

Public Prosecutor

AND

Sahminan Bin Mohd Ranih

Intermediate Court of Brunei Darussalam
(Criminal Trial No.33 of 2015)

Dk Hjh Norismayanti Pg Hj Ismail, ICJ
29th October 2016

Criminal Law – Voluntarily causing grievous hurt – use of weapon (knife) – Offence under section 326 of the Penal Code, Cap 22.

Evidence – Alibi – Failure to call alibi witness

DPP Hjh Zuraidah binti Hj Sidek for Public Prosecutor
Defendant present and in person

Cases cited:

R v Turnbull (1977) QB 224

Public Prosecutor v Sumet Ob-Orm [2008] 1 JBD 55

Public Prosecutor v Muhammad Zuhairie Bin Yunos [2011] 1 JCBD 28

Public Prosecutor v Setiyadi Saputro (ICCT No.27 of 2015)

J U D G M E N T

Dk Hjh Norismayanti, ICJ.

Charge:

The defendant Sahminan bin Mohd Ranih is facing a charge under section 326 of the Penal Code. The defendant is unrepresented and claimed trial to the said charge. The charge reads as follows:

“That you, on 23rd day of November 2015 at about 1200hrs at a room located at No.86 “D” – 1 Kg Pandai Besi ‘A’ Kg Ayer in Brunei Darussalam, did voluntarily caused grievous hurt to one Mahdini bin Hj Mustapa (M 48 years old) by means of an instrument for stabbing, to wit, a knife that was used to stab the said Mahdini bin Hj Mustapa two times, once on the left hand and one on his left arm and you have thereby committed an offence punishable under section 326 of the Penal Code, Chapter 22.”

The charge carries a penalty of imprisonment for a term which may extend to 15 years and with whipping.

The elements to be proven are:

1. Grievous hurt was caused by the accused;
2. That it was caused voluntarily;
3. Grievous hurt was caused by means of an instrument for stabbing.

Prosecution's case

The prosecution called a total of 8 witnesses. They consist of 3 policemen (PW1, PW2 and PW3), the victim (PW4), 3 eyewitnesses (PW5, PW6 and PW7) and a doctor (PW8).

Summary of prosecution case

On the 23rd November 2015 at about 1200hrs, the victim PW4 and five of his friends namely Asrimin (PW5), Japarudin (PW6), Zakaria (PW7), the defendant and a woman named Raminah Bte Kaling (Minah) were gathered at a house at No.86 "D" – 1 Kg Pandai Besi 'A' Kg Ayer. Whilst all 6 friends were inside a room "hanging out", the defendant attacked PW4 using a knife. The attack resulted in injuries to PW4's left arm and left hand. PW4 fell unconscious after the attack and was immediately taken to the hospital by the defendant together with PW5 and PW7. PW4's injuries were categorized as grievous hurt by PW8.

Summary of Prosecution evidence

PW1: L/Cpl 3616 Zaini bin Hassan

PW1 was a standby investigating officer on the 23rd November 2015 at Kampong Ayer Police Station when he received information from L/Cpl 5275 Ali bin Marudin about a report from the Emergency room concerning a man who was stabbed with the use of a knife. Based on the report, at about 1810hrs PW1 together with PW2 went to the hospital to investigate. From his investigation, PW1 found out the identity of the victim is Mahdini bin Hj Mustapa (PW4). PW1 and PW2 thereafter proceeded to the scene of the alleged offence at No.86 "D" – 1 Kg Pandai Besi 'A' Kg Ayer. At the scene PW1 and PW2 searched for the alleged knife used in the attack but the knife could not be found.

On the same day, PW1 together with PW2 took statements from the witnesses that brought PW4 to the hospital. From his investigation, PW1 was informed that the identity of the person who attacked PW4 as Sahminan bin Mohd Ranih. PW1 also recorded PW4's statement on the 24th November 2015 and PW7's statement and had also questioned the Defendant upon his arrest on the 25th November 2015. Defendant did not challenge PW1's testimony.

PW2: L/Cpl 3805 Abdul Ghani bin Abdullah Jilani

PW2 was also a standby investigating officer at Kampong Ayer Police Station on the 23rd November 2015. PW2 was also informed by L/Cpl 5275 about the report from the Emergency room about a stabbing case. Both PW2 and PW1 made their way to the hospital at about 1810hrs to investigate the victim of the alleged attack. At the hospital, PW2 found out the identity of the victim as Mahdini bin Hj Mustapa (PW4). PW2 and PW1 then headed to No.86 "D" – 1 Kg Pandai Besi 'A' Kg Ayer where the alleged attack took place. At the scene, PW2 drew up a rough sketch of the place as instructed by PW1. Both PW2 and PW1 then searched for the alleged knife used during the attack but it was not found.

