

HONG KONG / JUDGMENT

HKSAR v. SO CHI MING

COURT

Court of First Instance

DECIDED

7 November 2007

CASE / FILE NUMBER

HCMA856/2007

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

bjbj PkblR' nt

Before: Deputy High Court Judge Line in Court Date of Hearing: 7 November 2007 Date of Judgment: 7 November 2007

J U D G M E N T

This is an appeal against a conviction for an offence of failing to comply with the indication given by a red light, contrary to the Road Traffic (Traffic Control) Regulations. The offence was said to have occurred on 2 October 2006, at the junction of Tai Pak Tin Street and On Chit Street. A police officer gave evidence at the trial. He said he was driving his motorcycle along Tai Pak Tin Street and that the defendant's motorcycle was 40 metres in front of him. The defendant was driving at about 60 kilometres per hour. The traffic light ahead changed from amber to red when the defendant's motorcycle reached the white line 8 metres from the light. The defendant then accelerated up 60 to 70 kilometres per hour and drove through the red light. When he was stopped, the policeman said the defendant made this remark, Ah Sir, several marks deducted and I will be disqualified. Can you prosecute for another offence? The defendant gave evidence. He said he was driving at 40 kilometres per hour and that when he reached the junction the traffic light was green and it was still green when he went through it. He tells me today, though, and I presume he said this at the trial as well, that the policeman was not behind him but in fact was on the other road, namely, On Chit Street. As regards the remark made he admitted saying, Ah Sir, several marks deducted and I will be disqualified, but denied saying, Can you prosecute for another offence? The magistrate heard both men give evidence. He believed the policeman to be truthful and accurate and did not find the same for the defendant and accordingly convicted him. The defendant was represented in the court below and it was also submitted on his behalf that there was a reasonable excuse available because there was not time properly to stop safely, due to the late change of the light from amber to red. Having believed the policeman, the magistrate

found that the light was red when he went through it, therefore it must have been on amber some substantial time before turning to red, and so found that there was plenty of time to pull up safely, which was the obligation on a man with an amber light facing him, and so said he found there was no reasonable excuse. Given the finding that the motorcycle went through a red light, the finding about the reasonable excuse had to follow. The issue before me today is, am I sure the light was red? These small cases of a short, quick incident with one man's word against another are some of the most difficult to try in the whole of the criminal calendar. Obviously, the magistrate had the advantage of seeing and hearing both men actually give evidence. I merely have the evidence on paper, and in summary form at that. The point is obviously to be made that any appeal judge would be slow to come to a different conclusion without having had the advantage the magistrate had, but I am not going to decide the appeal just on that basis. It is going to be the case that either someone has not told the truth or someone is mistaken. When it comes to telling the truth, one is bound to ask, Why would a complete stranger - the policeman to the motorcyclist - choose to invent a false case against him? Of course, it is possible that a motorcycle officer out of motiveless malignity might choose to do that, but it would be in effect an extraordinary thing for him to do, namely, knowingly invent a false case against a man whom he knew to be innocent. Even though, the way the issues have fallen and emerged, it looks like it is one side or the other not telling the truth, I really suspect the answer to the case is more likely to be found in consideration of mistake. The event in question took place very quickly. Momentary decisions are made and there is a very human temptation, without dishonesty, to recreate it with hindsight in a way favourable to yourself. If I analyse mistake here, it seems to me it is easy for a motorist to make an error of judgment, a quick mistake. It is not something that is hard to contemplate. When it comes to considering the evidence of the police officer, there is the fact that he acted immediately in a way that was completely consistent with his observation. That is another way of saying the scope of a mistake on his part was much the less. The appellant today has urged me that the policeman would not have been able to make the correct observation, saying that at 40 metres the policeman would not be able to see whether or not the motorcycle in front had gone through a red or a green light. He showed me some photographs taken since the magistrate's trial and for the purpose of this appeal, which I have allowed him to use. In fact, the photographs demonstrate to me what my common sense tells me, which is, at 40 metres you can see perfectly well whether the vehicle in front is going through a red or a green light. From the material available to me, I am sure the offence was proved and accordingly the appeal against the conviction is dismissed. (P Line) Deputy High Court Judge Representations: Ms Laura Ng, Senior Government Counsel of the Department of Justice, for the Respondent Appellant, So Chi Ming (K L M N O P Q R S T U V &`#\$ bZ < =RM/L\$t\ [g\k [g\k =RM/ Normal.dot setup Microsoft Word 9.0)XR' Title llR' llR' llR' Microsoft Word Document 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=59141

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/hksar-v-so-chi-ming-2007>

Prepared on 27 October 2026 · Esheria