

HONG KONG / JUDGMENT

HKSAR v. TSE CHI HUNG AND ANOTHER

COURT

Court of First Instance

DECIDED

29 November 2007

CASE / FILE NUMBER

HCMA839/2007

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bjbj HCMA839/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE MAGISTRACY APPEAL NO. 839 OF 2007 (ON APPEAL FROM FLCC 2127 OF 2006 & FLS 13956 OF 2006)

BETWEEN HKSAR Respondent and TSE CHI HUNG (_*m) — This is an appeal by two Appellants against their convictions for the possession for sale of prohibited food, contrary to sections 29 and 35(1)(a) and 35(3)(a) of the Food Business Regulations, which have been made under provisions in the Public Health and Municipal Services Ordinance, Cap. 132. The trial of this case in the magistracy took some nine days. There were many issues raised but there is only one issue now left for me to decide on this appeal. That issue concerns the finding of whether or not two pieces of pork, which were discovered in a refrigerator at the store where the defendants worked, were prohibited food. The evidence concerning whether or not those two pieces of pork were prohibited food depended on the testimony of three witnesses, who were PW5, 6 and 7, at trial. The first one, PW5, was an expert in meat inspection. He described the system whereby stamps were put on carcasses at government slaughterhouse. PW6 was a senior superintendent of the FEHD, responsible for the management of all licensed slaughterhouses in Hong Kong. His expert opinion was that there was no possibility, given the system in place, of carcasses leaving the government slaughterhouses without the necessary stamp being affixed to them in the right places. There were some eight stamps per carcass. PW7 was a pork trader with over 50 years of experience. He said that he had never come across in his time any problems with missing stamps. There was no evidence called by the Appellants below and the magistrate was faced with that expert testimony, evidence about a system that worked and the opinions from those experts that it was a system that was not prone to letting carcasses leave the slaughterhouses without the relevant marks. The point taken on appeal is that, in effect, any system run by humans is amenable to mistake, and accordingly it would not be safe to draw the inference that the lack of a stamp on the pieces of meat in question here meant that they had not come from a licensed slaughterhouse. One only has to state that proposition to see the weakness of it. The point was, to an extent, based on the fact that in the cross examination of PW6, counsel - who was not counsel here before me today - produced some photographs, which were given an exhibit number, of

some pork carcasses. These photographs were shown to the witness and he was asked if they showed the Sheung Shui Slaughterhouse in the background. The witness agreed that it did do so. The photographs of the carcasses there, apparently in the slaughterhouse, showed that there was a missing stamp on one of the carcasses and, arguably, that the stamps had not been affixed in the right places on other carcasses, and that there was a faded mark on one of the carcasses; suggesting that things were going wrong with the stamping system. There was no other evidence about those carcasses in those photographs. The provenance of the photographs was completely unaddressed by any evidence at all. No one knows - the magistrate did not know and I do not know - when they were taken, by whom, or whether they had been doctored. More importantly than that, nobody knows whether or not the fact that those photographs existed demonstrated any defect in the inspection system at the slaughterhouse, because the carcasses there are photographed still inside the slaughterhouse. Why the photographs were taken, and by whom, remains a complete mystery. But one thing is absolutely clear, you cannot build from that shaky foundation an assertion that the photographs show carcasses that got out of the slaughterhouse without being recognised as not having the correct stamps on them. So the photographs, I am afraid, do not assist the Appellant in his argument in the way that is claimed in the perfected grounds of appeal and the Appellant's skeleton submission. The fact is that counsel did some calculations and based on the testimony that been given below, there were some 28,800 carcasses coming out of the Sheung Shui Slaughterhouse every day. There was the man with 50 years experience. If you do the sums, more than 500 million carcasses would have come out, without an apparent problem in the system surfacing. As I remarked to counsel in the course of argument, you do not have to be an expert in the meat trade to know that people are tempted here in Hong Kong to deal in and have for sale pork that has not been slaughtered in the proper way because of the obvious financial motives involved in such activity. I know that from my experience merely being here in Hong Kong, having seen from the court lists who is prosecuted for what. The evidence is such that the inference that the meat in question had not been slaughtered at the government slaughterhouse and was thus prohibited food was, in my opinion, overwhelming. I agree with the magistrate's conclusion in that regard. Accordingly, that being the only point raised, the appeal is dismissed. (Discussion re costs) The Respondent to this appeal asks for costs. I am going to grant them. The appeal was, in fact, even though very attractively argued by Mr Wong before me, quite without merit. He was presented, in my view, with an impossible task. The evidence was all one-way. The inference was overwhelming. Since the appeal was without merit, I shall order that the Appellants pay the costs of this appeal, to be taxed if not agreed. I will not make any order concerning the costs below. I do not know enough about what went on and why. But if I had been the magistrate made to listen to nine days of evidence concerning what should be simple issues I would have been very tempted to make the losing defendants pay the costs of the prosecution. In seeking to resist the order for costs today, Mr Wong correctly points out that it is the right of the Appellants to come here and argue their appeal, but the response to that is not all rights are free. In a situation where there is no question of imprisonment or the like and the prosecution arises out of economic activity, it is only right that the public does not have to bear the costs of an appeal when there is no merit in the point taken. (P Line) Deputy High Court Judge Ms Olivia Tsang, Senior Government Counsel (Ag) of the

Department of Justice, for the Respondent Mr Kevin C. W. Wong, instructed by Messrs Lau, Wong & Chan, for both Appellants PAGE - PAGE - CRT30/29.11.2007/GTT HCMA839/2007/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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Prepared on 27 October 2026 · Esheria