence of 3 years and 2 strokes for a plea of guilty under section 354B of the Penal Code. The judge initially started with a sentence of 5 years and 5 strokes but gave a reduction in view of the guilty plea.

Sentence

14. Taking into account the facts of the case, sentencing considerations, previous case authorities and the mitigating and aggravating factors involved, I take the following starting points:

Amended 1st charge: 5 years imprisonment and 5 strokes

Amended 2nd charge: 5 years imprisonment and 5 strokes

Amended 3rd charge: 5 years imprisonment and 5 strokes

15. In view of the Defendant's guilty plea, the sentences are reduced to the following:

Amended 1st charge: 3 years imprisonment and 2 strokes

Amended 2nd charge: 3 years imprisonment and 2 strokes

Amended 3rd charge: 3 years imprisonment and 2 strokes

16. In totality, the Defendant would be sentenced to 9 years and 6 strokes. Bearing in mind the totality principle, in order for the sentence to not be manifestly excessive especially for a first-time offender and his guilty pleas, the court orders for all the sentences to run concurrently and for the whipping to be non-cumulative except for 1 year and 1 stroke from each of the 2nd and 3rd amended charge which is ordered to run consecutively resulting in the total sentence of 5 years' imprisonment and 4 strokes.

17. The final sentence: The Defendant is to serve a total sentence of 5 years and 4 strokes. The sentence is to take effect from the date of conviction, 14th November 2022.

DK HJH NORISMAYANTI BINTI PG HJ ISMAIL

Judge, Intermediate Court