PUBLIC PROSECUTOR

AND

MOHD KAIROLIZAN BIN AHMAD

(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 2 of 2015)

Before: Mortimer P, Leonard and Burrell JJ A.
19th May 2015

DPP Shamsuddin Hj Kamaluddin for Appellant
Respondent in person

Leonard, JA.:

On the 7th of January 2015 in the Intermediate Court Her Honour Judge Hanani Metusain, at the close of the prosecution's case, acquitted the respondent Mohd Kairolizan bin Ahmad, having held that he had no case to answer on a charge alleging that he on the 21st day of December 2013 voluntarily caused grievous hurt to a police officer who was acting in the discharge of his duty, an offence punishable under section 333 of the Penal Code, Cap

The Public Prosecutor, (the appellant) has appealed against the acquittal on the ground, as set out in the Petition of Appeal, that "it is unsafe and unsatisfactory."

The test for deciding whether a prima facie case has been made out is to be found in section 177 (1) of the Criminal Procedure Code, Cap 7, which states that where the court finds that

> *"no case against the accused has been made out which, if unrebutted, would warrant his conviction the Court may …record an acquittal."*

In practical terms the rest set out in Section 177 is no more than a codification of the common law principle which is that a submission of no case should be allowed where there is no evidence upon which, if the evidence adduced were accepted, a reasonable jury, properly directed, could convict. In *R v. Galbraith, 73 Cr App R 124, CA*, the earlier authorities were reviewed and guidance given as to the proper approach. The topic is dealt with generally in paragraphs 4-363 to 4-365 of Archbold, Criminal Pleading Evidence & Practice, 2015.

The evidence in this case showed that three police officers approached the respondent intending to arrest him for a certain offence. One of them said "Polis" and upon hearing that the respondent ran off, pursued by the officers. Corporal 4238 attempted without success to stop him by grasping his shirt. Eventually whilst attempting to effect the arrest, which the respondent was resisting, he sustained a broken bone at the tip of his little finger, the injury being classified as grievous hurt.

It is clear from the reasons given for her decision that the judge had no difficulty with the evidence that Corporal 4238 was at the material time a public servant in the execution of his duty when, while attempting to arrest the respondent, he sustained grievous hurt, namely the broken finger bone. She did find difficulty with the evidence in relation to the alleged voluntary causing of the injury. Considering all the evidence before her the judge concluded that it was insufficient, if unrebutted, to make out against the respondent a case of voluntarily causing grievous hurt which would warrant his conviction. Having made that finding, she dismissed the charge and acquitted the respondent. Having read the record and heard the submissions of the Public Prosecutor, we are not persuaded that she was wrong. The acquittal being neither unsafe nor unsatisfactory, the appeal is dismissed.

Mortimer, P.

Leonard, J.A. **Burrell, J.A.**