

HONG KONG / JUDGMENT

HKSAR v. LAMA, BABU RAM

COURT

Court of First Instance

DECIDED

10 August 2007

CASE / FILE NUMBER

HCMA553/2007

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bjbj HCMA 553/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 553 OF 2007 (ON APPEAL FROM ESCC 556 OF 2007)

BETWEEN HKSAR Respondent and LAMA, BABU RAM Appellant

Before: The Honourable Mrs Justice V. Bokhary in Court Date of Hearing: 10 August 2007 Date of Judgment: 10 August 2007

J U D G M E N T

The Appellant who was acquitted by Symon Wong, Esq. in the Magistrate s Court at Eastern on a single charge of inflicting grievous bodily harm, but was refused costs. He appeals against that refusal. In explaining in his written Reasons for Decision why he refused the Appellant costs, the Magistrate said this under the sub-heading, Reasons for denial of costs

6. Section 3(1)(c) of the Costs in Criminal Cases Ordinance gave me the discretion to award costs, which is compensatory in nature, to the defendant in the event of acquittal. The discretion has to be exercised judicially. The normal practice would be to make an order for costs from the public funds unless there were positive reasons for making a different order. The positive reasons are (i) when an accused brings suspicion on himself or he misleads the prosecution into thinking their case is stronger than it is or (ii) where acquittal is achieved on a technicality.
7. I acquitted the defendant on a variety of reasons. It is true that the credibility of PW1 is in doubt. His account concerning the course of the assault and his injuries sustained are inconsistent with the medical findings. More importantly, it is apparent that the

identification evidence is clearly in issue. The circumstances under which the defendant was identified, in my judgment, is seriously flawed. I may have come to a completely different conclusion in respect of the correctness of the identity of the assailant, had there been a properly conducted identification parade held. It could be said that the defendant has succeeded defending the case on a technicality. On that basis, the application for costs is denied. It would appear that the Appellant had put up forceful resistance when the police officer brought him to the injured person for identification. And the Magistrate referred to this as a factor when giving his oral reasons for refusing costs, but the details of the resistance are not before me and, as can be seen, resistance is not referred to in the crucial passage which I quoted from the Magistrate's written Reasons for Decision. Mr Hung, appearing for the Respondent, submits that the Appellant had brought suspicion upon himself and that the Magistrate had rightly exercised his discretion in refusing costs. But whatever effect resistance of this nature may be capable of having on costs, I do not think it safe or just to take resistance into account for the purposes of the present case. That an accused may have been convicted if a properly conducted identification parade had been held does not justify treating him as having been acquitted on a technicality and depriving him of costs on that basis. Indeed, Mr Hung conceded that. The appeal is allowed to award the Appellant his costs of the trial to be taxed. I will now hear the counsel on the costs of this appeal. (V. Bokhary) Judge of the Court of First Instance High Court Mr David Boyton, instructed by Messrs John M. Pickavant & Co, for the Appellant Mr Henry Hung, of the Department of Justice, for the Respondent PAGE - A B C D E F G H I 1udk 1udk i\$&. HCMA 553/2007 setup HCMA.dot setup Microsoft Word 9.0 HCMA 553/2007 Title Microsoft Word Document MSWordDoc Word.Document.8

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