



IN THE PRIVY COUNCIL

No. 1 of 1973

ON APPEAL FROM THE COURT OF APPEAL

IN SINGAPORE

B E T W E E N:

KEPPEL BUS COMPANY LIMITED      Appellants

- and -

SA'AD BIN AHMAD      Respondent

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CASE FOR THE APPELLANTS

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Record

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| 10 | <p>1. This is an appeal from the judgment of the Court of Appeal in Singapore (Wee Chong Jin, C.J., Chua and Tan Ah Tah, JJ.) dated the 31st July, 1972, which dismissed the Appellants' appeal from a judgment of the High Court of Singapore (Kulasekaram, J.), dated the 5th April, 1971, whereby the Respondent was awarded damages in the sum of \$20,290 in respect of an assault and battery committed upon him by one Chiu Eng Kiam, the Appellants' servant employed by them as a bus conductor and hereinafter called "the conductor".</p>   | pp.46-53<br><br>pp.36-42            |
| 20 | <p>2. On the 8th May, 1967, at approximately 7.15 a.m., while travelling as a fare paying passenger on a bus operated by the Appellants, the Respondent was struck by the conductor on the left eye with a ticket punch. By his undated Statement of Claim, the Respondent sued the Appellants and the conductor for damage for personal injuries and loss and expense caused to him by the said assault. The conductor appeared in person: in his undated Defence, the conductor contended that the Respondent's injury was caused accidentally while he was defending himself from a blow by the Respondent. In their Amended Defence dated the 25th February, 1971, the Appellants admitted that they employed the conductor but denied liability on the ground that the said assault was not within the scope of the conductor's authority and was an independent act unconnected with his employment.</p> | pp.3-4<br><br>pp.5-6<br><br>pp.4-5  |
| 30 | <p>3. The Respondent gave evidence on his own behalf and called one witness, Mohamed Daud Bin Aman, another passenger on the bus. The Appellants called the conductor to give evidence on their</p>  | pp.9-15<br><br>pp.15-21<br>pp.21-28 |
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p.21 11.20-21      behalf, the conductor having elected not to give evidence on his own behalf.

p.9 11.8-10      4. The Respondent gave evidence that he was seated in the front portion of a 'Keppel' bus going to Jurong where he worked. He said that a lady passenger wanted to alight from the bus and the conductor asked her to wait at the door. The Respondent told the conductor that the lady might fall. There was then an altercation between the conductor and the Respondent. While the Respondent was seated, the conductor asked him who he was and then abused him in Chinese. The Respondent stood up and told the conductor not to say such things. During the altercation the bus stopped at a bus-stop and the lady alighted from the bus. The bus started off again and blows were exchanged. The Respondent could not say who aimed the first blow. Then people in the bus intervened and the Respondent sat down in his original seat. While the Respondent was sitting down, he felt his eye being poked and something hard hit his glasses, breaking them. When the Respondent sat down, the conductor was 2' in front of him. Within a second or two of sitting down, he felt the blow on his glasses.      10

p.9 11.8-10  
p.9 11.13-15  
p.9 11.17-19

p.9 11.19-21  
p.9 11.22-23

p.9 11.25-27

p.9 11.37-43

p.9 1.46 -  
p.10 1.1  
p.10 11.2-7  
p.10 11.14-16  
p.10 11.11-13      20

p.10 11.34-36  
p.11 11.1-3  
p.11 11.27-30      5. Under cross-examination on behalf of the Appellants, the Respondent said that he was seated in the rear half of the bus on the offside. The lady was seated in front of him with one seat between them. The conductor spoke to the lady in a harsh tone. When the conductor asked the Respondent who he was, the conductor was standing in front of the Respondent and the lady was at the door. The conductor then abused the Respondent in Chinese. By then the bus had stopped and the lady had alighted. The conductor then sold some tickets. He abused the Respondent again and the Respondent got up, touched the conductor's shoulder and told him not to say such things. The conductor further abused the Respondent. Two or three blows were exchanged and passengers in the immediate vicinity intervened. He sat down then and the conductor was in front of him. He then felt the blow. Under cross-examination by the conductor, the Respondent said that after the lady had alighted blows were exchanged and that was the only fight.      30

p.11 1.37 -  
p.12 1.1  
p.12 11.5-6  
p.12 11.9-10,  
15-18  
p.12 11.28-29      40

p.13 11.18-24

p.14 11.21-23

p.15 11.19-22      6. Mohamed Daud Bin Aman gave evidence that he boarded the 'Keppel' bus before the Respondent. A Malay lady told the conductor that she wanted to alight from the bus and he told her to wait at the door. The Respondent told the conductor that if he spoke like that he would report him to the bus company. Suddenly the conductor punched the Respondent: the lady was then seated      50

p.15 11.30-36

in the bus. The punch missed the Respondent. The Respondent then stood up. Not long after that, the bus reached a bus-stop and the lady alighted. After the lady had alighted, the witness heard the conductor abusing the Respondent in Mandarin. The witness then changed seats and went across to the other side of the bus. Just before he sat down in his new seat, he saw the Respondent and the conductor both standing and facing each other. The Respondent said to the conductor that the words he had used against him were bad. Nothing happened between the Respondent and the conductor and the Respondent sat down. The conductor, holding a ticket punch in his left hand, hit the Respondent on the left eye with the ticket punch breaking his glasses.

