

HONG KONG / JUDGMENT

HKSAR v. LAM CHUN MAU

COURT

Court of First Instance

DECIDED

25 September 2007

CASE / FILE NUMBER

HCMA650/2007

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bjbj HCMA650/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE (Appellate Jurisdiction) MAGISTRACY APPEAL NO. 650 OF 2007 (ON APPEAL FROM STCC12583 OF 2006)

BETWEEN HKSAR Respondent and LAM CHUN MAU (ellant who was unrepresented before me was convicted after trial in Sha Tin Magistracy of two offences of using a false travel document, a false Thai passport, contrary to section 42(2)(b) of the Immigration Ordinance, Cap. 115 (the Ordinance), being charges 1 and 4 respectively; of three offences of making a false representation to an immigration officer, contrary to section 42(1)(a) of the Ordinance, being charges 2, 5 and 7; and of two offences of signing a false notice for the purpose of procuring a marriage, contrary to section 34(a) of the Crimes Ordinance, Cap. 200, being charges 3 and 6. AUTONUMOUT In respect of the offences the subject of charges 1 and 4 involving the use of a false passport, the appellant was sentenced to six months imprisonment on each; for the offences the subject of charges 2, 5 and 7 relating to the false representations to immigration officers, he was sentenced to six months imprisonment for charges 2 and 5 and to ten months imprisonment for charge 7; for the offences the subject of charges 3 and 6 relating to his signing a false marriage notice, he was sentenced to two months imprisonment on charge 3 and to three months imprisonment on charge

6. All sentences were ordered to be served concurrently to each other except for the sentence imposed in respect of the 7th charged offence which was ordered to run consecutively to the others. That resulted in a totality of 16 months imprisonment. AUTONUMOUT The appellant appeals all his convictions on general grounds. He had originally appealed also his sentences, but he abandoned his appeal against sentence before me today and it was dismissed. In my view he was quite right to abandon that appeal. AUTONUMOUT The facts of the case are somewhat unusual. AUTONUMOUT The prosecution case was that the appellant had originally come to Hong Kong in 1994 on the strength of a false Thai passport, which stated his name to be Sae Chao Cheiofo, his date of birth to be 29 May 1969 and his place of birth to be Thailand. All that information was said to be false, the appellant being

born in Chaozhou, China in 1970 with the name Lam Chun Mau and he having obtained the Thai passport by illicit means in Thailand. Those facts founded charges 1 and 2. AUTONUMOUT He used the Thai passport when applying for various extensions of his stay in Hong Kong as a visitor and for travelling in and out of Hong Kong. AUTONUMOUT Subsequently he married a local Hong Kong woman and to do so had filed a notice of marriage with the Hong Kong marriage registry on 1 December 1994 and had produced the Thai passport for that purpose. Those matters founded the 3rd charge. AUTONUMOUT He then, on 7 June 1995, in order to stay for longer periods in Hong Kong, made an application for a dependent's visa to the Hong Kong Immigration Department using the information contained in his Thai passport. Those matters founded charges 4 and 5. AUTONUMOUT Later in June 1995, he applied for the issue of an identity card. He remained in Hong Kong and seven years later in 2002 received a permanent identity card. He then divorced his wife in August 2002 and on 17 June 2003 filed a marriage notice in respect of his intended marriage to another woman. In support of that notice he submitted his Thai passport as well as his Hong Kong identity card. Those matters founded the 6th charge. AUTONUMOUT On 17 June 2005 the appellant arrived in Hong Kong from the mainland through the Lo Wu Immigration control point, where he had presented his Hong Kong identity card, which included the same false personal particulars as his Thai passport to an immigration officer and that matter founded the 7th charge. AUTONUMOUT Subsequently on 7 July 2005, the appellant submitted an application for Chinese citizenship at the Nationalisation Section of the Hong Kong Immigration Department. In the course of an interview with Hong Kong immigration officers for the purposes of that application, he told them the details on his Thai passport were false and provided them with his true particulars. He subsequently was interviewed under caution on five separate occasions and each time confirmed the personal particulars contained in the Thai passport were false, and that he was in fact Lam Chun Mau, born in China in 1970. He was arrested and subsequently charged with the present offences. At trial he challenged the admissibility of the cautioned statements he had made, claiming that they had been obtained by way of inducement. They were admitted. In his evidence on the general issue the appellant claimed the details in his Thai passport were in fact true. AUTONUMOUT The appellant in his cautioned statements had said that in 1988 as a young man aged 18 years he had left China and travelled to Thailand on a Chinese passport. There he had an uncle Lam Lung Chim who bribed a Thai village elder to provide the appellant with various documents which included a Thai identity card and birth certificate eventually allowing the appellant to obtain a Thai passport. AUTONUMOUT In his evidence on the general issue he told the magistrate that he was in fact born in Thailand with the name Sae chao Cheiofo but that he then went to China with his mother as a young child and returned to Thailand at the age of 16 or 17 years. In China he had used the name Lam Chun Mau. But in Thailand he eventually received a genuine passport in his Thai name, which was in fact his true identity. AUTONUMOUT The appellant before me now advances a further version of events. He says he had lived in China as a child and had been taken to Thailand as a young man by an adoptive father who helped him become a nationalised citizen. He was told by this person that he was in truth a Thai. He says he was not sure of the

