

HONG KONG / JUDGMENT

HKSAR v. SO SING

COURT

Court of First Instance

DECIDED

12 April 2007

CASE / FILE NUMBER

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HCMA 1147/2006

IN THE HIGH COURT OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

COURT OF FIRST INSTANCE

MAGISTRACY APPEAL NO. 1147 OF 2006

(ON APPEAL FROM KCCC NO. 4748 OF 2006)

BETWEEN

HKSAR Respondent

and

So Sing Appellant

Before: Deputy High Court Judge E Toh in Court

Date of Hearing: 12 April 2007

Date of Judgment: 12 April 2007

J U D G M E N T

The Appellant was charged together with two other defendants, on one count of Conspiracy to Live on the Earnings of Prostitution of Others, contrary to section 137(1), 159A and 159C of the Crimes Ordinance, Cap. 200, Laws of Hong Kong.

The Defendant was convicted after trial of the charge. The 3rd

Defendant at the trial had pleaded guilty and the Appellant was convicted together with the 2nd Defendant. The Appellant was the 1st

Defendant in the court below.

The charge stated that the Appellant and Fung Yeuk-fei and Cheung Ping on 8 November 2005 in the New San Diego Hotel in Chi Wo Street in Hong Kong did conspire to knowingly a live wholly or in part on the earnings of the prostitution of others.

The evidence primarily came from two undercover officers. On 8

November 2005, PW1 and PW2 were instructed to conduct an undercover police operation at the New San Diego Hotel. At about 7:40

pm on that day, PW1 said he made a phone call to a male and the male who answered, claimed that he was a person called Ah Lik. PW1 then told Ah Lik that he had been given the telephone number by his friend and that he would be bringing along a friend to his place at around 8:30 pm. This person called Ah Lik agreed and told PW1 to go to the lobby of the New San Diego Hotel and when he arrived there, he should call him.

So at about 8:30 pm, PW1 and PW2 arrived at the lobby of the Hotel and PW1 then called the same telephone number for Ah Lik. When the call was picked up, PW1 identified himself as Ah Wing who had called him earlier. This person, who identified himself as Ah Lik, told PW1 that there was no room available at that time and told PW1 to call him later. After about 5 minutes, PW1 called the person Ah Lik again on the same telephone number and over the phone, the person called Ah Lik told PW1 to go up to Room 1109.

At about 8:39 pm, both prosecution witnesses went up to the 11/F. When they walked out of the lift, they saw the Defendant and a female who was subsequently charged and was the 2nd Defendant at the trial. The Appellant and the 2nd Defendant was standing at the end of the corridor. PW1 then pretended to drop a metal tape on the ground. The Defendant then pointed at PW1 and asked him if he was Ah Wing. PW1 then pointed at the Defendant and asked him if he was Ah Lik. The Defendant replied yes. Then both prosecution witnesses walked up to the Appellant and the 2nd Defendant. PW1 shook hands with the Defendant. They then went to Room 1108.

The Defendant knocked on the door of Room 1108. The door was opened, PW1 saw 2 males inside the room then the Appellant told both prosecution witnesses to sit down. After entering the room, the prosecution witnesses also saw 6-8 women sitting by the window or close to the bed inside the room. The Appellant then said to PW1 and PW2,

you can choose a girl here

. The Appellant then turned to PW1 and said,

you cannot make a selection because I have got this one ready to serve you

. The prosecution witness said that when the Defendant said those words he had his hand on a girl and pointed at her. After saying those words, the Appellant told PW2 to choose a girl. PW1 then went to the toilet and then PW2 chose the girl, but the Defendant told PW2 that the girl had already had a booking and asked him to choose another one and so PW2 agreed and made another selection.

