

HONG KONG / JUDGMENT

HKSAR v. CHAN PING SING

COURT

Court of First Instance

DECIDED

21 September 2007

CASE / FILE NUMBER

HCMA430/2007

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bjbj HCMA 430/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 430 OF 2007 (ON APPEAL FROM KTCC 7764/2006)

BETWEEN HKSAR Respondent and CHAN PING SING Appellant

Before: Deputy High Court Judge E Toh in Court Date of Hearing: 21 September 2007 Date of Judgment: 21 September 2007

J U D G M E N T

The appellant was convicted after trial of one charge of common assault. He appeals against his conviction. The facts are that, PW1, who is aged 60, and the appellant, aged 65, were neighbours. The history was that in 2004, PW1 had been imprisoned for wounding the appellant. And very recently, the appellant had complained about PW1 making too much noise at night. So on the day of the incident, when both of them happened to meet each other, they quarrelled, and then the evidence for the prosecution was that the appellant tried to grab PW1, but PW1 dodged and then the appellant pushed PW1 three times until he fell on the ground, and then the appellant kicked him on the upper thigh and hip. And PW1 said he sustained bleeding on his neck. PW1 was cross-examined as to the circumstances of the attack. The appellant elected to give evidence, in which he said that, he had been taunted by PW1 and when PW1 attacked him, he was only acting in self-defence. At the end of the day, the learned Magistrate, after hearing counsel s submission, then said the words, there is no doubt the defendant is guilty , that was all she said, and so the defendant was then sentenced to a fine. After a notice of appeal against conviction was lodged, the learned Magistrate then prepared her Statement of Findings. I note that the Statement of Findings is dated the 12th of April 2007 and the trial was on the 16th of March 2007, so nearly a

month later. The learned Magistrate then wrote in her Statement of Findings that she accepted PW1 as a reliable witness, although she had noted that PW1 had a bad record with seven previous convictions including one for dangerous drugs. She said that she had warned herself of the dangers of accepting his testimony unless it was corroborated in the material respect. As far as the appellant was concerned, the learned Magistrate in her evaluation did not accept the evidence of the appellant, and she said she did not accept that there was self-defence, and so she then convicted the appellant. The main point in this appeal is that the learned Magistrate at the conclusion of the case, when she convicted the appellant, had failed to give any reasons whatsoever. And although she was not obliged to do so under the law, in the interests of justice, some reasons ought to be given, Mr Butt argues, so that the appellant can know why he was convicted. Mr Liu, however, on the other hand, argues that because there was no statutory requirement on the learned Magistrate to give reasons, her reasons can be given at the stage when she prepares her Statement of Findings because magistracy appeals do not need leave from the courts and so the convicted defendant can lodge a notice of appeal as of right, and therefore it does not affect the convicted defendant's right to appeal. There has grown up a practice that a magistrate upon convicting a defendant would give some reasons as to why he was convicted, and I can only echo the words of Pang J in the HKSAR v Sin Cho Yin, HCMA 511/1998, where he said: I am aware of the workload in the Magisterial Courts and it would be unrealistic to suggest that their oral reasons should take the form of a carefully prepared written judgment. But good sense and practice requires that the important legal and evidential features of the case should at least be covered by the Magistrate in note form, albeit orally. Having said that, over-generalized statements such as "I have warned myself of all necessary warnings as required by law" or in the absence of specific references, phrases such as "I have considered all the evidence before me" is, in my view, inadequate. Those are words which all magistrates should keep in mind. It is in the interests of justice for a convicted person to know the basic reasons as to why he was convicted. If Mr s suggestion that because a convicted defendant in a Magistrate's Court can appeal as of right, and, therefore, a magistrate need not give reasons until such notice of appeal was lodged, then that would in my opinion clog up our system of appeal, particularly magistracy appeals. It should be at the stage when a defendant is convicted that brief reasons are given, so that either he or his legal adviser could advise him as to whether he should lodge an appeal; and not only that, giving reasons is a discipline because it focuses the mind of the learned Magistrate on the right questions and demonstrates that she has considered the issue correctly and also she can demonstrate the logic of her decision-making process. More importantly a defendant is entitled to know, as soon as possible, why he was convicted. It has always been said by the courts, whether here or in England, that, today, professional judges has a general duty to give reasons and that is clear, I cannot emphasise enough that it is in the interests of justice and also that justice ought to be seen to be done for a magistrate at the time when he or she convicts a particular defendant that he or she should give some reasons and demonstrate that she had focused his or her mind on the specific issues in question and come to a well thought out decision. As Pang J says we all appreciate the workload of magistrates, however, this should not be an onerous duty, because this court does not demand written and comprehensive reasons to be given at the time of conviction, but only some reasons even in note form as to the thinking

process of the magistrate with reference to the salient features of the case, and that the magistrate had applied the law properly to the facts which he or she has found proved. In this case, there is the matter of self-defence raised by the defence, we do not know at the time of conviction whether the learned Magistrate had even properly considered the law. So in these circumstances, I have no alternative but to allow the appeal and quash the conviction. The fine paid by the appellant should be returned to him. There is an application from Mr Liu for a re-trial in this case. That is opposed by Mr Butt on the grounds that the appellant is an elderly person, he is aged 65 and he did suffer injuries as a result of this incident, and to require him to go back to court after all this time is not fair to him, that justice does not require that there be a re-trial. As I have noted both the appellant and PW1 have a history between them and also their ages are quite similar, going for a re-trial would unfortunately be a burden for both the appellant and PW1, but I have to look at all the circumstances and in the interests of justice, at the end of the day, I consider that it is only proper and right that this case be sent back to the Magistrate s Court for a re-trial before a different magistrate. So I order a re-trial in this case. (E Toh) Deputy High Court Judge Mr Liu Yuen Ming, Senior Government Counsel of the Department of Justice, for the Respondent Mr Anthony Butt, instructed by Messrs Yip, Tse & Tang, for the Appellant 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 R S T U V 1udk 1udk HCMA.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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