

HONG KONG / JUDGMENT

HKSAR v. BELOMO BIDJO LEON AND ANOTHER

COURT

Court of Appeal

DECIDED

23 February 2007

CASE / FILE NUMBER

CACC501/2005

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bjbj m^IY CACC 501/2005 IN THE HIGH COURT OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION COURT OF APPEAL criminal APPEAL NO. 501 OF 2005 (ON APPEAL
FROM DCCC NO. 910 of 2005)

BETWEEN HKSAR Respondent and belomo bidjo leon (D1) 1st Applicant nyemeck theophile (D2)
2nd Applicant

Before: Hon Stuart-Moore VP Date of Hearing: 23 February 2007 Date of Judgment: 23 February
2007 J U D G M E N T Hon Stuart-Moore VP: The applicants (D1 and D2 respectively) were each
convicted of robbery after a trial before Deputy District Judge Casewell. They now seek leave to
appeal against conviction. The prosecution s case, as conveniently set out by the judge in his
Reasons for Verdict was that: the complainant, Mr Jalauddin, is a trader from India who was, in
August of 2004, in Hong Kong on business. The two defendants from Cameroon are applying for
refugee status in Hong Kong.

3. The complainant was a resident at Room 7 of the Disney Delux Guest House situated at 15/F,
Block E, of Chungking Mansion. The second defendant [D2] was resident in Room 4 of the
same guest house. The complainant said that on 9 August 2005 he was invited into Room 4 by
the 2nd defendant. When he arrived inside Room 4 he was seized from behind by the 1st
defendant [D1] and assaulted by the 2nd defendant. His wallet was taken from him and a
total of US\$1,000 was taken. Thereafter, the 1st and 2nd defendants left. The victim went to
hospital that evening.

4. On 11 August the complainant found that 1st defendant outside a money exchange shop at Chungking Mansion. He identified him to police. On searching, the 1st defendant was found to be in possession of US\$800. On 14 August 2005 the complainant located the 2nd defendant in Yee Wo Street, Causeway Bay. (pp. 9 10 of the Appeal Bundle) Neither D1 nor D2 testified at trial but their statements to the police following arrest contained denials. Again, it is convenient to take the judge's summary of their interviews which was as follows:
6. The 1st defendant said he had seen the complainant, Mohammad Jalauddin, only once when he had peddled a mobile phone to him. He said between 6 August and 9 August he lived at his flat in Yau Ma Tei; that he did not live on the 15th floor of Chungking Mansions, and if he had done so, then the complainant would have known his name. He said that on the day, he had seen the Indian male together with a person called Stephane Johnny, but that he, the 1st defendant, did not know Stephane Johnny.
7. The 2nd defendant denied that he had attacked the complainant. He said that he believed that the complainant had suffered losses on a business transaction and now wanted to get back his investment, and that the complainant was afraid to tell the police the truth, so he, the complainant, had said that the 2nd defendant had stolen his stuff.
8. The 2nd defendant said he had been staying in a guest house operated by the complainant, and the complainant had asked the 2nd defendant to invest in a business. He said that he, the 2nd defendant, had not done so, and the victim lost US\$1,000 on the enterprise. He said the victim had in fact called him at 8 pm on 9 August to tell him that the 2nd defendant's friend had taken the money away and wanted the 2nd defendant to help him find this person. (pp. 10 11 of the Appeal Bundle) Numerous grounds of appeal were advanced by both applicants although some of these were common to both of them. The complaints ranged from the observation that the complainant had made inconsistent statements and that the evidence given by the doctor who treated the complainant was not consistent with the account given by the complainant himself, to the more serious allegation that the lawyers who had represented them had failed to follow instructions in the various different ways set out in the homemade grounds of appeal. There were other grounds apart from these which I have also taken into account, including the criticisms of the identification and CCTV evidence which were extensively canvassed at trial. It suffices for present purposes to say that there is not a single ground which has any real substance. In particular, with regard to the complaint about the counsel and solicitors representing the applicants at trial, this has necessitated a considerable amount of research on their part to deal with all the points raised against them. These points have been fully covered in the large, unpaginated bundles of documents before me which include the affirmations of both counsel at trial and the affidavits of both solicitors who instructed them. From these bundles, it is quite apparent that the applicants were represented at trial by counsel and solicitors who had conducted themselves in exemplary fashion. A great deal of work had been done on behalf of the applicants prior to trial and the instructions taken at that time (which are included in the bundles together with attendance notes) were duly advanced during the trial. There is

nothing in the suggestion which the applicants have made that they were not properly advised or represented. Most importantly, perhaps, as they were perfectly entitled to do, they each made the choice, having been fully advised about their rights, not to give evidence. The reality is that there was convincing evidence before the court to support the case against both D1 and D2. The judge, having carefully reviewed the evidence he had seen and heard, expressed his findings as follows: 34. at the end of the evidence after considering all the factors submitted to me, I found the complainant was undeniably subject to a violent attack on the evening of 9 August, and that after that attack he had sought out the perpetrators. I found him to be credible, reliable and truthful and he certainly was not mistaken in his identification of either the 1st or 2nd defendant as being the perpetrators.

35. The complainant's evidence was common to the evidence against both defendants and the attack upon him was common to their defences. However, the factors advanced on me in defence of either defendant were different and had to be considered separately. The 1st defendant as I have outlined relied on a mistaken identification, the short period of identification, as well as his residence elsewhere, his absence from the video recording, his ability to explain at least \$500 of the US dollars on his person. As I have already outlined, I bore in mind these factors when considering every facet of the complainant's evidence.
36. I also noted the matters set out in the 2nd defendant's evidence, particularly what he told the police about his relationship with the complainant. The complainant had admitted that he knew the person who ran the guest house but denied that he had ever been involved in running the guest house. He also denied the other features raised by this defendant in his defence.
37. I do not consider for one minute that the 2nd defendant's explanation in his cautioned statement has any grain of truth in it, and I make the same finding in respect of the 1st defendant's record of interview. I found that the identification of the 2nd defendant as a perpetrator was clearly correct and was not done out of a desire to provide an explanation for a loss of money in a failed business transaction.
38. Clearly, from this I found that none of the factors raised by either defendant gave me cause to doubt the complainant's evidence. I was sure, at the conclusion of all the evidence: the complainant had told me the truth about the fact he was robbed of \$1,000 by the 1st and 2nd defendants and that he correctly attributed their respective roles; that the 2nd defendant had struck him with a bottle to further the robbery; that the complainant had correctly identified the 1st defendant as restraining him from behind; and that he had further correctly identified them in the street identifications which took place later. (Appeal bundle pp. 17-19) In my opinion, there are no grounds for disturbing the judge's verdicts either on the basis of any of the complaints raised by D1 or D2 or upon some other basis which might render these verdicts unsafe or unsatisfactory. There is no merit whatsoever in these applications and they are dismissed. The applicants may, of course, renew their applications before the full Court of Appeal within 14 days but if they do so they should be aware that the court may order loss of time in the event that their renewed applications are also found to be

unmeritorious. The applicants have indicated that they understand the meaning of loss of time and, in particular, that such an order would have the effect of lengthening their sentences. It was only by the closest margin that no such order was made today. (M. Stuart-Moore) Vice-President Mr Johnathan Man Tak-ho, SGC, of the Department of Justice, for the Respondent. The 1st and 2nd Applicants, in person. PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q 1udk 1udk "0 i\$&`G Normal.dot setup Microsoft Word 9.0 MCIY Title +~^IY +~^IY +~^IY Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 29 October 2026 · Esheria