relationship between his adoptive father and his mother in China and found it embarrassing, however he had always thought he had originally been born in China. AUTONUMOUT Then five or six years ago his adoptive father had told him that his Thai nationality had been purchased and that was the first inkling he had that his Thai passport may not have been genuine. He told me that he did not have a chance to tell this story at trial. AUTONUMOUT As to that assertion I must say that I cannot accept that he had no chance to tell his story at trial. He had every chance. He was represented by a duty lawyer. He elected to give evidence. There were no constraints upon his evidence. Equally in my view he had every chance to tell this story to the immigration officers during the course of his many interviews but he did not do so. AUTONUMOUT This third version of events he has put before me I regard as little more than an attempt by him to provide a further and improved story explaining both his admissions to the immigration officers who interviewed him and his evidence at trial. AUTONUMOUT The magistrate's findings of fact were firmly grounded on the evidence before him and were open to him on that evidence. As the magistrate said the fundamental issue at trial was one of credibility. He rejected the appellant's evidence on the basis that he was ... an untruthful witness. He was inconsistent, contradictory and clearly gave an account that was just not credible. On that basis he had rejected the appellant's contention that the cautioned statements he gave were obtained improperly and admitted them into evidence. In doing so he acted well within the parameters of principle governing the admission into evidence of a defendant's statements. AUTONUMOUT The magistrate found the version of events given by the appellant in his five cautioned statements to be reliable and true. In that regard the magistrate said ... I have carefully examined the details of the record of interview. They constitute a highly detailed account of his identity and his life as Mr Lam Chun mau. They contain such wealth of detail that in my view they must be based in reality. It would appear unlikely that the defendant would make up such a detailed account of a false identity. ... He went on to say I am satisfied after reading the interviews that the defendant was determined to establish himself as being Chinese and was prepared to provide the details to support that. But it was made clear to him during the course of these interviews that he was under suspicion of making a false representation. And despite that, he went on to make the full admissions that he did make. I find that those admissions must be reliable and truthful whereas the later explanation given by the defendant in evidence on the general issue is not reliable, not truthful. AUTONUMOUT No criticism can be made of the magistrates findings of fact, and there is no merit in the complaints advanced by the appellant in that regard. AUTONUMOUT Miss Polly Wan for the respondent very fairly brought my attention to one further matter. The offences the subject of the 3rd and 6th charges were so charged pursuant to section 34(a) of the Crimes Ordinance. That section is contained in Part V of Cap. 200, as is section 43 of the Ordinance. AUTONUMOUT Section 43 is in these terms A person shall not be liable to be convicted of any offence against this Part, or of any offence declared by any other enactment to be perjury or subornation of perjury or to be punishable as perjury or subornation of perjury, solely upon the evidence of one witness as to the falsity of any statement alleged to be false. [Emphasis added] AUTONUMOUT Miss Wan points out that all the incriminating