When PW1 and PW2 said they wanted to smoke, one of the male in the room went into the toilet to fetch an ashtray and the 2nd

Defendant also took an ashtray from the bedside for PW2. At that time the prosecution witnesses said the Defendant said,

you have to wait here because there are no cheap room available. We must get cheaper room from the hotel to keep our cost

. Then the Appellant left the room. The prosecution witnesses gave an account of what happened inside the room after the Appellant left the room and then one of the girls inside the room asked to go out to buy food. She was allowed out after the male had looked through the peep-hole on the door. During that time the 2nd

Defendant

s telephone rang and she answered the call and said there was no room that night. Then, subsequently the Appellant returned to the room and he was holding a packet of condoms and a computerised key card. He gave these 2

items to the girl he had chosen for PW1 and then there was a conversation about the Chinese word

as the girl had asked what that meant and then apparently according to the prosecution witness, the Appellant had replied that it meant that that would not make her to have a baby after doing it.

The Appellant turned to PW1 and told him to go to Room 1205. PW1 left the room with the girl and they went to Room 1205. She used the key card to open the door and then she undressed and was naked. She unwrapped the packet of condom that was given to her earlier by the Appellant. She took one out and put it on the bed then she went to the toilet. When she came out from the toilet, she helped PW1 to undress. When the police officers knocked on the door, the girl looked

through the peep-hole, she double-locked the door and came back to the bed and tried to make a phone call but PW1 stopped her. The police officers then entered the room and PW1 then left the room and went to Room 1108. That woman inside the room with PW1 was subsequently arrested. A condom and a packet of eleven condoms were seized at that time.

After PW1 had left Room 1108 with the girl, the Appellant asked PW2 about if he had made a further selection because the one that he had already chosen had gone to receive a customer. So PW2 then pointed out a girl and chose one. The Appellant said to PW2,

you can also go to the room. It is Room 1401

. So the Appellant then gave a card to the girl PW2 had chosen and then they left and went to 14/F to Room 1401. Inside the room, the girl helped PW2 to take off his shoes and socks and when PW2 said he was tired, the girl then massaged him. After massaging for 1-2 minutes, the police then knocked on the door and then subsequently entered the room. That girl inside the room with PW2 was subsequently arrested. Three condoms were seized and a tube of

jelly was also seized in the washroom.

Subsequently when PW1 and PW2 arrived back at Room 1108, the Appellant and D2 were still inside the room and these two officers then pointed out the Appellant and D2, to the arresting officers.

There were other police officers called to give evidence and one of them was the officer who arrested the Appellant and seized 2 mobile phones from the Appellant.

Subsequently, there were also admitted facts P76 which testified to telephone calls being made by other police officers to the same telephone number.

According to the admitted facts, PC33290 called the telephone number which is 96435595 to look for a prostitute, Queenie, a female Winnie received the call and said that Queenie would be available between 8:45 and 9:00 pm. As instructed by Winnie, this PC33290 called up again the same telephone number when he arrived at the New San Diego Hotel. This telephone number and the related SIM card was in fact seized from the 3rd Defendant at the trial, the defendant who had pleaded guilty.

It was also in evidence that it was the 3rd Defendant who had registered for the room and who had rented Room 501 and Room 1108. A bag belonging to the Appellant, a notebook which was exhibited as P55 was found inside the Appellant

s bag. Inside the notebook were entries that had dates, names and there were what appeared to be amounts of money registered in there. It appeared to be some kind of business record.

Subsequently, after the prosecution had closed its case, the Appellant elected to remain silent and called no witnesses. The Magistrate then accepted the evidence of the prosecution witnesses. She gave a very detailed account in her Statement of Findings of her assessment of both PW1 and PW2

s evidence and at the end of the day, found them to be honest and reliable witnesses and accepted their evidence in full. She paid attention to the fact that it had been submitted that both PW1 and PW2 wrote their statements at the same time, but she found that they were only writing their own statement, there was nothing untoward in that.

