

HONG KONG / JUDGMENT

HKSAR v. ANSAR, MAHMOOD

[2025] HKCFI 2375

COURT

Court of First Instance

DECIDED

28 April 2025

CASE / FILE NUMBER

HCMA21/2024

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

HCMA 21/2024

[2025] HKCFI 2375

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MAGISTRACY APPEAL NO 21 OF 2024

(ON APPEAL FROM WKCC 2035 OF 2023)

BETWEEN

HKSAR

Respondent

and

ANSAR, MAHMOOD

Appellant

Before: Hon Toh J in Court

Date of Hearing: 28 April 2025

Date of Judgment: 28 April 2025

JUDGMENT

The Appellant in this case was tried before a Magistrate for common assault. The particulars being that on 10 May 2023, he did assault a madam Yasmin Bushra. He was convicted after trial and now appeals against his conviction. It is not an issue, in fact, it was admitted that the Appellant and Ms Bushra had got married in Pakistan in 2004, and they had two sons and two daughters and the family was residing at the address which is stated in the particulars of the offence.

On 10 May 2023, at about 7.30 pm, the family was at the residence and an altercation happened between the victim in the event and the appellant. Part of what happened was recorded in two video recordings by their elder daughter on her mobile phone and these were produced as Exhibits P1 and P2, and I should also mention here that the Appellant was represented by counsel at the trial.

The prosecution relied mostly on the evidence of Ms Yasmin and also the medical report. Exhibits P1 and P2 were played before me earlier on and it was clear that in P1, the atmosphere was very, very tense. The participants, that is the victim in the case and the Appellant, were, I would say, in quite a high temper. It appears on the screen that the victim's hands were caught by the Appellant. Many words were exchanged and I did notice that the audio of those exhibits were not translated.

However, in Court, counsel for both parties agreed that the court interpreter can do the translation exercise in open court. This point was explained by the learned Deputy Magistrate in her Statement of Findings that she wanted to know what the contents of the words spoken at the time were, because it may affect her assessment of Ms Yasmin's credibility.

Ms Yasmin gave evidence and she was reminded by the learned Deputy Magistrate that she did not have to, under section 57A of the Criminal Procedures Ordinance, Cap 221, but she confirmed to the learned magistrate she understood and she did not want to apply for exemption from giving evidence.

Ms Yasmin testified that she was at home at the time and she was with her children, and the Appellant came out from the kitchen holding a beer and he started to abuse her and beat her, and that the Appellant was holding a beer in his left hand and beat her with his right hand, and she asserted that he punched her on the face as well as on the right side of her body, and that he also kicked her on the right side of her body, including her right forearm and leg.

The elder daughter then decided to record the scene, and that Exhibit P1 showed the living room after the assault, and Exhibit P2 was taken in the bedroom, and when the family wanted to call the police, the appellant tried to snatch away the mobile phone. Eventually, the appellant left home, and the elder daughter had also called the police. After the arrival of the police, Ms Yasmin was admitted to Princess Margaret Hospital.

Under cross-examination, Ms Yasmin said that she could not remember very much about the assault, other than that she was assaulted on her face and she was punched with his right fist, and that the Appellant had kicked her on her right thigh near the knee, and that was painful, and she said quite fairly that the assault lasted only for a minute or two.

It is clear from the evidence that the medical report in this case was that the doctor had examined Ms Yasmin shortly after the assault and noted that there was tenderness on her right arm and right thigh, and there is no bruising and no wound, and no swelling seen, and she was discharged after examination.

And eventually, Ms Yasmin also gave an account of the fact that they were at the Appellant's brother's place on the following day, and the Appellant was there and also abused her at that time. And when Ms Yasmin and her children went home, they saw the Appellant sleeping at home, and that was when they called the police, and the police came and arrested the Appellant.

Ms Yasmin was cross-examined about the fact that there was some inconsistency about the fact that she did not mention in her police statement that the Appellant had kicked her on her right forearm, and she said that she could not remember very much of exactly the details of the assault, and she said very honestly that what she said in court some might be right, and some might be wrong, because this assault happened some months prior to the trial. But one thing she was sure of was that the Appellant had assaulted her.

After the Prosecution closed its case, the Appellant exercised his right not to testify nor call any witness. And so the counsel representing the Appellant then made his final submissions. The learned Deputy Magistrate then analysed the evidence in front of her, and as Mr Daryanani noted, this is a one against one case. It was the word of Ms Yasmin against the word of the Appellant.

The learned Deputy Magistrate was well aware of the fact that Ms Yasmin did say in her evidence that her evidence in court, some was right and some was wrong. However, she said in paragraph 26 of her Statement of Findings that she did not lose sight of the fact that the incident happened more than 6 months prior to trial, and that the situation was rather chaotic. This I agree totally, because as can be seen from Exhibit P1, it was a very charged time at the time and with the feelings running high. And that Ms Yasmin also said in court that at the time the children were crying, and so the atmosphere was very tense.

So the learned Deputy Magistrate came to the conclusion that it is not unusual for Ms Yasmin not being able to give specific descriptions of the incident. And so her conclusion in paragraph 28 was that she did not feel that Ms Yasmin was lying or exaggerating or making things up, and that what she meant was that her memory might have failed her, and she was unable to give an accurate and exact account of the event.

So it is clear from the learned Deputy Magistrate's Statement of Findings that she had gone through the evidence very, very carefully, and at the end of the day concluded that the evidence had proved beyond a reasonable doubt that the Appellant did assault his wife. I am aware that on a Magistracy appeal, I have to look at the evidence in front of me and come to my own conclusion, basically about the evidence. However, the learned Deputy Magistrate has one advantage over me, because she had observed Ms Yasmin giving evidence. And therefore, I can only read from the evidence that appears in the appeal bundle and come to my conclusion.

I find nothing wrong with the learned Deputy Magistrate's assessment. In fact, as I said to Mr Daryanani at the beginning that one must also remember that the victim in this case comes from a traditional Asian family. And therefore, it is important when assessing her evidence to also conclude that she has difficulty in giving evidence against her husband that she is married to and has children with.

So all this comes into play when she is giving evidence and that is why she was very honest and in cross-examination admitted that some of her evidence in court may be wrong and some may be right. I see no great detriment to her credibility in this case and I would have come to the same conclusion as the learned Deputy Magistrate in this case.

The Appellant on appeal represented himself. He gave one ground of appeal, which is that he did not commit the assault and this was his defence in the trial. However, as has been noted, he did not give evidence in the trial nor call witnesses. So there is no evidence from the defence to contradict or in any way minimise the evidence of the Prosecution witness.

So in view of all that, there is no ground for interfering with the conviction in this case, and so the appeal is dismissed.

As I have been reminded by Mr Daryanani, the Appellant has been on bail and he is now to serve the 6 weeks' imprisonment as ordered by the learned Deputy Magistrate.

(Esther Toh)

Judge of the Court of First Instance

High Court

Mr Prakash L Daryanani, SPP of the Department of Justice, for the Respondent

The Appellant appeared in person

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=169368

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-ansar-mahmood-2025>

Prepared on 26 October 2026 · Esheria