

HONG KONG / JUDGMENT

HKSAR v. WONG CHAK MAN

COURT

Court of Appeal

DECIDED

30 January 2007

CASE / FILE NUMBER

CACC210/2006

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bjbj /nyr%RL ?e@S) Stock JA in Court Date of Hearing: 30 January 2007 Date of Judgment: 30 January 2007 J U D G M E N T Hon Stock JA: This is an application for leave to appeal against a conviction in the District Court on 10 May 2006 for an offence of robbery. When this matter came before me on 12 December 2006 I adjourned for further information which I have examined but there is one matter that concerns me and that merits, in my judgment, consideration by the court. It arises from page 19 of the Reasons for Verdict. There was a disparity between the description given by the complainant or victim on the one hand as to the appearance of the culprit and, on the other, the actual appearance of this applicant, most particularly as to his height. This is a matter about which some play was made in the course of the trial and what the Deputy Judge said was this: Boase has submitted the Defendant is inconsistent with the outlook and appearance of the robber especially in terms of the height which was described by PW1 as about 1.7m. Here, I agree with the submission made by Mr. Stirling, counsel on fiat that the purported description of the robber by PW1 was at most an identification of a stranger whom she had never met before under frightening circumstances. The reference to the 1.7m after all was only an estimate on her part and furthermore, there was no evidence as to exactly how tall the Defendant was. On the other hand, during the trial, PW2 testified that he had once accompanied PW1 to search around in the vicinity for the robber a few days after the robbery and he distinctly remembered that PW1 had told him that the robber were of similar height as himself. In this regard, I recalled that I have asked the Defendant to come out of the dock and stand by the side of PW2 in court and I found that they were really of similar height with the Defendant being slightly only higher. PW2 testified that he was 173m tall. While it is true that PW1 failed to make any positive identification more than one month later, the fact of the non-identification did not, in my judgment necessarily mean to say that the Defendant was not the robber. Victims sometimes failed to identify the suspect for a variety of reasons. I decided to attach full weight to the confessional statements and I found them to be reliable. It would appear that the trial judge whatever may have been the intention behind adducing this evidence in the first place used the evidence of PW2 as to what the victim had said as evidence of the truth of what she had said, and the question arises whether he has used this evidence for an impermissible purpose and, if so, whether that has any impact upon the safety of the conviction. For this reason, I grant the applicant leave to appeal against his conviction and I also grant him legal aid for the purpose of

that appeal. It is of course open to those who advise him to add any other grounds which they decide may properly be arguable. (Frank Stock) Justice of Appeal Ms Winsome Chan, SGC of Department of Justice for 1udk 1udk H; < :X7Y jFen :X7Y & 6" Flora-template-ABC-Final (fair)1.dot setup Microsoft Word 9.0 Judiciary Title Source Erica Microsoft Word Document MSWordDoc Word.Document.8

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