

HONG KONG / JUDGMENT

HKSAR v. CHAN YUNG

COURT

Court of First Instance

DECIDED

26 January 2007

CASE / FILE NUMBER

HCMA1213/2006

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bjbj lant

Coram: Deputy High Court Judge Line in Court Dates of Hearing: 26 January 2007 Date of Judgment: 26 January 2007

J U D G M E N T

1. This is an appeal against a conviction for assault occasioning actual bodily harm. It arises out of an unfortunate incident that occurred on 14 August of last year.
2. A couple, PW1 and PW3 at the trial, were on a bus that went from Tung Chung to the Caribbean Coast. The Appellant and his wife were of the view that they were not entitled to be on it. They all got off the bus and there was a frank exchange of views.
3. What happened was that, according to the prosecution, at one stage PW1 had raised up both palms of his hands to his chest height for a short time and dropped his hands down to his side when the Appellant had moved closer toward him. PW1 said he never touched the Appellant. He said that the Appellant continued to move closer and when they were only 1 to 2 inches apart, he suddenly and unexpectedly pushed out his chest and struck PW1 on his chest causing PW1 to lose his balance and fall backwards onto the ground and, as a result, he hurt his left forearm and bumped his head. There is a medical report. The injuries were confirmed in that but they were not serious.
4. The Appellant elected to give evidence and his case was that PW1 came up to him with both hands extended and pushed him on the chest, that he stepped backwards and then stepped forwards to his original position and pulled up his chest to within a foot of PW1 in order to reason with him, but that he did not have any physical contact with him. He says the act of falling backwards and falling over by PW1 was a pretence.

5. There was a witness called for the defence, and he said that he saw the Appellant use his abdomen with slight force to deliberately push PW1. He expressed a doubt as to whether that was sufficient to knock PW1 over. Then, in his re-examination, he said he was not sure if the force used was enough to push PW1 down or not.
6. The Appellant today, who appears in person, has done a lot of homework. He has been through the papers and he has addressed me at length. I have listened carefully to what he said and I have tried to take on the amount of detail he has put before me.
7. Firstly, let me say this: that it is clear from the statement of findings that the Magistrate dealt with this with great care. Even though it was a small incident resulting in a fine of only \$1,000 he did not let that deflect him from doing a very thorough job.
8. The statement of findings runs to six-and-a-half closely-typed pages. I am bound to say that the Magistrate dealt with all the important issues, as they appeared at the trial, and using his common sense and reason came to conclusions adverse to the Appellant. He had the obvious advantage of having seen and heard the witnesses. He was aware of the points that were available to be made by way of discrepancy and the like and I can see no flaw in his reasoning. I have no reason to doubt the conclusions he came to.
9. I do not just rely on the way the Magistrate tackled the task in his conclusions, I look at the matter, as it were, afresh to see if I have any reasonable doubt on the material as it is presented to me today. I hope I do the case justice if I say there are two important things in it: one is the push or not by PW1 against the Appellant and the other is the push or not by the Appellant on PW1. Those are the two central features.
10. Looking at the first, was there a push by PW1? The Appellant said, in his evidence, there was. However, in his interview with the police that was in evidence he had said that there was no contact at that stage between them. He was asked again about it and he said, He and I had no body contact. I even avoided touching him. So on that first central question, did PW1 push the Appellant, the Appellant has got some difficulties in his case by reason of that obvious change of ground.
11. Looking at the second important matter; was there a push by the Appellant, the Appellant says there was none. On the other hand, the witness he called said there was a deliberate push albeit he did not think the force was great. It seems to me, therefore, on that second central issue there are problems with the Appellant's case by reason of the conflict between him and his own witness, never mind the conflict between himself and PW1.
12. I appreciate in these small cases sometimes it is difficult to do justice but given the assiduous job that the Magistrate did and given my analysis of the major parts of the case today, I regret to have to inform Mr Chan that I dismiss his appeal against this conviction. (P Line) Deputy High Court Judge Representation: Ms Lily Wong Sze-lai, Senior Government Counsel, of the Department of Justice, for the Respondent Appellant: Chan Yung (J K L M N O P Q R S T U V & ` # \$ JUDGE.DOT setup Microsoft Word 9.0 judiciary Title Microsoft Word

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