On the 25th November 2015, PW2 was informed by PW1 that the defendant had been arrested. Following the arrest, at about 1530hrs both PW1 and PW2 headed to the Police Headquarters to question the defendant. PW2 recorded the defendant's statement at about 1551hrs. PW2 also record the statement of Raminah Bte Kaling on the 26th November 2015.

In his cross-examination by the defendant, PW2 confirmed that the alleged knife used was not found. The defendant did not challenge the rest of PW2's evidence.

PW3 – PC4994 Mohd Noor Khairul Faizal bin Metussin.

PW3 is the police photographer assigned to this case. On the 23rd November 2015, at about 1945hrs he arrived at RIPAS Hospital and proceeded to take photos of the victim PW4 and his injuries. On the 24th November 2015, PW3 also took photos of the house and rooms at No.86 "D" – 1 Kg Pandai Besi 'A' Kg Ayer. PW3 then compiled the photos in an album (exhibit P5).

In his cross-examination by the defendant, PW3 confirmed that the pictures of the house were taken at No.86 "D" – 1 Kg Pandai Besi 'A' Kg Ayer.

PW4 – Mahdini Hj Mustapa

PW4 is the victim of the alleged attack. It is PW4's evidence that he was in PW6's room at a house in Kg Pandai Besi with his friends PW5, PW6, PW7, the defendant and Minah on the day of the incident. At about 12 noon to 12.30 pm, PW4 saw the defendant leave the room and soon after the defendant came back in and PW4 saw him pick up a knife that was located near a wall in the room and attacked him with it whilst he was sitting. PW4 said the defendant stabbed him in his left arm and left hand with the knife. PW4 described the knife looked like a bayonet, about 6 inches in length with a red handle and a black blade. PW4 also made a drawing of the knife (exhibit P6). After the attack, PW4 stood up and fell unconscious. PW4 did not know why the defendant attacked him nor did the defendant say anything to him during the attack. The next thing he knew he woke up at the hospital. He was told by PW5 that the defendant, PW7 and PW5 himself took PW4 to the hospital.

In his cross-examination by the defendant, PW4 reiterated that the knife the defendant used looked like a bayonet and was not an actual bayonet. PW4 knew the knife belonged to the defendant as he always saw the defendant carry it around and it was always in his

hands. PW4 also states that the knife was not in court or with the defendant during the trial.

The defendant did not challenge the rest of PW4's testimony.

PW5 – Asrimi @ Azman bin Damit

PW5's evidence corroborates the testimony given by PW4 about the stabbing incident. PW5 went to PW6's house before Zuhur prayers. PW5 confirmed the pictures of the house and room shown in the police photo album (exhibit P5) as PW6's house. PW5 was present in PW6's room in Kg Pandai Besi with PW4, PW6, PW7, the defendant and Minah. They were all sitting and talking in PW6's room. Whilst they were talking, PW5 saw the defendant leave the room and a few seconds later came back in and went towards PW4. The next thing he knew PW4 was covered in blood. He suspected that the defendant had stabbed PW4. He did not however see what weapon was used but was sure it was a sharp object. He saw PW4 was stabbed in the left arm and left hand. He was standing next to PW4 when PW4 stood up and fell unconscious. He then saw the defendant holding PW4 and had wanted to take PW4 to the hospital. PW5 together with the defendant and PW7 then took PW4 to the hospital. He said PW6 stayed behind to clean up the room.

In his cross-examination by the defendant, PW5 confirmed that he did not see the weapon that the defendant had allegedly used but was sure it was a sharp object.

Defendant did not challenge the rest of PW5's evidence.