The learned Magistrate then considered the exhibit in the case and she paid particular attention to the notebook P55. She gave an account of what she could see from exhibit P55 at p.24-27 of the Appeal Bundle. It is clear that the learned Magistrate considered that this was obviously a business record and the learned Magistrate paid particular attention to the 5th section under the green plastic sheet has been extremely significant to this case because it dealt with the period of 31 October 2005 to 14

November 2005.

The learned Magistrate drew inferences that it was a record of different females having relations with different caller of telephone number at different time on a day. The learned Magistrate said that considering the notebook P55 and the evidence of PW1 and PW2, the only irresistible inference she could draw was that this book is related to the business of prostitution and that this is a record of the business of prostitution. At the end of the day, the learned Magistrate considered that the Appellant did indeed conspire with the other defendants, particularly the 2nd Defendant as charged.

The learned Magistrate also dealt with submissions from the defence that there was no evidence of agreement and the defence submitted that the Appellant and the 3rd Defendant were carrying on their own businesses.

The learned Magistrate at the end of the day thought that the only irresistible inference from all the evidence and apart from the evidence of PW1 and PW2, there was the evidence of the rental of the Room 1108, the presence of the girls, how the two prosecution witnesses were greeted on 11/F and taken into the room, how it was all set up and come to the conclusion that indeed the Appellant was conspiring with the 2nd Defendant and the 3rd Defendant to knowingly live wholly or in part on the earnings of prostitution of others, so the Appellant was convicted.

On appeal, counsel for the Appellant had submitted several grounds of appeal.

Basically, counsel Mr Kan had submitted first of all that the learned Magistrate had wrongly evaluated the evidence in relation to the 2nd Defendant because there is no evidence that he was conspiring to live on the earnings of prostitution. It would appear that the learned Magistrate

s conclusion was they were all acting as part of the conspiracy as it is clear from the evidence of the prosecution witnesses. They each had different roles to play in the conspiracy. So the learned Magistrate was indeed entitled to find that they were all acting as part of one agreement.

The second ground of appeal is that the learned Magistrate was wrong in concluding that the Appellant and the 2nd Defendant had conspired with the 3rd Defendant merely due to their presence in Room

1108 of the New San Diego Hotel. The evidence, as I try to list out above and which is clear from the Statement of Findings is that both the 2nd

Defendant and the 1st Defendant who is the Appellant in this case did much more than merely being present. It is clear that they were in it together.

As far as P55 is concerned, it was admitted in the admitted facts that it was found in a bag belonging to the Appellant. It would appear from the record that neither counsel had referred to it in their closing submissions. The learned Magistrate, as Ms Ho submitted, was entitled to look at it because it was properly admitted as an exhibit. But whether at the end of the day, she could draw the conclusions that this was a record of a girl

s name in the entry having sexual relations with another person, I have to say there is no actual evidence on that point. Certainly, it looks like a business record of some kind but I would not go as far as the learned Magistrate had done to say that it significantly helped the case of conspiracy against the Appellant.

In my view, the learned Magistrate, if she had wanted to place much significance on P55, she should have invited submissions from counsel about P55 and thus give an opportunity to both counsel to make their submissions on the particular exhibit and it appears that she had not done so. Then the next question is it fatal to the conviction.

It is clear from the evidence of the police officers, and the other evidence as to how the rooms were set up, what each of the Defendants had said, the property of each Defendant found in the actual room that the learned Magistrate was completely entitled even ignoring P55 to come to the conclusion that the only irresistible inference was that these three defendants were acting in a conspiracy to live on the earnings of prostitution. I agree that the learned Magistrate may have placed some significance on P55, but at the end of the day, looking at the Statement of Findings as a whole, it is clear that the main evidence upon which she drew the inference of an agreement came from PW1 and PW2 and the other exhibits.

So at the end of the day, I consider therefore the conviction is not unsafe or unsatisfactory and so the appeal is dismissed.

(E Toh)

Deputy High Court Judge

Ms Lily Ho, Senior Government Council, for Respondent

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