HONG KONG / JUDGMENT

HKSAR v. SO LOI AND ANOTHER

COURT
Court of Appeal

DECIDED
13 July 2007

CASE / FILE NUMBER
CACC189/2006

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Burrell J (giving the judgment of the Court) AUTONUMOUT On 8 May 2006, both applicants (D1 and D2) were convicted after a trial in the District Court before H.H. Judge Geiser of offences of conspiracy to blackmail and claiming to be a member of a triad society. They were both sentenced to three years imprisonment. They both sought leave to appeal against conviction. However, today D2 has indicated that he does not wish to pursue his application and accordingly his application is dismissed. AUTONUMOUT In a nutshell, the allegation against the applicants was that in late September and early October 2005, they both made demands for protection money on behalf of the Sun Yee On Triad Society of which they claimed to be members. The demands were made at a dockyard at Sam Mun Chai where water ski coaches berthed their speed boats. The demand was for a monthly fee of $500 per boat owner which if not paid would result in the boats being burnt. The proprietor of the dockyard (PW1) and four boat owners (PW2 to PW5) gave evidence for the prosecution. Both applicants elected to give evidence in their defence. AUTONUMOUT In his written reasons for verdict, the judge made a number of findings of fact. The more important ones were as follows :

(1) On 22 September 2005, both applicants came to the boat yard and spoke to PW1. PW1 knew them as Ah Loi and Ko Fai. They told PW1 that they had come to collect tor dei from the boat owners. The sum mentioned was $500 per month from each boat owner and if it was not paid the boats would be burnt.

(2) On 25 September 2005, PW1 saw them again in the yard. He heard D2 say to PW2 I am here to collect tor dei . Each boat owner has to pay $500. If you don t pay your boats will be burnt.

(3) On 6 October 2005, D1 came to the yard and, after speaking to PW1, wrote down his name, his triad society and his phone number on a piece of paper. About five or six copies of this note were made for distribution purposes. PW1 gave further evidence in relation to an incident on 9 October 2005 which related solely to D2 at trial. AUTONUMOUT At later identification parades, they were both positively identified by PW1 and PW4 as the persons

who had approached them and PW3 also made an identification in relation to D2. AUTONUMOUT In his defence, D1 said that the conversations they had had with the prosecution witnesses concerned the issue of their fishing nets being damaged by the speed boats but he denied making any demands for tor dei , he denied making any threats to burn boats or making any claim of membership of a triad society and, finally, he denied writing any notes as alleged. The judge did not believe him and did not accept his evidence. AUTONUMOUT The judge rightly observed that The issue in this case is extremely narrow and effectively boils down to one of credibility of the witnesses He described the prosecution witnesses as straightforward utterly convincing unshaken in cross examination and entirely truthful and he rejected D1 s version of events. The grounds of appeal AUTONUMOUT On this application, D1 has been represented by Mr Kevin Hon. AUTONUMOUT Mr Hon s first ground is that the judge failed to consider material discrepancies in the prosecution evidence. Two discrepancies are particularized. First, PW1 said that he followed D2 only into the boatyard whereas PW2 said that PW1 walked into the boatyard ahead of the others and described PW1 s actions slightly differently from PW1 s own version. Secondly, PW1, PW3 and PW4 gave different dates upon which they were given the note allegedly written by D1. AUTONUMOUT Hon complains that these discrepancies were not properly addressed by the judge. The judge did not explain how he had resolved them. The judge had said in his reasons for verdict There were some minor discrepancies in their evidence but such as they were, I did not find them to be so significant as to overshadow their general credibility. AUTONUMOUT We consider this ground to be wholly without substance. The judge was aware that there had been some discrepancies but clearly did not consider them to be material. He said they were minor and we agree. The order in which people walked into the boatyard is of no material significance. As to the note written by D1, the issue was whether or not he had written it. It was perfectly reasonable for the judge when deciding, as a fact, that it had indeed been written by him, to be unconcerned that different witnesses had remembered different dates upon which the incident had occurred. AUTONUMOUT It is not incumbent on a judge to deal in detail with every discrepancy or inconsistency. It is part of a judge s role to evaluate the significance of discrepancies. The judge in this case correctly evaluated them as insignificant and as such was not required to further elaborate upon them. His failure to do so does not tarnish his factual findings in relation to the key ingredients of the offences in any way. AUTONUMOUT The second ground is that the conviction was unsafe and unsatisfactory. It is submitted that because of certain factors, there is a lurking doubt about D1 s guilt. The factors relied on are that PW1 had known D1 for many years and there was no explanation as to why he would suddenly ask for tor dei . Also, that D1 had only one minor conviction 18 years earlier but PW1 had three more recent and more serious convictions. AUTONUMOUT The judge correctly directed himself on the question of character. There can be no grounds for interfering with his findings on the evidence. He saw and heard the witnesses. We are satisfied that the applicant had a fair trial and that the submission that the application should be granted because of a lurking doubt is untenable. AUTONUMOUT The application is dismissed. [Submission by counsel] AUTONUMOUT Having given Mr Hon opportunity to

address us as to why an order for loss of time should not be made, we remain satisfied that this is a case in which it is appropriate to exercise our powers under section 83W of the Criminal Procedure Ordinance, Cap.

221. We order that three months of the time that D1 has spent in custody pending the hearing of this application shall not be counted towards the three years sentence he is currently serving because this application was bereft of any merit. (M. Stuart Moore) Vice-President (M.P. Burrell) Judge of the Court of First Instance (A.R. Suffiad) Judge of the Court of First Instance Ms Mary Sin, SADPP of Department of Justice, for the Respondent Mr Kevin Hon, instructed by Messrs Rowdget W. Young & Co., for the 1st Applicant The 2nd Applicant in person PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V 1udk 1udk H I J K L M N O P Q R S T U V &`#$ <(z&; & 6" ABC.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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