

HONG KONG / JUDGMENT

HAU KING YEUNG v. HKSAR

COURT

Court of Final Appeal

DECIDED

29 March 2007

CASE / FILE NUMBER

FAMC1/2007

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

bjbj FAMC No. 1 of 2007 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 1 OF 2007 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM CACC NO. 375 OF 2005)

Between: HAU KING YEUNG Applicant

- and - HONG KONG SPECIAL ADMINISTRATIVE REGION Respondent

Appeal Committee: Mr Justice Bokhary PJ, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing: 29 March 2007 Date of Determination: 29 March 2007 D E T E R M I N A T I O N Mr Justice Bokhary PJ: This applicant seeks leave to appeal to the Court of Final Appeal against the Court of Appeal's judgment affirming his conviction, at his third trial, for a murder committed on 17 December 1996. It was his third trial because his conviction at the first trial had been quashed by the Court of Final Appeal which ordered a retrial, and his conviction at the second trial had been quashed by the Court of Appeal which ordered another retrial. Much of what the applicant seeks to argue before the Court of Final Appeal appears from the questions of law which he asks us to certify, the Court of Appeal having refused to certify them. These questions read :

- (1) whether, as a matter of law or practice, it can ever be right for an accused to be tried for the third time on the same charge when there has been inordinate delay between the event, the subject of the charge and the third trial; and
- (2) if the answer to the Question 1 is in the affirmative, whether as a matter of law, the judge in his summing-up should direct the jury to the risk to prejudice caused by the delay. The applicant also seeks our leave to appeal on the substantial and grave injustice ground, as to which he repeats the points indicated by those questions and adds complaints to the effect that a juror had been wrongly discharged during the trial and that he i.e. the applicant had been wrongly accused in cross-examination of lying. The reasons for refusing certification given by Stuart-Moore VP for the Court of Appeal were these : The first question

presupposes inordinate delay which we understand to mean a delay such as to prejudice a fair trial, in which case the question is hardly one that requires determination. Similarly, with the second question which is posed, it cannot be suggested that it is never right to order a third trial as this decision will be determined by issues which are entirely case-sensitive. Those reasons go, as it seems to us, essentially to the first question. And on that question they are sound. As for the second question, it is really a matter for consideration under the substantial and grave injustice ground rather than the point of law ground. We, too, refuse certification. On the substantial and grave injustice ground, having studied all the material put before us and having considered all the arguments urged on behalf of the applicant, we find ourselves unpersuaded that the way in which he was tried and his conviction was affirmed by the Court of Appeal involved whether by reference to doubt as to safety, oppression or anything else any departure from accepted norms such as would justify the grant of leave to appeal to the Court of Final Appeal on the substantial and grave injustice ground. Accordingly, leave to appeal is refused. (Kemal Bokhary) (Patrick Chan) (RAV Ribeiro) Permanent Judge Permanent Judge Permanent Judge Mr Graham Harris (instructed by Messrs Haldanes and assigned by the Legal Aid Department) for the applicant Mr John Reading SC and Ms Ada Chan (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

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=56553

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hau-king-yeung-v-hksar-2007>

Prepared on 27 October 2026 · Esheria