

LLP 19397 Muhammad Abdul Syazani

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 46 of 2013)**

Before Commissioner James Findlay in Court

Date of Hearing: 2nd September, 2014.

Date handing down reasons for Judgment: 3rd September 2014.

Road traffic – collision – drawing conclusions from collision damage – debris and position of vehicles after collision.

Mr Adrian Chan Choong Fatt (M/S Yu & Chiew) for the Appellant.

DPP Sharon Yeo for the Public Prosecutor.

REASONS FOR JUDGMENT

Findlay, J.C.:

The Appellant was charged that on 5 December 2010 he drove a motor vehicle without due care and attention and, after trial, was convicted of this offence by the Senior Magistrate on 30 November 2013. The appellant appealed against his conviction and the matter came before me on 2 September 2014. At the outset of the hearing, I told Ms Yeo that I was not happy with the conviction and invited her to persuade me that the conviction was safe and satisfactory. After hearing what she had to say, I was of the view that the conviction was neither safe nor satisfactory and I upheld the appeal, saying that I would give my reasons for this decision later.

The charge against the appellant arose from a collision between a car driven by him and a car driven by a Mr Abdullah. These vehicles were travelling in opposite directions and each of the drivers alleged that the other driver had encroached onto his side of the road.

It is well known to the courts that in this situation it is very difficult to ascertain who was at fault from independent evidence. The position of debris on the road and the position of the vehicles after the collision do not, in the ordinary run of cases, help in ascertaining where the collision occurred. The laws of physics involve the application of many factors and imponderables that render it virtually impossible to draw any conclusion from this evidence.

Notwithstanding these difficulties, the Senior Magistrate found that she was able to say that it was the appellant who encroached onto Mr Abdullah's side of the road, was therefore at fault and was driving without due care and attention.

In these circumstances, it is necessary to examine the Senior Magistrates reasoning to ascertain whether her conclusion was correct.

Mr Abdullah did indeed say that the appellant encroached onto his side of the road. He said that he was intending to turn into a road on his right, slowed down and indicated that turn. He says he noticed the appellant's vehicle had encroached onto his side of the road and he made the comment that this was so.

Mr Abdullah's wife gave evidence. She did not see the collision because she had her head lowered at the time, but she did hear her husband say that the appellant's car had encroached onto their side of the road.

The Senior Magistrate found that this evidence corroborated that of Mr Abdullah. This, of course, is not so. Even if one accepts her evidence that she heard her husband say that the appellant had encroached onto their side of the road, this does not constitute evidence that this was so. At most, it is evidence that Mr Abdullah made this comment, not that it was true.

In any event, in my view the Senior Magistrate should have treated her evidence with suspicion. She was a wife who would be expected to support her husband and it is odd that her head just happened to be lowered at the crucial time. It is also so that, the Senior Magistrate found, she attempted to give evidence that her husband was on his side of the road when the collision occurred. She could not say this if, as she says, she did not see what happened at the time of the collision.

So, it is my view that, in this respect, Mr Abdullah's evidence was not corroborated.

A police officer came to the scene and he drew what he says was a "rough sketch" plan of the road after the collision. It is indeed not only a sketch, but a rough one, not to scale, and contains no useful measurements at all. This officer said that most of the debris was broken glass and most of it was located on Mr Abdullah's side of the road rather than the appellant's. This officer marked an X on the plan as the point of collision, which was about in the middle of where he had marked the glass debris and well into Mr Abdullah's side of the road. This officer was not an expert in diagnosing the point of impact from post-collision debris and he had no business purporting to say where the collision occurred.

I put to Ms Yeo that a court could not, with any reliability, use the position of debris to find where the point of impact occurred. She agreed with that. However, she maintained that the Senior Magistrate had not done this. I cannot agree with that. In one way or another, the Senior Magistrate accepted what the police officer had said in evidence. The Senior Magistrate said that after studying the sketch plan and the other evidence that "I am inclined to accept [the police officer's] testimony in court. I believe the markings [on the sketch plan] are correct."

I also put to Ms Yeo that it was not possible to draw any sensible conclusions about where the collision occurred from where the vehicles ended up after the collision. Again, Ms Yeo agreed with this, but thought the Senior Magistrate had not done so. Again, I cannot agree.

The Senior Magistrate said: "I believed [the police officer] drew what he saw at the scene of the accident on the night in question. This is not based on the markings on the location of the broken glasses but also his observation [on the position of the cars] after the accident." From this remark, the Senior Magistrate seemed to see some significance in the final position of the vehicles after the collision.

The Senior Magistrate said that Mr Abdullah's wife had given evidence that, when the accident took place, her husband's car was still on his own side of the road. It does seem from the evidence that she was saying this, but that evidence should have been treated with great suspicion having regard to the fact that she said that she did not see the collision at all because her head was down.

Senior Magistrate also found corroboration for Mr Abdullah's version in the fact that the collision damage to the cars was concentrated on the right side of the vehicles. Senior Magistrate seemed to think that, if the appellant's version was the correct one, the damage would have been more on the left side of the vehicles. I do not understand this conclusion. The fact that the damage was to the right side of the vehicles is as consistent with the appellant's version as with Mr Abdullah's version. One cannot draw any sensible conclusion from this damage in favour of the prosecution case.

The Senior Magistrate said "I accept the oral testimony of [the prosecution witnesses] that the accident took place on [Mr Abdullah's] lane based on the damage report". If the Senior Magistrate is saying that the "damage report" corroborates the prosecution case, I cannot agree. It does nothing of the kind.

I should say that the Senior Magistrate made no findings as to the credibility of witnesses based on their demeanour or the quality of their evidence. The Senior Magistrate did not find that, from the way in which the Appellant gave his evidence, there was reason to reject his version. The Senior Magistrate did not find that there were any contradictions or inconsistencies in his evidence. It follows that I am in as good a position as the Senior Magistrate to assess the evidence.

The Senior Magistrate makes no mention of what I would regard as an important factor in this case. This is that it was Mr Abdullah who would have had a reason to move towards his right and the other side of the road because that was what he intended to do. The appellant, on the other hand, had no cause to deviate from a straight course and move to his right. This is a probability that should have weighed in the Appellant's favour.

For these reasons, my conclusion was that the conviction in this case was unsafe and unsatisfactory. Accordingly, I upheld the appeal.

I have given detailed reasons for my finding out of respect for the Senior Magistrate, who, in my experience, is usually sound in her approach.



Judicial Commissioner