

HONG KONG / JUDGMENT

HKSAR v. LAU SAU WAN

COURT

Court of Appeal

DECIDED

8 July 1997

CASE / FILE NUMBER

CACC106/1997

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

bjbj& IN THE COURT OF APPEAL No. 106 of 1997 (Criminal) BETWEEN HKSAR Respondent and LAU SAU WAN Applicant

Coram: The Hon. Power, VP, Mayo, JA & Wong, J. Date of Hearing: 8th July 1997 Date of Delivery of Judgment: 8th July 1997

J U D G M E N T

Wong J. (giving the judgment of the Court): The Applicant pleaded guilty before Judge Hawkes in the District Court to two charges of Evasion of liability by deception and was, on the first charge, sentenced to 2 years imprisonment and, on the second charge, 6 months, to be served concurrently. A charge of theft involving a larger amount of \$600,000.00 was not proceeded with. She now seeks leave to appeal against the sentence. The facts are set out in the Amended Summary of Facts as follows: Au Yeung Kee () was 60 years old and was the sole proprietor of Chu Kee Roast Meat Shop in Hoi Pui Street, Tsuen Wan. In about 1993, PW1 came to know this Defendant. Defendant persuaded PW1 to give her money for property investment. During the period from 1993 to 1995, PW1 gave Defendant a total of HK\$3 million. In 1994 and 1995, Defendant gave 2 cheques to PW1 but were later found to be bounced. Defendant was arrested and was interviewed. Under caution, she admitted having borrowed HK\$600,000.00 from PW1 as she lost money in gambling in Macau. Defendant also admitted that, in view of the liability of repayment, she gave 2 cheques for HK\$380,000.00 and for HK\$21,000.00 to PW1 in 1994 and 1995. However, she had no money in her bank accounts at the time of the issuance of these two cheques. On the first cheque, Defendant admitted having affixed a company chop in the name of Midland Realty so as to avoid encashment of it by PW1. She confessed that she signed in the name of Chan Siu-ling on the second cheque for the purpose of preventing PW1 from obtaining money. The relevant banks confirmed that the above mentioned 2 bank accounts were personal accounts in the name of the Defendant. Before sentencing, the judge called for and obtained a

probation officer's report, which he considered. He observed that it was the Applicant's gambling habit that led her to commit the offences and none of the \$400,000.00 had been repaid. He took a starting point of 3 years on the first charge and 1 year on the second charge. He considered these charges relate to separate offences and consecutive rather than concurrent sentences ought to be imposed but at the same time bore in mind the totality principle. He did at the end impose concurrent sentences. Mrs. Yew who appears for the Applicant before us argues that the two cheques were issued to evade part of the liability of the \$600,000.00 loan and therefore should be treated as one transaction. In treating them as separate offences the judge must have had in mind a more severe sentence as the starting point. It has to be noted that the first cheque was issued in July 1994 and the second in April 1995. There was a time gap of 9 months between these two cheques. Even if we accept the two charges as one transaction, it makes no practical difference because the judge applied the totality principle and passed concurrent sentences. Mrs. Yew further argues that the amount involved was not very substantial when compared with other cases of this nature that came through the District Court. The answer to this must be that the amount is not insubstantial. Despite inflation and high rising cost of living, \$400,000.00 is still a large amount of money to the average wage earner. The Applicant had practised the deception on the victim, an old lady of 60 years, for a considerable period of time. She was utterly and thoroughly dishonest and never had any intention to repay the debt from start to finish. This is evident from the fact that she affixed a company chop in the name of Midland Realty on the first cheque, and signed the second cheque in the fictitious name of Chan Siu-ling. She had done this deliberately to prevent the victim from cashing the cheques. Counsel also submitted and this is not a case of breach of trust and made reference to the Probation Officer's Report and the Applicant's previous criminal record. We do not think it is necessary to go into them. Suffice to say that the judge had taken all relevant mitigating factors into account and the overall sentence of two years imprisonment is, in our judgment, neither wrong in principle nor manifestly excessive. The starting point of 3 years adopted by the judge in respect of charge 1 is, in the circumstances of this case, appropriate. The application for leave is refused. (N. P. Power) (Simon Mayo) (Michael Wong) Vice-President Justice of Appeal Judge of the First Instance Mr. D. G. Saw, S. C. & Ms. Lily Ho for D.P.P. Mr. Lily Yew (D.L.A.) for the Applicant. - PAGE - W[SO @& @& @& @& > @Epson LQ-100 ESC/P 2 LPT1: ESCP2MS Epson LQ-100 ESC/P 2 Epson LQ-100 ESC/P 2 MSUD Epson LQ-100 ESC/P 2 Epson LQ-100 ESC/P 2 MSUD Epson LQ-100 ESC/P 2 " & 6" IN THE SUPREME COURT OF HONG KONG Judiciary Normal Microsoft Word 8.0 IN THE SUPREME COURT OF HONG KONG Title _PID_GUID Wingdings Roman Microsoft Word 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=489

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-lau-sau-wan-1997>

Prepared on 29 October 2026 · Esheria