PW6 – Japarudin bin Hj Jair

PW6 also identified the defendant as the person who had stabbed PW4. He confirmed the incident took place in his room at No.86 "D", Kg Pandai Besi 'A' Kg Ayer. PW6's testimony supports PW4 and PW5's account of the attack that took place in his room. PW6 said he was sitting in his room with 5 of his friends, PW4, PW5, PW7, the defendant and Minah at around Zuhur prayers. It was during this time he saw the defendant leave the room and a few minutes later he came back in and attacked PW4 who was sitting on the floor of the room. He saw the defendant stand next to PW4 and crouched his upper body to stab PW4. When he saw the defendant about to stab PW4, he saw PW4 put up his left hand to avoid the attack. PW6 did not see the knife when the attack was happening but only saw it on the floor after the attack happened. PW6 also made a drawing of the knife (exhibit P8). Seeing the attack PW6 yelled at the defendant to stop and the defendant stopped and left the room. He saw PW4 stood up and then PW4 fainted. The defendant then came back in into the room and wrapped PW4's arm with a towel. The defendant then took PW4 to the hospital together with PW5 and PW7. PW6 stayed behind to clean up his room. He described the weapon as a bayonet about 6 inches long with a red handle and silver blade. According to PW6, Minah had taken the knife and that he has not seen it since then. PW6 does not know what Minah did with the knife.

In his cross-examination, the defendant questioned PW6 on how can he possibly get a bayonet as it was a weapon only used by the government. PW6 clarified his answer that the weapon looked like a bayonet. He knew the description of a bayonet as he was previously in the military.

The defendant did not challenge the rest of PW6's evidence.

PW7 – Zakaria bin Hj Duai

PW7's evidence also supports the testimonies given by PW4, PW5, PW6's account of the incident that took place in PW6's room. He confirmed the defendant was the person who attacked PW4 . He could not remember the exact date of the incident apart from it occurring in 2015. He confirmed that he was in PW6's room with PW4, PW5, PW6, the defendant and Minah when the stabbing occurred. According to PW7, whilst they were in the room "hanging out" he saw there was jealousy between PW4 and Defendant. It was then when he saw the defendant leave the room and come back in and attacked PW4. The defendant straight away stabbed PW4 who tried to avoid the attack and the knife struck PW4's arm. He saw the defendant stab PW4 twice. PW7 described the knife looked like a bayonet with a red handle and also drew a description of the knife (exhibit P9). To his knowledge the knife belonged to the defendant as he had seen the defendant always bringing it around. After the stabbing, PW7 saw PW4 bleeding and fall to the floor. PW7 together with the defendant and PW5 took PW4 to the hospital. It is also his evidence he saw the knife lying on the floor after the attack and was later taken by Minah. He has not seen the knife again since the date of the incident.

In his cross-examination by the defendant, PW7 stated that he did not know whether the defendant had the knife with him in court that day. Defendant did not challenge the rest of PW7's evidence.

PW8 – Professor Dr Pushpraj Singh

PW8 was the doctor who examined PW4 at RIPAS Hospital on the 23rd November 2015. PW8 testified that PW4 was brought to the hospital by his friends who mentioned that PW4 was involved in a motorized boat accident but later PW4 informed him that he had fell from the roof top of his house whilst he was fixing it. In his medical report (exhibit P11) PW8 states his assessment of PW4's injuries and they are as follows: (1) a 4 cm long lacerated wound on the dorsal aspect of the left hand, (2) a 5 cm long lacerated wound on the lateral aspect of anterior cubital fossa (left arm) and (3) a partial fracture of the 2nd metacarpal of the left hand. PW8 categorized PW4's injuries as grievous hurt.

PW8 also concluded that it was not possible for the injuries to be sustained as result of a boat accident or falling of a roof. PW8 deduced the injuries could be the result of a very sharp object that could cut to the bone. '

In his cross-examination by the defendant, PW8 stated that he did not know the names of PW4's friends who informed him of the boat accident and that it was PW4 himself informed

him that he fell from fixing his house. The defendant did not challenge any other part of PW8's evidence.

Prima facie case

Based on all the evidence heard before the court, I was satisfied that there was a prima facie case for the defendant to answer. I thereby called upon the defendant to enter his defence. His options were explained to him and the defendant chose to give sworn evidence.

Defence case

At the start of his testimony, the defendant stated that he was not in the right state of mind during the incident. He then retracted his statement and stated that he was not at No.86 "D" – 1 Kg Pandai Besi 'A' on the 23rd November 2016. He claimed to be at his sister's house when the alleged attack took place. He alleges that the prosecution witnesses that allegedly saw him attack PW4 had all colluded against him. He also denies that he was at the hospital with PW4 on the day concerned.

The defendant further asserts that since the weapon that he allegedly used to stab PW4 was never produced before the court, there is no evidence to prove that he committed the offence.

When cross-examined, the defendant again denied that he was at No.86 "D" – 1 Kg Pandai Besi 'A' around noon on the 23rd November 2015. He denied stabbing PW4 and denied knowing about the knife.

