

HONG KONG / JUDGMENT

HKSAR v. SAINI RAHUL

[2018] HKCFI 1661**COURT**

Court of First Instance

DECIDED

21 June 2018

CASE / FILE NUMBER

HCMA176/2018

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bjbj HCMA 176/2018

**[2018] HKCFI 1661 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO 176 OF 2018 (ON APPEAL
FROM STCC 3996 OF 2017)**

BETWEEN HKSAR Respondent and Saini Rahul Appellant

Before: Deputy High Court Judge V Bokhary in Court Date of Hearing: 21 June 2018 Date of
Delivery of Judgment: 21 June 2018

JUDGMENT

The Appellant appeals against a sentence of 16 months and 3 e (Cap 115). The facts admitted by the Appellant were, as stated by the Magistrate in his Statement of Findings, as follows:

- a. At around 2008 hours on 18 October 2017, Immigration, Police and Labor Department conducted a joint operation at a restaurant namely Casablanca Restaurant & Caf located at 6/F, Ashley Centre, 23 25 Ashley Road, Tsim Sha Tsui.
- b. Labour Inspector disguised as a customer and was seated near the bar area of the said restaurant. After PW3 made the food order, defendant was seen t le in front of the Labour Inspector and served the tea to him.
- c. Defendant was later intercepted for proof of identity check which revealed that he was a holder of immigration recognizance form. Defendant was detained for investigation.

- d. Record check revealed the defendant entered Hong Kong on 19 April 2015 and was permitted to remain as a visitor in Hong Kong until 3 May 2015. On 4 May 2015, he surrendered to the Immigration Department. After investigation, he was released on the same day. He was later issued with an immigration recognizance on 19 June 2015. On 27 February 2017, a removal order was issued against the defendant and was served to him on 9 March 2017. Such order remains in force against him on the material day.
- e. On the material day, the defendant was found to have taken up employment as an odd job worker at Tsim Sha Tsui, while being a person in respect of whom a removal order is in force. Defence counsel had, the Magistrate noted, said the following in mitigation:
 - a. Defendant is 23 years old. He received education up to the first year in university in his home country and then he worked as a packing worker in a company, in a tobacco company, before he comes to Hong Kong.
 - b. Defendant's parents, elder sister and elder brother are all in India.
 - c. The incident happened on 18 October 2018 as he was helping his friend, not receiving any payment but in exchange for some food because the 19th October 2018 is the festival Diwali in India.
 - d. Defendant has a clear record.
 - e. Defendant pleaded guilty and showed his remorse. The considerations which the Magistrate had in mind when deciding on the sentence were, he said, these:
 - a. The guideline laid down in the case of HKSAR v. Usman Butt & Ors, where the starting point for this type of offence should be 22 months imprisonment.
 - b. Defendant has a clear record.
 - c. Defendant's person background and hardship. However, these have little effect on sentence considering the sentencing guideline.
 - d. A trial date was fixed for 29th December 2017, but Defendant applied for an early plea and pleaded guilty on 15th December 2017. Considering the authority of HKSAR v. Ngo Van Nam, a 25% discount is given for his guilty plea. The Appellant had sought a review out of time. The Magistrate said that he had no jurisdiction to entertain the review out of time. He also said that he would not have acceded to it even if the application had been taken out on time. As to that, these are his reasons: In any event, the defendant asked for review because his mother became ill and he has not committed serious offence like murder or rape. However, my decision for sentence based on sentencing guideline set out in Usman Butt. Defendant's mother illness would not be a reason for me to depart from that sentence. I have already given him one-fourth discount for his guilty plea after trial date was fixed. The Appellant's grounds of appeal are these: m SAINI RAHUL ([prisoner registration number]), hereby [sic] would like to apply for appeal against sentence of my case (Case no. STC 3996/2017), because I think the judge just gave me a too heavy sentence etc.). Moreover, I have big problem Sir/

Madam - in India in my family, when I had heard my sentence since my mother always in coma and without any contact [sic] she always sick and worried about me. I am also Sir in big stressed and very depressed always about my family because I have already big sentence. Mercy Sir/Madam please decrease my sentence as shorter as possible for you. Thank you. In addressing the court, the Appellant handed up a lengthy letter written in Hindi the contents of which were interpreted by the Hindi interpreter into English in court. In it, the Appellant sets out his family circumstances and he basically in effect asks for his sentence to be reduced on humanitarian grounds. I have considered everything that has been said by the Appellant and while human sympathy for the Appellant is natural, I do not see that there is any proper basis on which, humanitarian or otherwise, for his sentence to be reduced. I have considered everything that has been said by the Appellant and while human sympathy for the Appellant is natural, I do not see that there is any proper basis on which, humanitarian or otherwise, for his sentence to be reduced. (V Bokhary) Deputy High Court Judge Mr Prakash L Daryanani, SPP of the Department of Justice, for the Respondent The Appellant appeared in person

[2010] 5 HKLRD 452

[2016] 5 HKLRD 1 - PAGE * MERGEFORMAT - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V gd?i gd?i & # \$ & # \$ & # \$ [Content_Types].xml _rels/.rels theme/theme/themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O} Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .)x E /,EE\} theme/theme/_rels/themeManager.xml.rels 5 6? \$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/> [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml 4m1` s\ 9z8 `f&8 pyA) IIQ> jp#jWZCy7 #hWIP w-8:~ 2%wb~ drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E 2ZCt [ml84; uA~Z LX7Ge \ \$K/* #HXI drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content_Types].xml dlyLho ;d]6 yJ.; _rels/.rels fLV:*]m@= T;GI b9`5 drs/e2oDoc.xml #&\*Ys |\_W- kEG@ JVLk8- TA E A7rB P\*8| I"/ uA~Z LX7Ge drs/downrev.xmlL 6)i6E @\*\YS \DQ, [Content\_Types].xmlPK \_rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK [Content\_Types].xml dlyLho ;d]6 yJ.; \_rels/.rels fLV:\* ]m@= T;GI b9`5 drs/e2oDoc.xml gJs)rL. Vv5S TA E I"/ I[Zv \^P"a drs/downrev.xmlL 6)i6E @*\YS \DQ, [Content_Types].xmlPK _rels/.relsPK drs/e2oDoc.xmlPK drs/downrev.xmlPK &tBL ;R,U VZ" E*p# ;R,U _V5i High Court Normal.dotm Windows User Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL"

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