

HONG KONG / JUDGMENT

HKSAR v. ISLAM SIRAZUL

[2025] HKCA 739**COURT**

Court of Appeal

DECIDED

7 August 2025

CASE / FILE NUMBER

CACC165/2024

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CACC 165/2024 [2025] HKCA 739 On appeal from [2024] HKDC 903 and [2024] HKDC 904 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CRIMINAL APPEAL NO 165 OF 2024 (ON APPEAL FROM DCCC NO 3 OF 2023)

BETWEEN HKSAR Respondent and ISLAM SIRAZUL Applicant

Before: Hon Zervos JA in Court Date of Hearing: 7 August 2025 Date of Judgment: 7 August 2025

J U D G M E N T

On 5 June 2024, following a trial before District Judge G Lam (the judge), the applicant was convicted of one charge of attempted robbery, where it was alleged that he attempted to rob a mobile telephone from a cleaner at a playground (Charge 1), and one charge of resisting a police officer in the due execution of his duty (Charge 2). On 21 June 2024, he was sentenced to a total term of 42 months and 3 weeks' imprisonment. On 5 August 2024, the applicant filed a notice for leave to appeal against conviction and sentence out of time by about two weeks. The applicant appeared in person, having had legal aid refused on 24 September 2024. In an affirmation dated 2 August 2024 attached to his notice, the applicant explained the late filing was due to obtaining a translation of the document. In his appeal against conviction, he complained that his conviction on Charge 1 was "unjust and unjustifiable" as it relied mainly on PW1's evidence, and the judge was biased against him due to nationality or race. In respect of Charge 2, he argued that the witness did not see him resist arrest. In his appeal against sentence, he contended that his sentence for attempted robbery was far excessive compared to other robbery cases. On the evening of 5 September 2022, the applicant ran towards Madam Ouyang Li Ping (PW1), who was standing near a bench at Chun Yin Square Playground in Yuen Long, and attempted to snatch her

telephone. As PW1 ran away, he pursued and grabbed her from behind. She fell and he tried again to take her telephone, but fled when two passersby intervened. PW1 sustained minor abrasions, and her telephone screen was cracked. The applicant was pursued by two police officers. He resisted arrest and had to be subdued. At the scene, PW1 identified the applicant as her assailant. CCTV footage revealed him pursuing and scuffling with PW1. He stated in a cautioned interview that he wanted to check if PW1's telephone was his missing telephone and borrow it to make a call. The applicant testified that he had two mobile telephones, including a light blue Samsung telephone similar to PW1's telephone, which he purchased with a payment from his friend Mr Hassan (DW2). After making calls with his Samsung telephone at the playground, he left the telephone there. He then returned to search for it. He explained he asked PW1 about it in Bengali and tried to borrow her telephone to call his missing telephone. As she walked away, he followed her to explain himself, but did not try to snatch her telephone. He claimed he was cooperative with the police and did not resist arrest. The judge accepted the evidence of PW1 and the police officers, and rejected the applicant's evidence as "ludicrous and defying common sense". He found the "discrepancies" in PW1's evidence irrelevant, and her not witnessing the applicant's resistance did not contradict the police evidence. Having considered the CCTV footage, he found the applicant's explanation not "remotely plausible" and concluded that the applicant had tried to snatch PW1's telephone by force and had resisted arrest. The applicant is a Form 8 recognizance holder from Bangladesh and has been in Hong Kong since 2013. He had a clear record. The judge adopted a starting point of 39 months' imprisonment for Charge 1, which was enhanced by 4 months for his immigration status and discounted by 1 month for his clear record, arriving at 42 months' imprisonment. For Charge 2, the judge adopted a starting point of 4 weeks and discounted by 1 week for his clear record to 3 weeks' imprisonment. He ordered both sentences to run consecutively, resulting in a total term of 42 months and 3 weeks' imprisonment. The judge's reasons for verdict and sentence are unassailable. He was correct to characterise the defence case as wholly implausible given the overwhelming evidence against him. The applicant's leave applications against his conviction and sentence are refused. The applicant is reminded of his right to renew his applications for leave to the Court of Appeal, but he is also informed of the consequences of doing so, which may include a direction for any loss of time spent in custody pending his appeal, if the Court were to come to the view that there was no justification for the renewal of his applications. (Kevin Zervos) Justice of Appeal Mr Raymond HM Chan, SPP (Ag), of Department of Justice, for the respondent The applicant appeared in person

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