

HONG KONG / JUDGMENT

HKSAR v. FARINAS, BRIGILDA DE SIXTO

COURT

Court of First Instance

DECIDED

28 March 2007

CASE / FILE NUMBER

HCMA69/2007

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bjbj HCMA69/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 69 OF 2007 (ON APPEAL FROM KCCC 4246/2006)

BETWEEN HKSAR Respondent and FARINAS, BRIGILDA DE SIXTO Appellant

Coram: Deputy High Court Judge Line in Court Dates of Hearing: 28 March 2007 Date of Judgment: 28 March 2007

J U D G M E N T

1. This is an appeal against conviction for wilfully ill-treating a child of which the appellant had care, contrary to section 27(1) of the Offences Against the Person Ordinance and an appeal against the sentence of 2 years that was passed for it.
2. The appellant was a domestic helper and she had care, as part of her duties, of a 5-month-old male child. In the evening of 12th June of last year - it was a Monday - that child was having emergency surgery to its penis in order to stop the bleeding from it and to repair the damage which it had sustained. Someone had cut around almost the entire circumference to the depth of the full skin thickness. It did not, in fact, need the expert who was called at the trial to say that it had to have been done by someone deliberately, because common sense tells one that.
3. The mother had the custody of the child over the weekend and had last changed his nappy at midnight between Sunday and the Monday. The mother handed over the child before going to work on the Monday morning. She did not change the nappy then; the appellant did. Nothing unusual came to the attention of the mother at that stage.

4. It was gone 6 pm on the Monday evening that the mother happened to be talking to her 6-year-old son at home on the telephone. The appellant asked to speak to the mother and told her on the telephone that there was bleeding in the nappy. The mother rushed home to find the nappy full of blood and the penis bleeding. They went straight to hospital, and the emergency surgery followed.
5. The appellant was asked for an explanation and she gave an interview to the police concerning which there was no dispute. She gave evidence at the trial in line with what she had then said. Her explanation was that when the baby was handed over to her on that Monday morning she saw blood in the nappy but said and did nothing about it; she did not inform the mother because she thought the mother knew of it. She used the word "scratch" in relation to the wound. She said it became graver in the afternoon and that the wound got bigger and therefore she decided to inform the mother when she was speaking on the phone, as I have described. She said that she believed that the cause of the injury was due to the acidity of the child's urine.
6. The appellant is a lady now aged 34. She is the mother of two children herself and she spent two years working as an intern in a hospital in the Philippines.
7. The magistrate rejected her explanation. He judged that if she had seen blood in the nappy as she claimed, she would have said something about it. He regarded her claimed belief that acidity of urine caused the injury to be ludicrous. Those are judgments with which I agree. It followed that once the explanation the appellant gave was rejected, and she was the only person with the opportunity to inflict this injury, that the magistrate was bound to find that it was she who caused it, that being an act of wilful ill treatment. It was the only verdict available on the evidence, given the basic findings.
8. Accordingly, the appeal against conviction is dismissed. The magistrate took, in my view rightly, a serious view of this case and passed a sentence of 2 years' imprisonment which was the most available to him. He looked at psychological, psychiatric and background reports. There was nothing in them to explain the conduct that he had found proved against the appellant and those reports provide no help for her. It goes without saying that to cause an injury like this to a baby in one's care is a very grave crime. The magistrate expressed himself in a forthright way by saying that he was surprised that the case had been charged under this section and that it was tried in the magistracy. I agree with him. The sentence of two years was the least the appellant could expect. Accordingly, the appeal against sentence is also dismissed.
9. Finally, I record that the appellant was unrepresented today before me and, in substance, her argument on conviction was merely to say that she had not done anything wrong save delay reporting the matter. As regards sentence, she relied upon her personal circumstances and the obvious pain of separation from her family and children. Given what I have already said, those matters could not affect the dismissal of these appeals. (P Line) Deputy High Court Judge Ms Mickey Fung, Government Counsel, of the Department of Justice, for the

Respondent Appellant, Farinas, Brigilda De Sixto, in person PAGE - PAGE CRT27/28.3.2007/
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Prepared on 27 October 2026 · Esheria