

HONG KONG / JUDGMENT

CHOI WING KAI v. THE QUEEN

COURT

Court of Appeal

DECIDED

20 February 1981

CASE / FILE NUMBER

CACC72/1981

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj CACC000072/1981 IN THE SUPREME COURT Criminal Appeal 1981 No. 72 BETWEEN CHOI WING KAI Appellant THE QUEEN Respondent

Coram: Liu, J. in Court. Date of Judgment: 20th February, 1981

JUDGMENT

This is an appeal from a decision of the learned magistrate returning a verdict of guilty against the appellant of having professed to be a member of a triad society. The Particulars of Offence read as follows: "CHOI Wing-kai, you are charged that on the 18th April, 1979 in Kowloon in this Colony, you professed to be a member of the Sun Yee On Triad Society, an unlawful society." A new recruit from the Royal Hong Kong Police, trained and detailed to infiltrate into triad societies, testified before the court. On instructions, he joined the Sun Yee On Society on the 9th May, 1978. There was some confusion as to dates, but it was established beyond reasonable doubt before the learned magistrate that he did so join the Sun Yee On Society. Criticisms levelled by counsel for the appellant cannot therefore be more than peripheral. Having gained acceptance by the Sun Yee On Society which was admittedly an illegal society, the under-cover agent Detective Constable Leung became familiarized with the connotations of the usage of terms such as "cousin" and "follow". He told the court that if one joined a triad society, one must follow a protector and that for members having the same protector, they would rank and address each others as "cousins". On the 18th April, 1979, by order of his protector, he proceeded to Hap Yee Tong with a view to making preparations for arranging chairs, coloured ribbons in the forthcoming celebration of the Tin Hau Festival. On location he met one Li, one Shuen and the appellant. He testified that those three i.e. Li, Shuen and the appellant and he worked TOGETHER. Li, according to the Detective Constable, was initiated into the Sun Yee On Society on the same occasion as he was. The Detective Constable claimed that Li introduced Shuen to him as one following TAM Ki. In turn, Shuen introduced the appellant to him as his i.e. Shuen's

"cousin" and also following TAM Ki. Upon the introduction, the appellant confirmed to Detective Constable that he, the appellant was Shuen's "cousin" and followed TAM Ki. The Detective Constable further testified that prior to that occasion, TAM Ki professed to him to be a member of the Sun Yee On Triad Society. This information is hearsay insofar as it seeks to prove the truth of the statement, but it is not hearsay insofar as it tends to reflect on the frame of mind of the Detective Constable. It is a piece of evidence admissible and accepted by the learned magistrate for showing that the Detective Constable believed TAM Ki to be a member of his own society. This evidence is of but little assistance. Let us go on the assumption first, that the utterances both by Shuen and the appellant on the 18th April, 1979 did constitute declarations of the appellant's triad membership. The next question to be answered must surely be whether having declared himself to be a member of an illegal society, the appellant can by the evidence given before the learned magistrate be connected with or tied to the Sun Yee On Triad Society. It was urged on behalf of the appellant that guilt must be proved by evidence beyond reasonable doubt and must not be based on speculation, particularly not merely to be inferred from the tenor of the evidence. Mr. Leung, appearing for the Crown pressed upon me that the circumstances must lead to the inescapable inference that in his declaration the appellant must have professed himself to be a member of the same Sun Yee On Triad Society. Counsel submitted that if different fractions had met on the 18th April, 1979, clarification would have been sought or given and that if indeed such clarification had been sought and given before the arrival of the Detective Constable, a Sun Yee On member, the identity of the illegal society; if a different one, would have been specifically spelt out in the introductions of Shuen and the appellant. The introduction was made in terms of a close tie, and they worked together in one chore. From the circumstances as related by the Detective Constable, the irresistible inference, I agree, is, assuming what was said in the presence of or by the appellant could amount to a declaration of his status or membership of an illegal society, that the appellant belonged to the Sun Yee. On Triad Society. I turn next to deal with submissions advanced on behalf of the appellant in the order as they were put. It was submitted that the evidence of the Detective Constable serving as under-cover agent for the Royal Hong Kong Police was unclear, ambiguous and untruthful. I do not share counsel's criticisms in that regard. It was further submitted that Detective Constable Wong could be no expert. His evidence was compared with certain passages in Stanton. On a fair reading of his evidence, I do not myself detect any inconsistency between the two. Both Detective Constable Wong and Detective Constable Leung testified as to the usage and meaning of the word "cousin". Certain passage in Stanton may, on the face of it, be so construed as to exclude the possible use of the word "cousin" among members of the triad society. The evidence of Detective Constable Wong who was accepted as an expert by the learned magistrate and whose acceptance I can see no good justification for interference and the evidence of Detective Constable Leung was in each case categorical as to the connotation of that word, when appropriately used. Bearing in mind the hierarchy as explained by the police officers in conjunction with the evidence they gave before the learned magistrate, I do not find the statement in Stanton to have the effect of diminishing the credibility and reliability of the evidence of both these police officers. Common sense in fact dictates that the usage of the word "cousin" in the circumstances prevailing is not a matter unusual or strained. It was further urged upon the court by counsel for the appellant that the

learned magistrate erred in his understanding of the decisions on mens rea. I accept and can find no good reason for interfering with the conclusion reached by the learned magistrate that the statements made by Shuen and the appellant himself could be and were in fact tantamount to declarations of his rank in a triad society. I have made reference to the evidence from which an irresistible inference may be drawn to connect the appellant with the same Sun Yee On Triad Society. Coming closer to the issue of mens rea, in my view, the declarations on the 18th April, 1978 in the circumstances as testified to in the evidence of both Constables were made to promote mutual interest of members of the same society. Li, Shuen, the appellant and the Detective Constable were then together involved in the preparations for the celebration of the Tin Hau Festival on the same location, in the same chore. It would be conducive to the welfare of members of the same chore. It would be conducive to the welfare of members of the same society if rank was clearly acknowledged. Weight of evidence and credibility of witnesses were generally attacked. The learned magistrate had an opportunity, denied of me, of observing the demeanour of witnesses. There is no justification, in my judgment, for disturbing his assessment of the witnesses and evaluation of their evidence. I have listened with care the submissions so ably made by counsel for the appellant. Everything that could possibly be said on his behalf has been said. For all these reasons, in my view, no part of the decision of the learned magistrate made on review can be faulted, and I order that appeal of the appellant be dismissed. (B. Liu) Judge of the High Court Representation: Mr. S.K. Leung, counsel for the Crown. Miss M. Moosdeen instructed by H.H. Lau & Co. for Appellant. PAGE PAGE PAGE - &`#\$ CACC000072/1981 CHOI WING KAI v. THE QUEEN Normal.dot tempuser Microsoft Word 9.0 Judiciary Hong Kong SAR Judiciary Hong Kong SAR CACC000072/1981 CHOI WING KAI v. THE QUEEN Title Microsoft Word Document MSWordDoc Word.Document.8 CACC000072/1981 CHOI WING KAI v. THE QUEEN Normal.dot tempuser Microsoft Word 9.0 Judiciary Hong Kong SAR Judiciary Hong Kong SAR CACC000072/1981 CHOI WING KAI v. THE QUEEN Title

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=6743

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/choi-wing-kai-v-the-queen-1981>

Prepared on 26 October 2026 · Esheria