

HONG KONG / JUDGMENT

POON WING KAY v. HKSAR

COURT

Court of Final Appeal

DECIDED

12 January 2007

CASE / FILE NUMBER

FAMC57/2006

Source: legalref.judiciary.hk · Research copy typeset by Esheria. Not court-issued or certified.

bjbj FAMC No. 57 of 2006 IN THE COURT OF FINAL APPEAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION MISCELLANEOUS PROCEEDINGS NO. 57 OF 2006 (CRIMINAL) (ON APPLICATION FOR LEAVE TO APPEAL FROM CAAR NO. 2 OF 2006 and CACC NO. 536 OF 2005)

Between: POON WING KAY Applicant

- and - HONG KONG SPECIAL ADMINISTRATIVE REGION Respondent

Appeal Committee: Mr Justice Bokhary PJ, Mr Justice Chan PJ and Mr Justice Ribeiro PJ Date of Hearing: 12 January 2007 Date of Determination: 12 January 2007 D E T E R M I N A T I O N Mr Justice Bokhary PJ: This case arises out of the fatal consequences of a race between two public bus drivers competing for passengers. The applicant was one of those drivers. His co-accused Mr Liu Chun Pong was the other. In the course of their race these two men went through 10 sets of red lights. The race came to its fatal end when the public light bus driven by the applicant crashed into a taxi and then into the public light bus driven by Mr Liu. Among those injured as a result were two of Mr Liu s passengers who died from their injuries. The applicant and Mr Liu were charged with causing death by dangerous driving, contrary to s.36(1) of the Road Traffic Ordinance, Cap.374, and with causing harm to persons by racing vehicles, contrary to s.33 of the Offences Against the Person Ordinance, Cap.212. They stood trial before HH Judge Whaley in the District Court, and were convicted as charged. For causing death by dangerous driving the maximum penalty is 5 years imprisonment while the maximum penalty for causing harm to persons by racing vehicles is 2 years imprisonment. Judge Whaley sentenced the applicant to 2 years imprisonment. This was by way of a term of that duration on the causing death by dangerous driving charge and a concurrent term of 15 months on the racing charge. Mr Liu was sentenced to 2 years imprisonment. This was by way of a term of that duration on the causing death by dangerous driving charge and a concurrent term of 15 months on the racing charge. Each man was disqualified from driving for 2 years. Upon the Secretary for Justice s application for a review of sentence, the Court of Appeal (strongly composed of Ma CJHC, Stuart Moore VP

and Stock JA) increased each man's prison term and period of disqualification. Each man's prison term was increased to 5 years. This was by way of a term of that duration on the dangerous driving causing death charge and a concurrent term of 2 years on the racing charge. On the dangerous driving causing death charge, each man was disqualified from driving for 12 years. The applicant now seeks leave to appeal to the Court of Final Appeal against the extent to which the Court of Appeal increased his sentence. It is contended on his behalf that it is reasonably arguable that the increase constitutes a substantial and grave injustice by way of a departure from accepted norms contrary to his interests. The arguments on the applicant's behalf have been very thorough, but can be dealt with simply by saying this. It is always possible to imagine circumstances worse than those of any given case at hand. But in a shockingly bad case, which this plainly was, there is no accepted norm against the imposition of the maximum penalty, whether at first instance or upon review. And, as it happens, it might be said that neither the applicant nor Mr Liu really received the maximum penalty, since the terms which each received were made concurrent rather than consecutive. Consecutive terms would have resulted in each man receiving 7 years imprisonment. And of course the District Court has jurisdiction to sentence up to a maximum of seven years imprisonment. In the result, there is no proper basis on which to grant leave to appeal to the Court of Final Appeal in this case, and such leave is accordingly refused. (Kemal Bokhary) (Patrick Chan) (RAV Ribeiro) Permanent Judge Permanent Judge Permanent Judge Mr Andrew Raffell and Ms Ophelia, C.C. Yap (instructed by Messrs Louis K.Y. Pau & Co.) for the applicant Mr David C. Leung (of the Department of Justice) for the respondent

PAGE - PAGE - &`#\$ &`#\$ Normal.dot setup Microsoft Word 9.0 Judiciary Hong Kong
Title Microsoft Word Document MSWordDoc Word.Document.8

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE https://legalref.judiciary.hk/lrs/common/ju/ju_frame.jsp?DIS=55677

CASE PAGE <https://chat.esheria.ai/case-law/hong-kong/poon-wing-kay-v-hksar-2007>

Prepared on 26 October 2026 · Esheria