

HONG KONG / JUDGMENT

HKSAR v. LAM SIU MAN

COURT

Court of First Instance

DECIDED

6 November 2007

CASE / FILE NUMBER

HCMA771/2007

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

bjbj Appellant

Before: Deputy High Court Judge Line in Court Date of Hearing: 6 November 2007 Date of Judgment: 6 November 2007

J U D G M E N T

This is an appeal against sentences totalling 18 months imprisonment, imposed following pleas of guilty to two counts of conspiracy to defraud. The substance of each conspiracy was an arrangement with others whereby the Appellant entered into a bogus marriage in order to facilitate the partner gaining entry into Hong Kong. In line with established sentencing practice, the magistrate took a starting point in each case of 18 months, reduced it to 12 months by virtue of the plea of guilty, but because there were two offences, he overlapped them such as to produce the total of 18 months. Let me say immediately that there is nothing wrong with those sentences if this were an ordinary case. They were passed by a very experienced magistrate, who gave clear reasons why he took the course he did. He had heard mitigation on behalf of the appellant from the duty lawyer. Today, the appellant has been unrepresented in front of me. She produced to me a document which was an assessment of her IQ from the Special Education Section of the Education Department. Even through the assessment was an old one, done when she was a schoolgirl, what it assessed her as being, was someone with mild grade mental deficiency with an IQ of between 50 and 69. I asked her how she had got the assessment and she told me that her family had sent it to the prison social worker, because this appellant had told that social worker about attending a special school and the family had, therefore, sent the assessment in at the social worker's request. I have also received a letter written from the appellant. She reveals in that that she was, in fact, introduced by a neighbour whom she had known for a good few years to the men who organised these conspiracies, and that she felt she had been cheated herself, and used, and claimed that she did not receive a single cent in respect of either matter. The mild

grade mental deficiency and the lack of any reward for her going through the sham marriages did not feature in the mitigation advanced below. At my invitation, the appellant gave evidence before me today. She explained she simply did not tell the duty lawyer about not receiving any money, and that in fact, even now, she does not really understand the assessment that was made in the report that I have mentioned earlier, it being written in English. She had not told her family about the trouble she was in and they were not there to support or help her at the hearing below. Her three brothers have attended today and one of them has given evidence on her behalf. I am not going to repeat the evidence I have heard, but the picture is substantially different from what which was presented to the magistrate and that is why I am going to pass a different sentence. But I wish to emphasise that if I had had the information he had, I would have passed the sentence he passed, because he rightly identified the fact that these were grave crimes, designed to undermine our Immigration laws. I will mention one matter, though, that has arisen, merely so he understands why I have acted as I have in part. He was presented with written brief facts that related that - because there was a co-accused below - D1, this appellant, and D2 had received their reward. I have heard today from the appellant, and it came across in a way that was distinctly convincing that it was the neighbour who pocketed the money. I asked her if she knew how serious this was when she was doing it. She very frankly told me that she did. Her low IQ and mild grade mental deficiency had not robbed her of an insight into the wrong she was doing and there must be a prison sentence. However, in the circumstances where I judge someone has, in fact, used her disability and she benefited nothing from it, I take the view that I can mitigate the length of the sentence. I would like to add that the bona fides of what I have heard today as to the true picture are well established. The brothers had not come here expecting to be called upon, and the way in which what I like to think is the true position has emerged has been entirely convincing. In the special circumstances of this case, I shall quash the sentences that were passed and impose sentences of 9 months imprisonment on each of these counts, to run concurrently. I shall say again that there was nothing wrong with the original sentences on the basis of the information then available and that these sentences are based on exactly the same perception as to the seriousness of the general nature of such conspiracies, but that the peculiar facts and the humanitarian considerations that exist in this particular case allow me to take the course I have. (P Line) Deputy High Court Judge Representations: Mr Harish Melwaney, Senior Government Counsel of the Department of Justice, for the Respondent Appellant: (D1) Lam Siu Man (K L M N O P Q R S T U V & `#\$ bZ < =RM/L\$t\ [g\k [g\k =RM/ Normal.dot setup Microsoft Word 9.0 judiciary 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=59167

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-lam-siu-man-2007>

Prepared on 25 October 2026 · Esheria