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7. Under cross-examination on behalf of the Appellants, the witness agreed that after the Respondent stood up two or three blows were exchanged none of which landed on the Respondent or the conductor. The witness said that there was a gap in the scuffle when the bus stopped and the lady got off the bus. During that gap, the conductor was collecting fares from the persons who had boarded the bus at the last stop. The conductor pressed the bell for the bus to start after the lady got off. The Respondent had sat down as the lady got off the bus. While the conductor was collecting fares, the witness saw the Respondent stand up (he thought for the purpose of alighting from the bus). The Respondent and the conductor were then facing each other. There was no blow then. The Respondent sat down. Then the conductor hit the Respondent's eye with a ticket punch which was in his left hand.

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8. Counsel for the Respondent addressed the learned Judge on the question of quantum and then closed his case.

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9. The conductor then gave evidence on behalf of the Appellants. He was a bus conductor employed by them at the material time. He said that a Malay lady, seated in the first row immediately behind the driver, wanted to alight from the bus but did not express that intention clearly. She raised her hand and he asked her if she wanted to get down but she did not answer. He asked her again and said that if she wanted to get down she should put up her hand and say 'brake'. He told her to move to the side of the entrance and wait there. He pressed the bell for the bus to stop and moved to the middle portion of the bus to watch the entrance. The Respondent walked up to him and asked him why he had chased the lady out of the bus. He told the Respondent that he was

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p.16 11.4-7  
  
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p.16 11.21-24  
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p.18 11.24-26  
p.19 11.7-8  
  
p.19 1.9 -  
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p.22 11.11-21  
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p.22 11.27-30

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p.22 11.30-31 teaching female passengers how to get down from the bus. The Respondent said that he wanted to lodge a complaint. The conductor told him that he could lodge a complaint and told him to mind his own business. The conductor asked the Respondent what he wanted. The Respondent then attempted to punch him in the face; he ducked his head to the right.

p.22 11.32-38 The conductor in turn punched at the Respondent but missed. Passengers in the bus intervened and stopped the fight. At that time the bus stopped and the lady got down. The conductor gave the signal for the bus to move off. After that he went on collecting the fares and punching tickets. While he was punching tickets in the middle portion of the bus, the Respondent was standing in front of him. Suddenly the Respondent punched him once on the left cheek causing a haemotoma. The conductor hit the Respondent: he was holding his ticket punch in his right hand. Accidentally the ticket punch touched the Respondent's spectacles.

p.22 11.38-41

p.22 11.41-44

p.23 11.3-5

p.23 11.5-7

p.23 11.8-11

Exhibit D2 p.57

p.23 11.12-16

p.23 11.20-22

p.23 11.24-27

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p.23 11.12-16

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p.25 11.11-12

p.26 11.7-9

p.26 11.10-12

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p.39 11.36-40

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p.39 11.43-46

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11. Kulasekaram, J., rejected the evidence of the conductor that he was struck suddenly on his cheek by the Respondent or that he accidentally broke

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- the Respondent's glasses. The learned Judge accepted the Respondent's witness' account that the conductor was collecting fares in front of the Respondent and being abusive in Chinese before he struck the Respondent suddenly and broke his glasses. He found that the Respondent was seated when he was hit by the conductor.
- 10 12. Kulasekaram, J. found as a fact that there was a distinct gap in the events between the Respondent and the conductor being separated by the passengers after the exchange of blows ('the earlier incident', Record p.39 11.46-47) and the second incident, when the conductor hit the Respondent. In the learned Judge's opinion the time between the two incidents was so short that 'for all intents and purposes the whole incident should be taken as one continuous event.'
- 20 13. On those findings, Kulasekaram, J. found the conductor liable in damages for the injuries he caused to the Respondent and rejected any question of self-defence.
- 30 14. Kulasekaram, J. then considered the question whether the conductor was acting in the course of his employment with the Appellants when he hit the Respondent, so as to make the Appellants vicariously liable. The learned Judge held that when the conductor hit the Respondent he was then maintaining order among the passengers in the bus; he was telling the Respondent by his act not to interfere with him in his due performance of his duties.
15. Kulasekaram, J., awarded the sum of \$20,000 by way of general damages plus \$290 agreed special damages and judgment was entered accordingly against both the conductor and the Appellants on the 29th April, 1971.
- 40 16. The Appellants appealed to the Court of Appeal in Singapore. The appeal was heard by Wee Chong Jin, C.J., Chua and Tan Ah Tah, JJ., and judgment was given on the 31st July, 1972, dismissing the Appellants' appeal.
- 50 17. In the judgment of the Court of Appeal, the evidence of the Respondent, his witness and the conductor was summarised. The judgment set out certain of the facts found by Kulasekaram, J. The Court then considered, inter alia, a submission on behalf of the Appellants that Kulasekaram, J., ought to have found that there was a distinct break between the first incident prior to the Malay lady alighting from the bus and the second incident, which occurred after she had alighted and the

