

HONG KONG / JUDGMENT

HKSAR v. TANG MAN KIT

COURT

Court of First Instance

DECIDED

18 December 2007

CASE / FILE NUMBER

HCMA534/2007

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Before: Deputy High Court Judge Line in Court Date of Hearing: 18 December 2007 Date of Judgment: 18 December 2007

J U D G M E N T

This is an appeal against conviction on two charges of impersonating a public officer, contrary to section 22 of the Summary Offences Ordinance, Cap.228. In a word, the matter arose out of gambling that took place at a bus drivers banquet in November 2006. The defendant gambled and he lost. There was a dispute about how much he lost. There was a dispute about whether or not he had been cheated, but the fact is that he ended the evening owing money. Two prosecution witnesses, PW1 and PW3, said that at the showdown which took place at the end the appellant falsely claimed that he was a police officer, and that two days later, on 15 November, when a meeting had been arranged concerning the matter at a bus terminus, a similar claim was made. The appellant did not give evidence. The magistrate found the witnesses who incriminated him to be credible and honest witnesses. This appeal is launched on the basis that various inconsistencies between the witnesses and omissions they made in making their statements to the police cast such doubt on the evidence, that I should not act upon it and I should find there is a reasonable doubt and therefore allow the appeal. The inconsistencies and omissions are fully set out in a written argument lodged by the appellant and there is a full answer in a skeleton submission supplied by the respondent. We have not been through each and every one orally in court and I am not going to do so in this judgment. The best point that Mr McGowan claims was that neither PW1 nor PW3 made any mention in their witness statements of the allegation made at the time by the appellant that he had been cheated in the gambling, though when both were cross-examined both conceded that such an allegation had been made, and his point is that when the claim to being a police officer was allegedly made, the allegation of cheating was all

connected with it and he says it is very suspicious therefore that it was not in their witness statements. The fact is, points like that would have so much greater force if there had been some engagement between prosecution and defence, but there was nothing, there was not a shred of evidence really to contradict what PW1 and PW3 said on this topic. Do points like this destroy their evidence such that it cannot be relied upon? Looking at all the evidence and material before me, the answer I come to without any hesitation is no. These are small points. They are small jury points which cannot begin to meet the massive imbalance of evidence that occurred at the trial. There were men swearing that this man said certain things on certain occasions but the Defendant, as was his right and it does not mean he is guilty because he exercises the right, chose not to go into the witness box and explain or deny. The evidence was all one way. You will always be able to make jury points such as are made here. They do not begin, in my judgment, to upset what was in effect a one-sided context. Returning to the particular point concerning the evidence of the first and third prosecution witnesses under cross-examination and what was missing from their witness statements, the explanation seems to me to be this: that when police officers take witness statements they concentrate on what is the substance of the matter in front of them. The substance of this matter was the allegation made by the two witnesses that the appellant had claimed to be a police officer. It was not an investigation into cheating. One was much more important than the other. One finds its way into the witness statement. I am not particularly surprised that the other part did not. When one looks at the transcript, which we have, the cross-examination reveals from both men the allegation of cheating being made in similar sort of circumstances. So what is the scenario I am asked to consider? That both decide to make up a false allegation against the appellant, that they decide not to mention the allegation against them of cheating in their police witness statement but before the trial say, Well, look, if we are asked about this we had better add this in to the allegation of impersonating a police officer and we will not mention it in our evidence-in-chief but we will, if asked about it in cross-examination, come out with the same story. ? I regret to say I find that scenario unrealistic. The way it emerged in the evidence is entirely consistent with those two men speaking from a true recollection of events and the fact that the matter of cheating was not mentioned in their witness statements does not cause me to have any doubt as to their good faith or the credibility of their evidence. The second best point made perhaps was this. There was another witness, PW4, who was present at the meeting at the bus terminus. He did not speak to the offending claim being made there but the conversation there took some time, it was fluid, and what the magistrate found, based on the evidence, was that the distance between the parties at the material moment was such that, given background noise, he would not have heard what had been said. Complaint is made that there was no evidence about there being noise in the bus terminus. I have never been in a bus terminus in urban Hong Kong that has not been noisy. They are all noisy, and the magistrate was quite entitled to use his common sense in that regard. A point is made that the witness did describe a conversation which the others did not describe. The magistrate preferred the evidence of PW1 and 3 in that regard. He was perfectly entitled to, but even if he was wrong in that, it does not begin to upset what I have described as the huge imbalance in the case between the evidence all going one way and there being no evidence to contradict it. In a word, what the appellant really has to claim here is that the evidence of the two material witnesses was in effect so bad it

could not be believed. It clearly is not the case. It is credible evidence and since it was all one way I am not surprised at the result. The last thing I will say, because it is my judgment today on the facts as they appear before me that matters and whether I have a doubt about the truth of the prosecution case, is this: if you look at the situation that existed, whether or not the man had been cheated, he was under pressure because he owed money, and such behavior is just the sort of thing people resort to under pressure, and is it not an enormous coincidence that the appellant should be said to do this when, as was the case some 6 years before, he had in fact been a serving policeman? That is, in my judgment, more than just an unhappy coincidence for him. The appeal against conviction is dismissed. (P Line) Deputy High Court Judge Representations: Ms Polly Wan, Senior Government Counsel of the Department of Justice, for the Respondent Mr James H M McGowan, instructed by Francis Kong & Co., for the Appellant PAGE - PAGE - CRT16/18.12.2007/ LT HCMA534/2007/Judgment 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 A B C D E F G H I J 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 judiciary Title Microsoft Word Document MSWordDoc Word.Document.8

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