

HONG KONG / JUDGMENT

# HKSAR v. LEE CHI MING

## COURT

Court of First Instance

## DECIDED

13 July 2007

## CASE / FILE NUMBER

HCMA18/2007

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Before: The Honourable Mrs Justice V. Bokhary in Court Date of Hearing: 13 July 2007 Date of Judgment: 13 July 2007

## J U D G M E N T

The Appellant was convicted after trial before Peter Hui, Esq. in the Magistrate s Court on a charge of having inflicted grievous bodily harm on a Ms Buyoccan, contrary to s. 19 of the Offences Against the Person Ordinance, Cap. 212, and sentenced to 6 months imprisonment. He now appeals against conviction and sentence. At the time of the incident which resulted in the charge, Ms Buyoccan was employed as a domestic helper at the Appellant s home. The incident was an altercation which arose because the Appellant and his wife were unhappy that Ms Buyoccan had allowed a neighbour to take their daughters out. Subject to the point which forms the first ground of appeal against conviction, Ms Buyoccan s evidence was to the effect that the Appellant threw a mug at her and the mug hit her mouth. The Appellant s evidence was to the effect that Ms Buyoccan apologised, he asked his wife to forget the matter, his wife then started an argument with him, he became upset and banged a mug onto a decorative cabinet, and Ms Buyoccan was presumably hit in the mouth by a broken fragment of the mug. The first ground of appeal is that Ms Buyoccan had admitted at the end of defence counsel s cross-examination of her that it had occurred to her that her chances of succeeding in a compensation case would be greater if the Appellant were found guilty and that is why she had failed to tell the trial court the truth. The relevant questions and answers were as follows: Q. But has it occurred to you that you might be entitled to claim some compensation in respect of the injury that you unfortunately sustained? Has that occurred to you? What do you mean, sir? Have you thought about the fact that you might be entitled to some form of compensation some money because of the injuries you received to your mouth? Of course, sir. It has occurred to you. Yes. Yes. And has it also occurred

to you since this incident that your chances of succeeding in a compensation claim are greater if the defendant is found guilty of the matters which you have alleged against him? Has that occurred to you? Yes. And is that why you have failed to tell the court the truth in these proceedings? A. Yes. In convicting the Appellant despite that last answer, the Magistrate took the view that Ms Buyoccan had misunderstood the question. Perhaps she did, but is the conclusion that she did safe and fair to the Appellant? A foundation was laid and a context was set for the last question and, on the face of it, the last answer is clear. None of the questions asked in re-examination resulted in any withdrawal of that answer or in the repetition of any of Ms Buyoccan's earlier evidence that the Appellant threw the mug at her. Whatever one may suspect, I do not feel able, in the state of the evidence and having regard to the course of the trial, to regard the sustaining of this conviction as safe, satisfactory or fair. That being so, I allow the appeal to quash the conviction on the first ground of appeal against conviction. There is therefore no need to deal with the other grounds of appeal against conviction or with the appeal against sentence. (V. Bokhary) Judge of the Court of First Instance High Court Mr Peter Duncan, SC and Mr Tony C Y Li, instructed by Messrs Yeung & Chan, for the Appellant Mr Edmond Lee, SGC of the Department of Justice, for the Respondent

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