



Pengiran Haji Zainurin Bin Pengiran Haji Md Yassin

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 20 of 2013)**

**Steven Chong, J.
10 April 2014**

Criminal Law – Voluntarily causing hurt – Appeal against conviction – Appellate court will not disturb findings of fact unless they are plainly wrong or clearly reached against the weight of the evidence.

Lt. Col (R) Hj Harif Bin Hj Ibrahim (M/S Lt. Col (Rtd) Harif Eric Advocates and Solicitors) for the Appellant.

DPP Ms Sharon Yeo for the Public Prosecutor/Respondent.

Steven Chong, J.:

On 27 April 2013 in the Magistrate's Court the defendant was convicted after a trial of voluntarily causing hurt to his wife ("*the complainant*") by "*grabbing and squeezing [her] on her arms tightly*" contrary to section 323 of the Penal Code.

Senior Magistrate Pg Masni Pg Hj Bahar imposed a fine of \$2,000 or 2 months' imprisonment in default of payment.

The defendant appeals against conviction.

Prosecution case

The pertinent parts of the evidence of the complainant, who is a primary school teacher, are as follows. On the afternoon of 22 November 2010 she took her four children to shop for items for a school concert. She brought her mother along as they intended to



visit her brother in Kampong Bunut after shopping. Upon receiving a call from the defendant she sent a text message to him saying she was out shopping. Later, she sent another text message to him saying they would be visiting her brother.

At home that evening the defendant was angry and he questioned the complainant as to where she had gone that afternoon. The defendant did not accept her explanation and became verbally abusive. When the complainant's mother intervened, the defendant shouted at her to keep quiet.

The defendant then vented his ill-temper by slamming the doors, kicking several items and punching a biscuit tin on the dining table. Moving on to the daughter's bedroom the defendant said he was going to "*hit his head*" on the wardrobe.

Concerned that the defendant would injure himself, the complainant held on to him. The defendant "*pretended*" to faint and fell to the floor. Then he got up from the floor and grabbed the complainant's arms tightly causing hurt to her. Gripping her arms, he said he was going to "*hit his head*" on her and tried to head-butt her but she was able to avoid him.

The complainant left the daughter's bedroom and went to the dining room followed by the defendant. Whilst she was seated at the dining table he pushed it towards her causing it to hit her on the chest. He also threw a chair to the floor before going upstairs where he screamed out that he was going to throw away the daughter's computer.

Fortunately, by this time, the complainant's brother and sister-in-law arrived at the house and they were able to pacify the defendant.

On 26 November 2010 the complainant decided to make a police report. She had suffered 18 years of almost daily spousal abuse in the marriage, usually verbal but sometimes physical. She has filed a petition for divorce but the defendant has refused to consent. In the beginning she was willing to withdraw her police complaint if the defendant consented to a divorce but she now wants the law to take its course.

The complainant admitted that on one occasion in August 2010, she had slapped the defendant and spat on him and on the floor when she was angry after discovering the work schedule of the defendant's "*mistress*" and a hoard of pornographic films kept by the defendant in the house.

Corroboration of the complainant's evidence on the material issues came from the daughter, who testified that on the evening in question she was in her bedroom and saw



the defendant attempting to *"hit his head"* on the wardrobe; the complainant pulling the defendant's shirt sleeve to stop him; and the defendant gripping the complainant's arms and trying to head-butt her.

The daughter also said she heard the defendant say he was going to *"hit his head"* on the complainant during the incident.

Dr. New Oo Hlike examined the complainant in RIPAS Hospital on the afternoon of 26 November 2010. She found multiple small bruises on both of the upper arms and a bruise on the right forearm of the complainant. She opined that the injuries constituted hurt.

Defence case

The defendant's account of the events of 22 November 2010 was that an argument arose between him and the complainant because she had taken the children out without his permission. The complainant was aggressive and verbally abusive. She accused him of having an extramarital affair.

About two weeks prior to that day, the complainant had slapped him and spat on the floor. On another occasion the complainant besides slapping him, twisted his private parts and forcefully stuffed his mouth with a photograph of a woman.

Returning to the incident on 22 November 2010, the defendant recounted that the complainant's repeated accusations of his infidelity drove him to *"hit his head"* on the wardrobe in the daughter's bedroom. While he was doing so, he felt a tight hug on his body from the complainant. He told her to let go of him but she continued to hug him. So he took hold of her hands, told her again to release him, and she eventually did so.

The defendant said he had no intention of hurting the complainant. He never said he was going to *"hit his head"* on her. Nor did he ever try to head-butt her. He believed the complainant's desire to divorce him was the motive for her allegations of domestic abuse.

Decision of the Magistrate

Although the Magistrate did not expressly say that she believed the evidence of the complainant, it is implicit that in disbelieving and rejecting the defendant's version of the events of 22 November 2010, she accepted the complainant's account of the incident.



The Magistrate found the daughter to be a credible witness and that her testimony of what transpired in her bedroom at the material time was corroborative of the complainant's evidence.

Accordingly, the Magistrate was satisfied the prosecution had proven the defendant's guilt on the charge beyond reasonable doubt and convicted him.

Grounds of appeal

Altogether there are 11 grounds of appeal but in essence the complaint is that the Magistrate had erred in accepting the evidence of the complainant as to what had occurred and rejecting the evidence of the defendant as to what had transpired on that regrettable evening.

Merits of the appeal

It is settled law that an appellate court will not disturb findings of fact unless they are plainly wrong or clearly reached against the weight of the evidence. It is not enough to show that the appellate court would have come to a different conclusion on the evidence from the court below, bearing in mind the trial court had the benefit of observing the witnesses to assess their veracity and reliability.

The Magistrate was faced with two conflicting versions of the incident, one from the complainant and the other from the defendant. The Magistrate had the opportunity to see and hear them, and the other witnesses, testify in court, and having assessed the veracity and reliability of the evidence given, was entitled to choose to believe the complainant and not the defendant on the material issues.

Nothing that has been said on behalf of the defendant has persuaded me that the Magistrate's findings of fact are plainly wrong or clearly reached against the weight of the evidence. Of course there are inconsistencies between the evidence of the complainant and the daughter but they are of a minor nature and do not adversely affect the credibility of the complainant's evidence that the defendant did intentionally cause hurt to her.

There was a suggestion by counsel on behalf of the defendant that since the complainant had chosen to "*enter the danger zone*" in order to "*save*" the defendant from hurting himself by hitting his head on the wardrobe, he could not be guilty of the offence of causing hurt to her when he reacted by grabbing her arms.



This contention is plainly wrong because the evidence of the complainant which was accepted by the court below was that the defendant had grabbed her arms, hurting her, in an attempt to head-butt her, having told her he was going to do so. It is therefore evident that the defendant intended to cause hurt to the complainant and he did cause hurt to her when he grabbed her arms. The complainant's voluntary intervention to prevent the defendant from hurting himself cannot provide him with any defence to the charge.

I think it is to the complainant's credit that despite the defendant's abusive behavior that evening, as his wife, she was concerned enough about his well-being to try to restrain him from self-harm. An uncaring wife might simply have stepped aside with nonchalance.

Conclusion

For the reasons I have given this appeal against conviction is dismissed.

DATO PADUKA STEVEN CHONG

Judge, High Court