

HONG KONG / JUDGMENT

R. v. LAI TAT WAI

COURT

Court of Appeal

DECIDED

30 May 1997

CASE / FILE NUMBER

CACC634/1996

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bjbj& IN THE COURT OF APPEAL 1996, No. 634 (Criminal) BETWEEN THE QUEEN Respondent
and LAI TAT WAI Applicant

Coram: Hon Bokhary, Mayo, JJ.A. and Wong J in Court Date of hearing: 30 May 1997 Date of
judgment: 30 May 1997

J U D G M E N T

Mayo JA giving the judgment of the Court: The applicant pleaded guilty to four counts of robbery and two counts of attempted robbery. The trial judge Deputy Judge Kilgour sentenced the applicant to 11 years 8 months imprisonment. The modus operandi of all of these robbery was similar. To obtain an accurate idea as to how these robberies were perpetrated it may be helpful to extract verbatim from the agreed facts on the first count. At about 15.00 hours on 20.10.1994, IP Kai-lai (PW1), was serving at teller counter no. 4 at Dah Sing Bank, Ground Floor, 4-6 Dock Street, Kowloon, when the defendant approached and produced a piece of paper into her deposit tray. PW1 picked-up the note and read it, Robbery (I) have (a) bomb and (a) gun. I want \$300,000 or (I ll) detonate the bomb at the counter. PW1 passed the note over to her colleague who was standing behind her. The defendant demanded her to hurry up. PW1 was terrified. PW1 took out a pile of \$10 bank notes from her drawer and put it into the deposit tray to give it to the defendant. The defendant said I don t want these. (I) want bank notes of higher denomination. PW1 turned over several piles of \$500 and \$1000 bank notes to the defendant. Before taking the moneys, the defendant put down on her counter a grenade-like object shaped like a dumb-bell with a wooden handle about 1 foot in length with two black substances at both ends, each about 3 inches in diameter. The defendant quickly took the moneys from the deposit tray, the grenade-like object and fled out of the bank. PW1 pressed the alarm button underneath her counter. The amount of moneys taken by the defendant was \$31,300. After a period of investigation, the defendant was finally arrested on 14.11.95 at his residence. As might be expected the distinguishing feature

between the robberies and the attempted robberies was that in the case of the attempts the staff of the bank s concerned delayed handing over the moneys and the applicant lost his nerve and ran away without obtaining any money. The offences in question spanned a period from October 1994 to September 1995 and the total proceeds of the robberies amounted to \$152,200.00. One of the main factors which was weighed by the judge when considering an appropriate sentence was the mental condition of the applicant. When he passed sentence the judge had before him both psychiatric and psychological reports on the applicant. The applicant s family has a significant record of mental illness and one of his brothers is severely mentally retarded. The applicant s father had died of cancer in 1995 and it had then become necessary for the applicant to become the main breadwinner of all the family. One of the matters referred to by his counsel in mitigation and supported by the medical evidence was that the applicant may have been suffering from drug induced psychotic symptoms as a consequence of his self-inflicted drug abuse. The applicant accepted that he had been an addict of the drug known as during this period. What was clear however was that his condition was not such as to render him incapable of committing these offences. Indeed as the judge rightly observed the applicant appeared to be fully capable of committing these offences at periodic intervals when he needed money. Also it was evident from the reports that the applicant did not at the time when sentence was passed require to be treated as an in-patient. The judge considered that he had to treat each of the cases as a serious bank robbery. He adopted 10 years as an appropriate starting point and gave the applicant the usual 1/3 discount for his pleas. Although each of the robberies was a separate and distinct episode the judge was of the view that if consecutive sentences were passed the totality of the sentence would be excessive. He therefore ordered that each of the subsequent sentences should only start to run 1 year after the preceding sentence had started to run. It was in this way that the total of 11 years 8 months imprisonment was arrived at. In the perfected grounds of appeal complaint is made that the judge attached insufficient weight to the applicant s psychiatric and psychological condition and to the stresses and strains experienced by him at the time. Also he failed to take cognisance of the fact that the applicant s mental condition had improved thus rendering it less likely that the applicant would commit further offences. It is evident from reading the judge s reasons for sentence that he gave most anxious thought and consideration to the personal circumstances of the applicant and his family. He also however had regard to the overall criminality of the applicant s conduct and the effect this had on the victims of the robberies. It is impossible to say that the judge overlooked any of the factors which were before him. The sentences imposed were neither wrong in principle nor manifestly excessive. The application is therefore refused. (K. Bokhary) Justice of Appeal (Simon Mayo) Justice of Appeal (Michael Wong) Judge of the High Court Mr AA Bruce, QC and Mr S.L. Lam for Crown Prosecutor Mr Christopher Grounds (DLA) for Applicant - PAGE - W[SO @& > @& > @& @Epson LQ-100 ESC/P 2 LPT1: ESCP2MS Epson LQ-100 ESC/P 2 Epson LQ-100 ESC/P 2 MSUD Epson LQ-100 ESC/P 2 Epson LQ-100 ESC/P 2 MSUD Epson LQ-100 ESC/P 2 " & 6" IN THE COURT OF APPEAL Registrar, Supreme Court Normal Microsoft Word 8.0 IN THE COURT OF APPEAL Title _PID_GUID Microsoft Word MSWordDoc Word.Document.8

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