

HONG KONG / JUDGMENT

HKSAR v. LEE TIN HUNG AND ANOTHER

COURT

Court of First Instance

DECIDED

27 March 2007

CASE / FILE NUMBER

HCMA1231/2006

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bjbj gSpv Ng)Y is an appeal against a conviction by two appellants for affray.

2. At 7.30 in the morning of 20th June last year, the appellants returned to an address in Temple Street to go home having been at a friend's birthday party. The magistrate found - and there is no real quarrel about it - that they were drunk. Outside the premises they wanted to enter was a group of men, said to be Nepalese, drinking beer. The magistrate found - and, again, there is no quarrel about it - that the 1st appellant here addressed them in offensive terms telling them to get out of the way and his rude behaviour set off all that followed. One of the men struck the 1st appellant; D4 rushed up and thereafter an affray took place with others joining in. Witnesses speak of an iron bar, a knife and a chair being used as weapons.
3. A crowd gathered to watch the incident. Two police vehicles with officers inside them arrived. The two police officers who gave evidence below described the fighting that they saw. It was suggested to them that what they were witnessing was an attack on these appellants and that their actions were actions taken reasonably in their self-defence or defence of one another. Those suggestions were rejected. The evidence from the officers was that they tried to stop what was going on but were unsuccessful. One of them drew his pistol; the other drew his baton. The nature of the fighting was such that those significant steps were taken. Eventually the fighting broke up and these appellants, according to the police officers, ran away.
4. It is not disputed today that an affray took place. The issue is whether the prosecution proved for sure that these two appellants were not acting in self-defence or defence of one another. Mr Burkett in his usual brisk way, makes it very clear what the narrow issue is: which is that if the violence was started by the other side, then self-defence was up and running. I agree with that. He goes on to say that there is no point of transition where a court could say it was sure that the self defence had ceased and unlawful fighting had taken over. With that, I do not agree.
5. The fight clearly took some time. There was a crowd of spectators. The police had to arrive. Time passed as they observed what was going on. I appreciate that people cannot judge to a nicety the degree of violence they use if they are attacked but you can tell if you watch a fight

going on if men want to fight, whether they are fighting each other or whether someone is acting in self-defence. This scene was acted out in front of the police officers. It demonstrated that a transition had taken place. Self-defence allows a man to do what is reasonably necessary in the circumstances. The evidence of the observing police officers demonstrates to me that the actions of the appellants were such that what they were doing was not reasonably necessary.

6. With the arrival of the police, which it is conceded must have been obvious to the combatants, came the opportunity to avoid any attacker and seek the protection of the police. Instead of that happening, the appellants continued to fight. Mr Burkett says it would be asking a lot of a police officer to make the concession that what he saw was an attack and self defence. Even supposing that to be correct, what these officers are able to point to is the action they took at the time in relation to what they observed. It was such that their uniformed presence, their shouts to stop, would not part these two sides from fighting and it required, as I have said, the drawing of a pistol and the display of a baton.
7. In my judgment, the evidence supports for sure the conclusion that what was happening when the police were there was not reasonably necessary; it was not self-defence. I do not just look at the evidence of the police officers. The defence called their own witness, an independent passer-by. He provided no real succour for the defence but on matters of detail such as how the initial contact went off between the two sides, he supported that which led to the finding that it was the 1st appellant who was spoiling for a fight.
8. The 1st appellant did give evidence. It is implicit in the findings made by the magistrate that it was rejected and all I need say in the circumstances is that that was not surprising. His view of his own behaviour that night was one in which he put himself unrealistically in a much better light than his actions deserved, a prime example of which was how he approached the men who were in his way. He said he approached with a polite request that they move which was, of course, undermined by his own witness.
9. In my judgment, there is ample evidence to support the finding of unlawful fighting on behalf of the two appellants. In those circumstances, the appeals against conviction are dismissed. (P Line) Deputy High Court Judge Mr Frederick Chung, Senior Government Counsel, of the Department of Justice, for the Respondent Mr Francis Burkett, instructed by Ong Hean Cheng & Company, for the 1st and 2nd Appellants PAGE - PAGE CRT32/27.3.2007/MMcG HCMA1231/2006/Reasons for Judgment 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 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 &`#\$ JUDGE.DOT setup Microsoft Word 9.0 judiciary Title WqSpv WqSpv WqSpv Microsoft Word Document MSWordDoc Word.Document.8

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