

HONG KONG / JUDGMENT

HKSAR v. LI FENGXIA

COURT

Court of First Instance

DECIDED

5 December 2007

CASE / FILE NUMBER

HCMA937/2007

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Before: Hon Beeson J in Court Date of Hearing: 28 November 2007 Date of Judgment: 28 November 2007 Date Reasons for Judgment Handed Down: 5 December 2007

REASONS FOR JUDGMENT

The Appellant pleaded guilty before Principal Magistrate, Mr Jenkins on 3 counts of Making a False Representation to an Immigration Assistant under Part II of the Immigration Ordinance, Cap. 115 (Charges 1 to 3) and a 4th count of Conspiracy to Defraud (Charge 4). Charges 1, 2 and 3 related to different dates: Charge 1, 8 November 2003; Charge 2, 2 June 2004 and Charge 3, 27 July 2004. The conspiracy to defraud related to a period in June 2004. The Appellant was sentenced to a total prison term of 18 months, and she appeals against that sentence on the ground that it was too severe. The Appellant was married and living on the mainland. Her father had a sworn brother who was a Hong Kong resident. He had suggested to her that she use a false identity to marry him, so she could settle in Hong Kong. The Appellant agreed and acquired a false 2-way permit in the name of LI Yifeng, which she used to enter Hong Kong on 8 November 2003 (Charge 1). On 2 June 2004, by using the same permit she made a false representation as to identity (Charge 2). On 3 June 2004, she filed a notice of marriage with the sworn brother at the Hong Kong Marriage Registry (Charge 4). On 27 July 2004, the Appellant used another false 2-way permit to enter Hong Kong and married the sworn brother in Hong Kong a few days later. The Appellant had a clear record and her counsel told the court in mitigation that the Appellant had married the father's sworn brother in order to look after her sister in Hong Kong. The Appellant appeared in person on this appeal, and after hearing what she had to say and reviewing documents produced by her daughter who was in court, the Appellant was advised that her appeal was dismissed, and that written reasons would be given at a later date. These are the reasons for that dismissal. Before hearing the Appellant's submissions, she was advised of the

charges, reminded of the sentences imposed and reminded too of the letter that she had put into court in support of her appeal. The Appellant's grounds and submissions were rather muddled, but overall amounted to a denial of guilt and complaints that the Immigration officers had forced admissions from her by withholding food and that she had been coached by them as to what she should write. The Appellant claimed that at the time she was questioned she was in a hurry to go to Macao and so told Immigration officers that she was not acquainted with a person whose name was on a bank book she had, in the hope that she could leave earlier. She denied that she had used another identity to come to Hong Kong. She said she was frightened. Her elder sister, who lived in Hong Kong, was in Toi Shan visiting her mother who was ill. She herself had been forced by Immigration officers into a room which housed a photocopier and a microwave. She alleged she was told to squeeze herself into the remaining space which was less than 12 inches across. She alleged further that Immigration officers placed a meal box beside her, although she had not been allowed to eat. She claimed she did not know what the officer wrote down. She suffered from presbyopia and was not wearing her glasses, so she could not see. She had agreed to go along with whatever they said. The officer made up everything. She was coached as to what she should write and told that only then would she be allowed to eat. The officers assured her that they would mitigate for her and ask for her early release. The Appellant told the court that she admitted she was wrong, but she was an illegitimate child, who in the old society would have had to be drowned. She had acted as she had because she wanted to protect the reputation of her parents, but as her father was now dead and her mother on the verge of dying, from diabetes and dementia she asked rhetorically what the point was of protecting them any more. She denied ever using a permit in the name of LI Yifeng and reiterated that she had been forced to admit the offences. The Appellant's daughter, who was in court, produced various letters written in mitigation. One written by the Appellant herself coincided, more or less, with what she said in court. One letter was written allegedly by the grandmother who stated she was ill and her days numbered and expressed the hope that she could see her daughter. The Appellant complained that while she had been remanded for 4 months she had a severe illness related to her spine and that on one or two occasions she had fallen into a coma at Tai Lam Prison, and had had to go to hospital. She asked the court to redress injustices, and produced various documents which, purportedly, supported her submissions. The Appellant claimed that LI Hung-chiu, the person named with her in the conspiracy to arrange a false marriage, was actually her natural father, rather than her father's sworn brother. She produced a declaration by a man of that name dated 10 December 2001, witnessed by a Sham Shui Po district councillor. She produced a letter from her putative father to herself addressing her as daughter. She produced the death certificate of her father, her own birth certificate and a hospital certificate from Mainland China regarding her mother's condition. None of these documents were translated, but were interpreted by the court interpreter. The Appellant claimed further that she had not known about Charge 4, the conspiracy, but had thought that it was the same as the first three charges. The Admitted Facts produced in the Magistracy contained an admission that Li was her father's sworn brother, and that she had treated him as a father since 1978. There had been no attempt by the Appellant to draw any of the material raised on appeal to the attention of the Magistrate. She complained that she had not been given an opportunity to speak directly to the Magistrate. However, if these

matters had been exercising her mind, as she claimed, she would have raised them with counsel who acted for her at plea. None of the matters raised on appeal were matters which indicated the Magistrate was in error in convicting on these charges. The Magistrate noted that since March 2006, there had been a significant number of cases similar to the bogus marriage charge coming before him. The scheme which the Appellant sought to enter, meant that she was eligible for a 90-day permit to stay in Hong Kong, rather than the normal 7-day permit, and she would have been eligible to apply to settle in Hong Kong at a later date in due course, if the dishonest scheme had not been detected. The Magistrate considered the Appellant had gone to great lengths to achieve her aim of settling in Hong Kong and for that reason a deterrent sentence was appropriate. He referred to a number of cases where a starting point of 18 months was adopted, although for appellants who were Hong Kong residents. The only reason advanced in mitigation of the Appellant's behaviour, was that by marrying the father's sworn brother, she would be able to look after her sister in Hong Kong. The Magistrate took into account the relevant authorities and sentencing principles. He assessed the sentences for Charges 1 to 4 and imposed 12 months imprisonment for each of Charges 1, 2 and 3. For Charge 4, he adopted a starting point of 18 months, which he reduced to 12 months to reflect her guilty plea. He reviewed totality and found a total sentence of 18 months imprisonment was appropriate. He ordered that the sentences on Charges 2 to 4 be concurrent, but that 6 months of those sentences be served consecutively to the sentence on Charge 1. There is nothing excessive about these sentences, nor is there any basis for allowing the appeal. The appeal is accordingly dismissed. (C-M Beeson) Judge of the Court of First Instance Ms Agnes Chan, SGC of Department of Justice, for the Respondent Appellant appearing in person

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