The DPP then referred Defendant to his previous statement that he made to the police as evidence to show that he had admitted to being at the scene of the incident and had stabbed PW4 twice. The defendant disputes the statement stating that the police statement was made up stories. He also denied Raminah was his girlfriend and he was not jealous of the attention Raminah was giving PW4 that would him want to attack PW4.

Defendant did not call any other witness to support his testimony.

Consideration of evidence from the prosecution:

1. Eye witness evidence

I consider the evidence of PW4, PW5, PW6 and PW7 as material evidence towards the charge under section 326 of the Penal Code. All four prosecution witnesses identified the defendant as the person who committed the offence. To sum up, evidence given by PW5, PW6, PW7 corroborates PW4's testimony on the attack by the defendant. PW6 and PW7 also corroborated PW5's evidence that the defendant was with PW5 and PW7 when they brought PW4 to the hospital. PW4, PW5, PW6 and PW7 all gave consistent testimonies as to the time and place where the stabbing occurred which was at No.86 "D" – 1 Kg Pandai

Besi around zuhur prayers. PW5, PW6 and PW7 also corroborated each other's evidence on their account of how the stabbing happened and the injuries PW4 suffered.

2. The alleged weapon - knife

PW4, PW6 and PW7 gave consistent testimonies that the defendant had used a knife to attack PW4. PW4 and PW6 were consistent on the description of the alleged weapon that it looked like a bayonet and was about 6 inches long. I also note the minor inconsistency on the color of the blade between PW4 and PW6's evidence. PW7 on the other hand corroborates PW6's description of the knife having a red handle and silver blade. PW7 also corroborates PW6's evidence that after the attack, they saw the knife lying on the floor in PW6's room and later saw Minah took the knife away. They have not seen the knife since then.

On the matter of the drawings (exhibit P6, P8 and P9) of the knife by PW4, PW6 and PW7, I attach little weight if any as I consider them as crude drawings of the knife and not to scale.

Upon consideration of the overall evidence from PW4, PW5, PW6 and PW7, I am satisfied that PW4, PW5, PW6 and PW7 are all credible witnesses with no evidence to refute their testimonies. I therefore accept their evidence fully having regard to the minor inconsistencies referred to above.

3. Grievous injury

PW8 confirmed the extent of PW4's injuries in his medical report which concluded that the injuries constitute grievous injury probably caused by an assault. PW8 further states that the injuries were the result of a very sharp object.

I accept PW8's evidence as a whole.

Consideration of defence evidence:

1. Alibi evidence

The defendant had put forth a defence of an alibi. With an alibi defence, the defendant has an evidential burden to prove his alibi defence. He claims to have been at his step-sister's house at the time of the incident. The court explained to Defendant that he can call witnesses to support his alibi that he was at his step-sister's house but Defendant chose not to call any witnesses.

In consideration of defendant's alibi, I have taken into account the following: (1) the fact that the court only has the defendant's testimony that he was not at the scene, (2) the defendant did not name any person that could verify his presence at his step-sister's house on the 23rd November 2015 around noon that day, (3) the defendant did not call any alibi witness and (4) the defendant did not challenge any of PW4, PW5, PW6 and PW7's testimony during his cross-examination of the 4 witnesses about his presence at the scene of the incident.

I am also guided by the case of **R V Turnbull (1977) QB 224** where in his judgment Lord Widgery CJ stated:

“False alibis may be put forward for many reasons: an accused, for example, who has only his own truthful evidence to rely on may stupidly fabricate an alibi and get lying witnesses to support it out of fear that his own evidence will not be enough.The Jury should be reminded that proving the accused has told lies about where he was at the material time does not by itself prove he was where the identifying witness says he was.”

Based on the evidence before the court, I can only conclude that in the light of 4 identifying witnesses, the defendant had put forth a false alibi. I believe that the defendant had resorted to fabricate an alibi to avoid liability. I therefore reject the defendant's alibi defense.

2. Allegation of collusion

The defendant claims that PW4, PW5, PW6 and PW7 had colluded to accuse him of stabbing PW4. The defendant did not provide any basis for this defense. This was the first time the defendant had accused PW4, PW5, PW6 and PW7 of collusion. The defendant did not at any stage during his cross-examination of PW4, PW5, PW6 and PW7 put to the witnesses that they had colluded and neither did he contest the evidence given by the said witnesses.

I therefore find there to be a lack of evidence to support the defendant's allegation. I therefore dismiss the defendant's allegation of collusion.

