

Muhammad Adli Firdaus Bin Rasyanorfadhilah
AND
Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 19 of 2021)

Steven Chong, C.J.
9th December, 2021.

*Criminal law and procedure – No record of defendant admitting to the Statement of Facts –
Conviction quashed – Retrial ordered.*

Hj Mohammad Rozaiman DSLJ Hj Abd Rahman (M/S ZICO R.A.R)
DPP Nor Hafizah Binti Ahmad and PO Hj Siti Mu'izzah Binti Hj Sabli for the Public Prosecutor.

Cases cited:

Balasubramaniam Palaniappa Vaiyapuri v Public Prosecutor [2002] 1 SLR(R) 138
Shan Kai Weng v Public Prosecutor [2004] 1 SLR(R) 57
Rajeevan Edakalavan and Toh Lam Seng v Public Prosecutor [2003] 2 SLR(R) 346
Muhammad Lan Syukri Bin Abdullah Umpok@Lanyau Anak Umpok v Public Prosecutor [2008] 2
JCBD 277

Steven Chong, CJ:

Introduction

On 31 July 2021 in the Magistrate's Court the appellant, who was unrepresented at the time, pleaded guilty to and was convicted of two charges: criminal intimidation contrary to section 506 of the Penal Code (1st Charge); and unlawful possession of an offensive weapon, i.e., a "Kerambit" knife, in a public place contrary to section 29(1) of the Public Order Act.

Before sentence was imposed by the Senior Magistrate there was an unsuccessful application by the appellant, who was then represented by counsel, to retract his guilty plea on two grounds: firstly, the guilty plea in respect of each charge was not unequivocal; and secondly, the admission to the Statement of Facts was not unqualified.

The Senior Magistrate sentenced the appellant to 2 months' imprisonment on the 1st Charge and one year's imprisonment with 3 strokes corporal punishment on the 2nd Charge.

Statement of Facts

Briefly, the salient details of the Statement of Facts were that on the afternoon of 26 July 2021 the complainant was dropping off his children at Panaga School when the appellant approached his car brandishing a knife. The complainant told the appellant to “*settle the matter later*” and immediately drove to the police station to report the incident. The appellant was interviewed by the police and admitted using the knife to “*scare*” the complainant.

Ground of appeal

Counsel for the appellant appears to have abandoned the grounds of appeal advanced in the court below. The primary contention now is simply that the conviction is unsafe because although the appellant pleaded guilty to the charges he did not admit to the Statement of Facts tendered by the prosecution.

Record of proceedings

In the Senior Magistrate’s record of proceedings it is stated sequentially that (1) each charge and penalty was read to the appellant in Malay; (2) the appellant understood the charge and penalty and pleaded guilty; (3) section 175 of the Criminal Procedure Code had been complied with; (4) the Statement of Facts was read and explained to the appellant in Malay; (5) the appellant understood the Statement of Facts; and (6) the court was satisfied the appellant understood the Statement of Facts.

What is glaringly apparent, however, is the absence of any record of the appellant’s admission to the Statement of Facts.

Section 175 of the Criminal Procedure Code

This section provides that before a plea of guilty is recorded the court shall ascertain that the accused (1) understands the nature and consequences of his plea; and (2) intends to admit, without qualification, the offence alleged against him. I will elaborate below.

The requirement of understanding the nature of the plea means that the accused must know exactly what he is being charged with: *Balasubramaniam Palaniappa Vaiyapuri v Public Prosecutor* [2002] 1 SLR(R) 138.

As to understanding the consequences of the plea the accused must be aware of the punishment prescribed for the offence: *Shan Kai Weng v Public Prosecutor* [2004] 1 SLR(R) 57.

The court must also establish that the accused intends to admit without qualification the offence alleged against him, i.e., he must admit to all the ingredients of the offence contained in the Statement of Facts without qualification: *Rajeevan Edakalavan and Toh Lam Seng v Public Prosecutor* [2003] 2 SLR(R) 346.

Understanding the Statement of Facts is not the same as admitting to it. It is not a given that since the appellant understood the Statement of Facts it follows that he must have admitted to it.

The absence of any record of the appellant's admission to the Statement of Facts brings into question whether section 175 of the Criminal Procedure Code was actually complied with by the Senior Magistrate.

According to the Deputy Public Prosecutor the record of the prosecution indicates the appellant admitted to the Statement of Facts. But the issue cannot be determined on the basis of the record of the prosecution. It is the record of the Senior Magistrate that is decisive in deciding what transpired in the proceedings and not the record of the prosecution nor the record of the defence: *Muhammad Lan Syukri Bin Abdullah Umpok@Lanyau Anak Umpok v Public Prosecutor* [2008] 2 JCB 277.

Conclusion

The duty of the court is to ensure that the accused unreservedly admits to the Statement of Facts before accepting his guilty plea. On the face of the record of proceedings there was a failure of this duty by the court below and the conviction is unsustainable.

I therefore quash the conviction and order a retrial before another Magistrate.

DATO SERI PADUKA STEVEN CHONG
Chief Justice