

HONG KONG / JUDGMENT

HKSAR v. LAM TAK WAH

COURT

Court of First Instance

DECIDED

5 December 2007

CASE / FILE NUMBER

HCMA1042/2007

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bjbj HCMA1042/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 1042 OF 2007

BETWEEN HKSAR Respondent and LAM TAK WAH Appellant

Before: Deputy High Court Judge Geiser in Court Date of Hearing: 5 December 2007 Date of
Judgment: 5 December 2007

J U D G M E N T

On 5 October of this year the appellant was convicted of a single count of indecent assault contrary to section 1221 of the Crimes Ordinance Cap. 200, Laws of Hong Kong, by Mr John Glass, a magistrate sitting at Tsuen Wan Magistrates Courts. He was fined the sum of \$4,000. He has filed a Notice of Appeal against conviction on the general ground that the conviction was against the weight of evidence or that there was no sufficient evidence whereon to found the said conviction. His Notice of Appeal against sentence pleads that the sentence was too severe. With regard to conviction, only one witness was called by the prosecution. That is the victim; I believe her name was Miss Chow wei, who gave evidence to say that whilst she was at work as a security guard on the day of the alleged offence, she noticed a spider on the window facing the entrance to the lift lobby of Tower 3-5 Caribbean Coast, Tung Chung. She asked her employer - that is, the appellant - to remove it and pointed at it. Whilst doing so, she said that she felt his - that is, the appellant's - hand brush her buttock twice. The appellant evidently said that he could not see the spider and asked Miss Chow to point it out once again. Whilst doing so, Miss Chow said that she felt the appellant's arm brushing her chest. There followed a verbal altercation between the two of them. The appellant, who had a clear record, elected to give evidence. In evidence he confirmed that there was a spider, but he said that he did not assault the victim. In his comprehensive statement

of findings, the learned magistrate, being mindful of the burden of proof, was satisfied that the appellant had touched Miss Chow s breast by a single act of pressing his arm against her chest as he moved his arm across it. He found that this was not an accident, and he further found that Miss Chow had not fabricated this evidence. He also found this act, coupled with the earlier incident of the appellant touching her buttocks, to be indecent. With regard to the appellant s evidence, in view of the appellant s clear record, the learned magistrate gave himself a full Berrada warning. However, he disbelieved the evidence of the appellant and found him to be untruthful. Conversely, he accepted the evidence of Miss Chow, who he described as being an honest and reliable witness. The learned magistrate found the prosecution to have proved the charge against the appellant beyond all reasonable doubt. The learned magistrate had the benefit of seeing and hearing the witnesses; that is, the victim on the one hand, and the defendant on the other, for himself. He was entitled to come to the findings that he did. He gave himself the necessary warnings in assessing the appellant s evidence. I see no basis for interfering with the learned magistrate s decision. There is no merit in this appeal. The appeal against conviction must be dismissed. With regard to the question of appeal against sentence, the appellant was fined the sum of \$4,000. I need say no more than the sentence, on any view, was neither manifestly excessive or wrong in principle. The appeal against sentence also fails and is similarly dismissed. Deputy High Court Judge Geiser Representations: Miss Teresa Kam, Government Counsel of the Department of Justice, for the Respondent Appellant, Lam Tak-wah, in person

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