3. Defendant's written statement to the police

The DPP sought to rely on a previous statement that Defendant had given to the police to rebut the alibi defence. The defendant contests the statement and the content as being made up stories. I conclude that the written statement was wrongly adduced through the defendant. The statement should have been adduced through the recorder of the statement either prior to the closing of the prosecution case or by calling the recorder of the statement as a rebuttal witness. As such, I will not attach any weight on the statement as I deem it to be inadmissible evidence.

4. The alleged weapon

Throughout the trial, the defendant had mostly focused his cross-examination of the prosecution witnesses on the whereabouts of the knife that was allegedly used in the attack. The defendant declared that without the knife, he cannot be found guilty of committing the offence.

Clearly I must disagree with the defendant's assertion that it is necessary for the alleged knife to be produced as evidence for the court to consider whether he is guilty or innocent

of the offence. The court may rely on other relevant evidence available before the court in assessing guilt or innocence.

In consideration of the defendant's testimony, I do not find the defendant to be a credible witness. The defendant has failed to raise reasonable doubt.

Court's finding

I find there to be more than ample evidence to support the defendant's guilt. There is a total of 4 eye witnesses including the victim that identified the defendant as the offender. I find PW4, PW5, PW6 and PW7 are credible witnesses in their account of the incident and I accept their evidence. In regards to the defendant, I do not believe his alibi defence and allegations of collusion and dismiss his defence accordingly.

In conclusion, I am satisfied that the prosecution has proven beyond reasonable doubt that the defendant is guilty of the offence under section 326 of the Penal Code and I convict the defendant accordingly.

Sentencing Considerations:

The defendant is a 33 year old man and is married with no children. He is self-employed. He does repairs to houses. He says he lives with his mother and is the only one who is currently looking over his mother. His siblings live elsewhere. The defendant has no previous record of any criminal conviction.

Mitigation:

In his mitigation, the defendant prays for leniency and a reduction in his sentence. He is remorseful of the offence he committed. He says that he wants to continue to take care of his mother.

His circumstances is clearly unfortunate. The penalty provided for under this charge provides for a term of imprisonment.

In consideration of the appropriate sentence to impose, I also take into account the aggravating and mitigating factors set out below:

Mitigating factors:

1. The offence was not pre-meditated. I believe the defendant's action was done in the heat of the moment.
2. The defendant did not flee the scene of the crime and had immediately brought the victim to the hospital for medical attention.
3. The defendant is a first offender
4. The defendant is remorseful.

Aggravating factors:

1. The offense was not provoked.

2. Use of an offensive weapon (knife).
3. Causing Grievous injury.

I now turn to the following cases as guidance:

In ***Public Prosecutor v Sumet Ob-Orm [2008] 1 JBD 55*** the defendant pleaded guilty to the charge of causing grievous hurt with the use of a knife. The defendant had attacked the victim on the head with a knife whilst the victim was sleeping causing a skull fracture. The victim also suffered fractures to his right elbow and left index finger. The defendant then left the scene after the attack and threw the knife into a river. The learned Judge Dato Steven Chong sentenced the defendant to 3 years' imprisonment and 3 strokes having considered the defendant's remorse, plea of guilty and his clear record.

In ***Public Prosecutor v Muhammad Zuhairie Bin Yunos [2011] 1 JCBD 28*** the defendant was sentenced to 9 years for an offence under section 326 of the Penal Code. The trial judge, learned Judicial Commissioner Barnett considered the attack "unprovoked, frightening and almost fatal." The defendant in this case had a clear record but pleaded not guilty to the charge.

In ***Public Prosecutor v Setiyadi Saputro (ICCT No.27 of 2015)*** the learned Judge Abdullah Soefri POKSM DSP Hj Abidin sentenced the defendant to 3 years' imprisonment and 3 strokes. In this case the defendant had hacked the victim's head with a machete. The defendant then fled the scene and threw the machete into a river. The learned judge took into consideration the defendant's plea of guilty, his clear record and remorse.

Sentence

Having considered the facts of this case in comparison to the cases cited above, I consider a starting point of 4 years and 4 strokes. Taking into account all the mitigating factors, I reduce the sentence by 1 year and 1 stroke.

The defendant is hereby sentenced to 3 years' imprisonment and 3 strokes.

The imprisonment sentence is to take effect from today, 29th October 2016.

DK HJH NORISMAYANTI PG HJ ISMAIL
Intermediate Court Judge