

Haji Abu Bakar Bin Hj Md Arshad

Appellant

AND

Public Prosecutor

Respondent

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 39 of 2016)**

Before Commissioner James Findlay in Court

Date of hearing: 3 April 2018

Date of handing down judgment: 12 April 2018

Mr Sheikh Noordin Mohammad (M/S Sheikh Noordin Bin Sheikh Mohammad) for the Appellant.

DPP Sharon Yeo for the Public Prosecutor

JUDGMENT

Findlay, J.C.:

The appellant was charged with two counts of voluntarily causing hurt with a dangerous weapon under section 324 of the Penal Code. The appellant was convicted of one charge and acquitted of the other. Following his conviction, the appellant was sentenced to 2 years imprisonment and 2 strokes.

The appellant now appeals against both the conviction and the sentence.

Broadly speaking, the Magistrate came to her conclusion on the basis of the credibility of the witnesses. That being the case, it is not possible for an appellate court to differ from the Magistrate unless it can be shown that the Magistrate made some mistake so as to reach the wrong conclusion or that the conclusion is clearly against the weight of the evidence. Mr Noordin knows this and submitted several arguments to show that the Magistrate did fall into error.

Firstly, he argues that the Magistrate failed to consider the evidence of some witnesses. Essentially, the effect of the evidence of these witnesses was negative, not supporting the prosecution case or that of the appellant. The Magistrate did summarize their evidence so she was fully aware of what they had to say. Their evidence did not support the prosecution case, but neither did it weigh in favour of the appellant. I cannot find that this helps the appellant's case.

Mr Noordin then submitted that there were discrepancies in the evidence as to the number of blows inflicted. This was not a calm situation in which one might expect witnesses to observe

what happened and be consistent. Here, there was a tense situation in which it would not be surprising if witnesses differed as to their recollection of what happened. One witness said things happened “so fast”. The Magistrate was fully aware of the discrepancies and found that they did not destroy the prosecution case. In fact, I believe it would be a matter for comment if, in this situation, the evidence of witnesses was entirely consistent. I cannot differ from the Magistrate’s finding.

The next point raised by Mr Noordin is that the Magistrate was wrong to rely on medical evidence as supporting the prosecution case. The medical evidence was that the injuries were consistent with the evidence of the victim. The evidence was that the injuries were not caused by the use of bare knuckles. In my view, the Magistrate was quite correct to regard the medical evidence as supporting the prosecution case.

Mr Noordin also criticizes the Magistrate for finding that the fact that some DNA of the victim was found on a knuckle duster found at the scene supported the prosecution case. Mr Noordin submitted that the fact that there was no evidence of where the DNA was situated on the knuckle duster was against the prosecution case. He suggested that it may have been that it was the victim who used the weapon, not the appellant. That submission is not supported by any probability nor was it put to any witness. It is also suggested that the fact that the appellant’s DNA was not found on the knuckle duster was material. The Magistrate found that this was not so and I cannot differ from that. The knuckle duster was found at the scene after a search at which the appellant was not present. Ideally, the appellant should have been present, but the Magistrate accepted the evidence of the finding as credible and that cannot be challenged.

The next point taken by Mr Noordin is that the Magistrate was wrong to reject as credible evidence some pictures of injuries caused by a knuckle duster. The Magistrate said that she could not assume expertise in this area and in that she was correct. The Magistrate also said that these pictures should have been put to the medical witness and I agree with that. That does not, as Mr Noordin suggests, shifted the burden of proof.

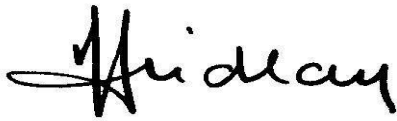
Mr Noordin also submits that the evidence that the injuries were caused by a knuckle duster “or similar instrument” does not meet the allegation in the charge. The Magistrate accepted that the injuries were caused by either a knuckle duster “or similar instrument, and not bare knuckles.” The phrase “knuckle duster” is not, as far as I know, a term of art. An instrument that is like a knuckle duster may be described, in ordinary parlance as a knuckle duster. I believe that a finding that what was used was either a knuckle duster or an instrument similar to a knuckle duster is sufficient to meet the charge.

The last point taken by Mr Noordin is that the fact that the victim of the assault alleged in the second charge, of which the appellant was acquitted, had been detained under a law that may have meant that this victim was not creditworthy. The Magistrate did not know on what basis the victim had been detained and neither do I. Nevertheless, this witness’s evidence had been rejected by the Magistrate on other grounds and hence the acquittal. I do not believe that this could have any adverse effect on the Magistrate’s findings on the charge on which the appellant was convicted. Mr Noordin also alleges that the fact that two other prosecution witnesses were suspended from duty must affect their creditworthiness. The Magistrate was aware of these facts and there is no reason to differ from her conclusion that the conviction was safe.

In conclusion, I decide that I cannot find any basis for concluding that the Magistrate's long and careful consideration of all the relevant issues was in any way faulty or that there is any sensible basis for disagreeing with her.

As to the sentence passed, this was a serious assault on a policeman on duty. This fact has always been regarded by the courts as deserving of a strong deterrent punishment. I do not see any reason for differing from the Magistrate's decision on sentence.

Accordingly, the appeals against conviction and sentence are dismissed.

A handwritten signature in black ink, appearing to read "H. J. de la Haye".

Judicial Commissioner