Criminal Law

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# Brief outline of the facts of the case

On 13 May 2003, the crown case depicted that a white Toyota utility was being driven by Abdali Khanafer out from the Frederick Street, Rockdale premises with the intention to make a right-hand turn in the street. A collision occurred where the road was wet and it had been raining. A vehicle was seen by Mr Khanfer travelling in a southerly direction along Frederick Street. The appellant was driving the Honda Civic and Mr Khanafer felt that the vehicle was at a safe distance. Mr Khanafer proceeded to the north but his vehicle stuck in the Honda Civics' rear that causes to spin. The Honda Civic collided into the parked vehicle on the southbound roadway side and the side of the driver was made a contact with the parked car (Austlii, 2013). The crown case depicted that the appellant was being travelled at a speed of 91 km/ hour when the collision occurred. The limit of speed was 50 km per hour. The Toyota utility passenger was suffered from right cheek fractured and sub conjunctional haemorrhage of the right eye. The injury consisted of the "grievous bodily harm" elements for the purpose of a crime under section 52A (3)(b) and the appellant was being charged. The appellant stated that he braked but there was no evidence. The appellant stated that the speed was 50 km per hour before the collision. However, there was a passenger in the appellant's car who gave evidence to support the case. The case was being heard on appeal in the court.

# Identifying legal issues

The two legal issues are being raised on appeal against the conviction. The first issue was that he was being deprived of the fair trial due to the late preface of the expert evidence on ground 1 and 2. Sergeant Kelly, the expert produced four written reports that estimated the speed of the appellant at the collision time using the physics formulae. Two years prior trial, the reports 1 and 2 was being produced. The reports 3 and 4 were being produced at the accomplishment of evidence. The counsel argued that the later introduction of reports 3 and 4 consisted of new material of specialist and technical nature was detrimental to the appellant to have the fair trial and it needs to be rejected. The trial judge denied the application and it was being held that the unfairness can be overcome by the adjournment for enabling the appellant for seeking his own expert or re-examining the witness with proper path to the jury (Austlii, 2013). The trial judge offered remedies was not taken by the appellant. The second issue was that the jury stated that he had grievous bodily harm was being unreasonable. The injuries were being suffered by the passenger associated with the accident lead to “grievous bodily harm” under section 52A (3) (b).

# Various legal principles

The jury found the appellant guilty for the dangerous driving that causes grievous bodily harm under the provision of section 52A(3)(b) of Crimes Act 1900. The passengers in the car were being suffered due to the accident which leads to "grievous bodily harm" under the section 52A(3)(b). Under section 8 (1) of the Criminal Appeal Act 1912, the board of discretion should order a new trial because of the occurrence of a miscarriage of justice. The evidence of Sergeant Kelly has been considered as the expert evidence under section 79 under Evidence Act 1995 (Barker, 2007).

# Examining the decision of the court

The court made the decision on the basis of the facts and evidence. The trial judge examined the evidence provided by Sergeant Kelly which was being submitted. After the submission of evidence, the counsel for appellant was applied for release of the jury and contended that the decision for conducting the trial will be made on the basis of the materials provided in the report. The late production of the expert evidence lead to the suffering of the appellant. The trial judge did not accept the application (Harvey, 2009). The jury held that the unfairness can be overcome by adjournment for enabling the appellant for searching own expert or evaluating the witnesses with the accurate method. The trial offered remedies which were being a note taken up by the appellant. The jury decided that the “grievous bodily harm” was being occurred under the section 52A(3)(b). The expert evidence provided by Sergeant Kelly in such a way that it was not fair to appellant for permitting it to be depended upon. The evidence of Sergeant Kelly needs to be submitted as the expert evidence under section 79 of Evidence Act 1995 (Kirton & Madunic, 2009). The section 17(2)(h) of the District Court Act 1973 gives the Rule Committee for making regulations for the purpose of the criminal jurisdiction of the district court concerning significant matters consisting of the expert evidence. However, the Criminal Procedure Rule consisted in the District Court Rules Part 53 does not include the expert evidence. The jury agreed with the conclusions and reasons of Beazley JA as per the grounds of 1(a),(b) and (C) and also to the ground 2 and ground 3.

# Discussing whether the decision of the court altered

On 4 May 2007, it was being informed to the court that the appellant has to serve the imprisonment of 18 months with the non parole period of nine months. The appellant did not appeal for bail pending and the sentence was being continued under section 18 of the Criminal Appeal Act 1912. The non-parole period was being served by him. The jury was satisfied that section 8(1) prudence need to be exercised against to make the order of the new trial by entering into the judgment of acquittal on appeal. The jury agreed to the sentence and the new trial do not require as per the case. The decision of the court was based on the law and regulations. The conclusions and reasons for Beazley JA were being accepted by the jury under the law (Wilson, 2012).

# References

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