evidence in this case came from only one source, the appellant himself, and for that reason it may be that the convictions of the appellant on the 3rd and 6th charges run counter to section 43. AUTONUMOUT There is, perhaps oddly, little authority precisely on point but a number of judicial dicta exist which suggest that section 43 (or more precisely the English equivalent of it contained in section 13 of the Perjury Act 1911) does not require corroboration or support from more than one witness where a defendant admits the statement he made was untrue. AUTONUMOUT In *R. v. Rider* [1986] 83 Cr.App.R. 207, a case involving consideration as to when a judge should direct a trial jury as to the operation of section 13, Mustill LJ said at 210 ...where the prosecution sets out to prove that the statement in question was untrue and does not invite a conviction on any other basis the trial judge should (subject to one important qualification) always bring section 13 to the attention of the jury. The qualification is that if the defendant admits that the statement was untrue the prosecution need call no evidence to prove this fact; section 13 does not apply; and there is no place for a direction on the matter. [Emphasis added] AUTONUMOUT In my view that must be correct. The admission referred to by his Lordship seems to refer to a pre trial admission, given the context of the reference, but even if his Lordship was referring to an admission made during the course of trial it seems to me the same principle applies. AUTONUMOUT Admissions by a defendant as to the untruth of an earlier statement made by him on oath are regarded as being in a different category to that which section 43 of the Ordinance is directed. Section 43 (as with section 13 of the Perjury Act 1911) was a clarification of a common law rule which had been to similar effect. In *R. v. Peach* [1990] 2 All ER 966 Lord Lane CJ approved of the reasons for the common law rule as set out by Byles J in *R. v. Hook* 169 ER 1138 at 1142. Byles J said The rule of law requiring two witnesses to prove an assignment of perjury reposes on two reasons; first, that it would often be dangerous and always unsatisfactory to convict the defendant when there is but the oath of one man against the oath of another; secondly, that in all judicial proceedings all witnesses, even the most honest, would be constantly exposed to the peril, annoyance and oppression of indictments for perjury if the single oath of another man, without any confirmatory evidence, might, in point of law, suffice to convict. AUTONUMOUT It may be argued that where an accused admits to an investigating officer that he has, in some way, committed perjury, then that evidence of his confession is insufficient to warrant a conviction because it is really evidence of perjury from a single source, that is the accused, and that is in breach of section

43. But in my view that argument must fail. AUTONUMOUT Firstly, section 43, in its reference to the evidence of one witness, is plainly referring to a prosecution witness and not to the accused himself. The purpose of the section is the prevention of a conviction of an accused where it is one person's word against that of the accused. An admission made by an accused in writing and signed by him is in a wholly different category and in my judgment by itself is capable of proving an offence of perjury. AUTONUMOUT But in the present case there is another compelling reason as to why section 43 does not prevent a conviction. That is because the police officer who interviewed the appellant under caution gave evidence as to

those interviews, and it was through that officer that the records of those interviews as signed and adopted by the appellant were produced. AUTONUMOUT In other words, there was on the occasion when the appellant admitted the offences the subject of charges 3 and 6 a police officer present who later testified to the effect the appellant made the admissions as well as producing a signed record of the admissions. It seems to me that evidence, in any event, is sufficient to satisfy the section. That is, that the evidence of the prosecution witness against the appellant was supported also by the signed record of interview. AUTONUMOUT The appellant s appeal against his convictions has no merit and is dismissed. (M.A. McMahon) Judge of the Court of First Instance, High Court Ms Polly Wan, SCG of Department of Justice, for HKSAR Appellant in person PAGE - PAGE A B C D E F G H 1udk 1udk &`#\$ & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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