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p.40 11.39-42  
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p.47 11.16-39  
p.47 1.40 -  
p.48 1.19  
p.48 1.20 -  
p.49 1.5  
p.49 1.8-  
p.50 1.8

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p.50 11.17-22

conductor had resumed his collection of fares. The Court said that what was material was that the learned Judge found that after the break, while the Respondent was seated, the conductor standing over him hit him on the eye with his left hand in which was the ticket punch.

p.51 11.19-24

18. The Court of Appeal then considered the Appellants' contention that Kulasekaram, J. ought to have held that they were not vicariously liable because this was not a case of a servant doing something he was authorised to do, albeit in a wrongful, unauthorised manner, but a case of an assault outside the province of his duties committed in the course of a private quarrel. The Court recited the conclusions of Kulasekaram, J., and considered that the difficult question in each case was whether or not the act done by the servant, albeit an unauthorised and wrongful act, was an act done in the course of the servant's employment. The

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p.51 11.29-36

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Court referred to Kulasekaram, J.'s view that although there was a distinct gap in the events between the conductor and the Respondent being separated by the passengers after the exchange of blows and the second incident when the conductor hit the Respondent in the left eye, the lapse of time between the two incidents was so short that for all intents and purposes the whole incident should be considered as one continuous event. That view, in the opinion of the Court of Appeal, disposed of the contention that the conductor hit the Respondent in the course of a private quarrel. The Court of Appeal considered that there was sufficient evidence for Kulasekaram, J. to conclude that in hitting the Respondent the conductor was acting in the course of his employment. Accordingly, the Court of Appeal dismissed the Appellants' appeal with costs.

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p.53 11.24-32

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p.53 11.40-41

19. The Appellants respectfully submit that Kulasekaram, J. and the Court of Appeal were wrong in their conclusion that the conductor was acting in the course of his employment when he hit the Respondent. The only relevant duty which it was concluded the conductor was performing in the course of his employment was the duty to maintain order among the passengers in the bus. It is respectfully submitted that there was no disorder among the passengers. Alternatively, the only disorder among the passengers was that of the conductor's own making. In the further alternative, if the circumstances had amounted to disorder among the passengers, the conductor's act of striking the Respondent in the left eye could not properly be regarded as any mode of carrying out his duty of maintaining order.

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20. It is respectfully submitted that the conductor

10 was not maintaining order at all, whether in an authorised or unauthorised manner. On the facts as found by Kulasekaram, J., after passengers had intervened in the exchange of blows and separated the Respondent and the conductor, the Respondent went back to his seat and the conductor began collecting fares. It is respectfully submitted that there was then no disorder in the bus and/or no warrant for the conductor to exercise his duty of maintaining order. It is respectfully submitted that the conductor's behaviour which followed in abusing the Respondent and in striking him after he had resumed his seat in no way related to any disorder in the bus. Such behaviour was adopted not in furtherance of the Appellants' business but for the conductor's private purposes.

20 21. Alternatively, it is respectfully submitted that Kulasekaram, J., should have found on the evidence that when the Malay lady alighted from the bus the conductor ceased to act in the course of his employment by continuing to abuse the Respondent.

30 22. Alternatively, the Appellants respectfully submit that there was no evidence to justify Kulasekaram, J.'s view that for all intents and purposes the whole incident should be taken as one continuous event. It is respectfully submitted that two alternative distinct breaks occurred, first, when the Malay lady got off the bus and, secondly, when the Respondent resumed his seat after the exchange of blows and the conductor began collecting fares. It is submitted that although the material events on the bus may have occupied a short interval of time they could not properly be regarded as one continuous event for the purpose of determining whether at each stage the conductor was acting in the performance of his duty to maintain order.

40 23. The Appellants respectfully submit that the judgments of the Court of Appeal and of Kulasekaram, J. were wrong and ought to be set aside and this appeal ought to be allowed with costs for the following (among other)

R E A S O N S

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1. BECAUSE the conductor was not acting in the course of his employment in striking the Respondent in the left eye;
  2. BECAUSE in striking the Respondent in the left eye the conductor was in no way acting in the performance of his duties as a bus conductor;

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3. BECAUSE Kulasekaram, J., failed to give due weight to the evidence and to draw proper inferences from it:
4. BECAUSE Kulasekaram, J.'s conclusion that the incidents on the bus should be treated for all intents and purposes as one continuous event was wrong and was not supported by any evidence:
5. BECAUSE the Court of Appeal was wrong in considering that Kulasekaram, J.'s conclusion set out in the fourth Reason hereof disposed of the Appellants' contention that the conductor hit the Respondent in the left eye in the course of a private quarrel.

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J.G. LE QUESNE

STUART N. MCKINNON



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-- and --

SA'AD BIN AHMAD      Respondent

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CASE FOR THE APPELLANTS

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