

HONG KONG / JUDGMENT

HKSAR v. ALI AHMED

COURT

Court of Appeal

DECIDED

15 November 2002

CASE / FILE NUMBER

CACC189/2002

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bjbj CACC 189/2002 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO. 189 OF 2002 (ON APPEAL FROM DCCC 43 OF 2002)

BETWEEN HKSAR Respondent and ALI AHMED Applicant

Before: Hon Stuart-Moore V-P, Yeung JA and Jackson J in Court Date of Hearing: 15 November 2002 Date of Judgment: 15 November 2002

J U D G M E N T

Hon Jackson J (giving the judgment of the Court):

1. On 19 April this year the applicant was convicted after trial in the District Court of an offence of burglary and he was sentenced to a term of 2 years and 6 months imprisonment.
2. On 2 August 2002 his application for leave to appeal against both his conviction and sentence was dismissed by Mayo VP. He renewed his application before us.
3. The applicant s ground of appeal as it was simply stated in April was that he is innocent. The learned Acting District Judge plainly took a different view.
4. The evidence adduced by the prosecution at trial was that the premises in question (by the name of Beer Disco Karaoke Bar) are situated on Tung Lo Wan Road in Causeway Bay. Those premises were closed and secured after business at 3:30 a.m. on 12 December 2001.

5. At about 4:50 a.m., police officers found the applicant and his co-accused inside those premises his co-accused was seen to be carrying some plastic bags which he promptly put down on the floor. When asked by the police what they were doing in the premises, the applicant and his co-accused claimed to be cleaners but declined to give any further information.
6. The applicant was searched and in his trouser pocket was found a credit card in the name of the Beer Disco Karaoke Bar . A check of the premises showed that they had been forcibly entered and ransacked. The plastic bags which the applicant s co-accused had been carrying were found to contain items belonging to the Bar and included compact discs, a compact disc player and some bottles of liquor. On one of those bottles was found a fingerprint of the applicant.
7. At trial the applicant elected to give evidence and, among other things, he told the court that whilst he had been in an alleyway close to the premises at the material time seeking to urinate following his consumption of some 8 cans of beer, he had not entered the premises; he was not in possession of the Bar s credit card and the fingerprint found on the bottle was not his.
8. The learned Deputy Judge, in his comprehensive reasons for verdict, rejected the applicant s account of matters. He concluded that it was untrue, and he accepted the prosecution evidence saying that (in his view) the evidence against the applicant was overwhelming. Before us, the applicant continued to maintain his innocence and said that because he was innocent he could add nothing regarding sentence. In our view there is nothing in this appeal either in respect of conviction or sentence. A sentence of 2 years and 6 months is an entirely appropriate sentence following trial for a burglary of commercial premises. The application is wholly without merit and it is dismissed. We direct that a period of 3 months which the applicant has already served shall not be reckoned as part of his sentence. (M Stuart-Moore) (W Yeung) (C G Jackson) Vice-President Justice of Appeal Judge of the Court of First Instance High Court Mr P S Chapman, SADPP of the Department of Justice, for the Respondent Applicant in person PAGE 1udk 1udk G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V i\$&`G rLy.E user ABC Paper05.dot setup Microsoft Word 9.0 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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