

HONG KONG / JUDGMENT

CHAN KA MAN v. HKSAR

COURT

Court of Final Appeal

DECIDED

12 December 2007

CASE / FILE NUMBER

FAMC59/2007

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bjbj FAMC No. 59 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 59 OF 2007 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM CACC NO. 254 OF 2005)

Between: CHAN KA MAN Applicant

- and - HONG KONG SPECIAL ADMINISTRATIVE REGION Respondent

Appeal Committee : Chief Justice Li, Mr Justice Bokhary PJ and Mr Justice Chan PJ Date of Hearing : 12 December 2007 Date of Determination : 12 December 2007 D E T E R M I N A T I O N Mr Justice Bokhary PJ : At his first trial the applicant was convicted on four counts but acquitted on five counts based on five of the nine incidents the subject-matter of a complaint by the complainant. At his retrial on four counts the applicant brought out the fact that when the complainant eventually complained to the police, her complaint was ultimately of nine incidents. That was done with a view to showing the extent of the delay before she made any complaint to the police and using such delay to attack her veracity. It could not be established that any of the acquittals involved any finding that the complainant had been disbelieved. It is therefore rightly accepted by counsel for the applicant that, on the authority of HKSAR v. Wong Sau Ming (2003) 6 HKCFAR 135, none of the acquittals was admissible for the purpose of attacking the complainant's veracity by suggesting that it was based on her having been disbelieved. But it is reasonably arguable that the applicant was entitled to have the jury made aware, and properly directed on, the fact that he had been acquitted on the counts based on the five incidents in question or at least that he had not been convicted of any offence in relation to any of those five incidents, the purpose being to protect him by dispelling any notion in the mind of the jury that he may have been so convicted. And it is reasonably arguable that he has suffered substantial and grave injustice as result of the jury not having been so made aware and directed. He is granted leave to appeal on that basis and, we emphasise, that basis only. (Andrew Li) (Kemal Bokhary) (Patrick Chan) Chief Justice Permanent Judge Permanent Judge Mr Phillip Ross (instructed by Messrs Lo,

Wong & Tsui and assigned by the Legal Aid Department) for the applicant Mr Simon Tam (of the Department of Justice) for the respondent PAGE - PAGE - & `#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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