

HONG TECK HOCK
AND
PUBLIC PROSECUTOR

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 16 of 2014)

Before: Mortimer P, Leonard and Burrell JJ A.
23rd May 2015

Mr. Rudi Lee Kim Boon and Ms. Shamila Subramaniam (M/S Rudi Lee, Annie Kon & Associates) for Appellant
DPP Hjh Farhanah POKPSRDPSS Hj Awg Suhaili and DPP Hjh Atiyyah Azzahra POKLSDSLJ Awg Hj Abas for Respondent

Leonard, JA.:

On the 13th of March 2014 Hong Teck Hock was convicted by a Magistrate after a trial and sentenced for certain offences. He appealed to the High Court and his appeal was dismissed. We have before us a Notice of Appeal which begins by stating incorrectly that Mr Hong was convicted in the High Court. His counsel Mr Rudi Lee submits that his client is entitled to appeal to this court against conviction and sentence. In support of his submission he relies on section 19 (a) of the Supreme Court Act, Chapter 5, which is in the following terms:

- 19. The criminal jurisdiction of the Court of Appeal shall consist of—*
- (a) appeals from the High Court and*
 - (b) (repealed);*
 - (c) such other jurisdiction as may be conferred upon it by this or any other written law.”*

Mr Lee, unsurprisingly, was unable to cite any example of such an appeal as the one contemplated ever having been entertained by this court. The Public Prosecutor was unaware of any such case. We ourselves have never seen one. The reason for that is that if a person who has been convicted and sentenced in the Magistrates' Court appeals unsuccessfully to the High Court that is an end of the matter unless the case comes within the scope of section 291 (A) of the Criminal Procedure Code, Chapter 7 which reads:

- (1) When an appeal from the decision of a Court of a Magistrate in a criminal matter has been heard and determined by the High Court and the judge who*

heard the appeal or the Public Prosecutor, on his own behalf or on the application of any party to the proceeding, has, within one month of such determination or within such further time as the Court of Appeal may permit, signed and filed with the Registrar a certificate that the decision of the High Court involves a point of law which it is desirable in the public interest to have determined by the Court of Appeal, such appeal shall be reheard by the Court of Appeal.

Mr Lee submits that since no distinction is made in section 19 between the original and the appellate jurisdiction of the High Court there must be a full right of appeal against decisions made in both jurisdictions. The submissions made to us include a comparison between legislation in Singapore and Malaysia, where reference is explicitly made to both original and appellate jurisdictions, and our section 19, where reference is only made to appeals from the High Court, without making a distinction between the two types of jurisdiction. It is argued by Mr Lee that it follows that an aggrieved party can appeal without leave from all decisions of the High Court including appellate decisions. Suffice it to say that the Respondent has correctly pointed out that Mr Lee has omitted to refer to other parts of the relevant provisions in Malaysia and Singapore from which it is plainly apparent that though the wording in our jurisdiction and in Malaysia and Singapore differs, the practical effect differs very little. The scope of an appeal from the High Court in its appellate jurisdiction by an unsuccessful appellant in a criminal case is restricted to points of law (variously described in each country) and then only after a filtering process. If a convicted person had a general right here to appeal without leave from a decision of the High Court made in its appellate jurisdiction in a criminal matter, there would be no need for section 291(A). It is clear, and evident from the practice in Brunei, that appeals to this court from the High Court in criminal matters may only be brought in relation to decisions made in the High Court in its original criminal jurisdiction, save for the one statutory exception referred to above. It follows that for want of jurisdiction we cannot entertain the proposed appeal.

There will be an order that the Notice of Appeal be struck out.

Mortimer, P.

Leonard, J.A.

Burrell, J.A.