

HONG KONG / JUDGMENT

# R. v. LAM PING-KEUNG

## COURT

Court of Appeal

## DECIDED

6 May 1992

## CASE / FILE NUMBER

CACC415/1991

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bjbjU CACC000415/1991 IN THE COURT OF APPEAL 1991, No 415 (Criminal) BETWEEN THE QUEEN LAM Ping-keung

Coram: Hon. Fuad,V-P, Macdougall and Nazareth, JJ.A. Date of Hearing: 6 May 1992 Date of Judgment: 6 May 1992 Date of Handing Down Reasons: 13 May 1992

## REASONS

Nazareth, J.A. (giving the reasons of the Court):

1. On 29th July 1991 the Applicant was convicted in the District Court by His Honour Judge Cameron on six charges i.e. on charges 1 and 2 of permitting a girl under 16 years of age to be on premises managed by him, for the purposes of prostitution contrary to s. 141 of the Crimes Ordinance, Cap. 200; charge 3 of managing a vice establishment contrary to s. 139(1) (b) of cap. 200; and the remaining charges i.e. 4, 5 and 7, of being a man living on the earnings of prostitution contrary to s. 137(1) of Cap. 200. He was sentenced to 18 months' imprisonment on the 3rd charge and to one year's imprisonment on each of the other charges, all the sentences to run concurrently.
2. Having heard Miss Sze Kin who appeared for the Applicant and Mr. Coghlan for the Respondent, we gave our decision, and now hand down our reasons.
3. The facts of the matter are quite simple. On 18th. December 1990, a police party looking for a missing person, went to the premises concerned at Pitt Street, Yau Ma Tei, Kowloon to make routine enquiries. They found the Applicant there and a number of other people including the female persons named in the several charges. One of them, in a state of undress, was emerging from a room in which a male person was found dressing. The Applicant was arrested and later made three statements in Chinese.

4. The evidence against the Applicant consisted first, of that of the two young girls PW2 and PW3 named in the first two charges. Their evidence was regarded as unsatisfactory by the Judge and accepted only as to the fact that both worked as prostitutes at the premises, and that both had seen the Applicant there on previous occasions. Second, the evidence concerned the age of PW3, given by her mother, and exhibits seized from the Applicant's room which consisted of paraphernalia consistent with the premises being used as a vice establishment. And third, the evidence consisted of the three statements made by the Applicant to the police and admitted by the Judge after a voir dire. The first two statements are essentially exculpatory, whereas the 3rd statement contains admissions upon which the Crown case substantially rested. Understandably therefore the Applicant's first ground was concerned with the admission of the 3rd statement. It was to the effect that the Judge erred because the statement was taken in question and answer form after the Applicant was charged. The assumption that the Applicant had been charged prior to the taking of the 3rd statement arose from the English language version of the recitals in the statement which suggested that the Applicant had already been charged. However, it transpired and was not disputed before us that that was not so. The factual foundation of the 1st ground accordingly fell away and with it that ground.
5. Turning then to the grounds relating to the individual charges it is stated in relation to the 1st charge that there was no evidence of PW2's age. Clearly in the context of the 1st charge PW2's age had to be strictly proved: see e.g. para. 20-54 Vol. 2 Archbold 1992. The Judge dealt with the matter in the following way: "although PW2's age had not been proved by the production of a birth certificate the defendant knew she was under 16" PW2 could not give evidence of her own age to establish the charge; moreover the Judge had rejected her evidence save in the two respects mentioned. It is not suggested that there is any other evidence on record which established PW2's age. Accordingly the conviction on the 1st charge could not stand and the appeal in respect of it had to be allowed.
6. The 2nd charge, however, was not affected by any such deficiency, PW3's mother having testified to her age and produced her birth certificate. Miss Sze Kin instead pointed to the following wording of s. 141 of the Crimes Ordinance under which the 2nd charge, like the first, was laid: "An owner or occupier of any premises or vessel, and any person who manages or assists in the management or control of any premises or vessel, who induces or knowingly suffers ... a girl under the age of 16 to resort to or be on such premises..." She submitted that since the intention was to create an offence of strict liability the section was limited to a person who was both, an owner or occupier on the one hand, and who managed or assisted ... on the other. We reject that contention on the plain meaning of that provision.
7. Miss Sze Kin also submitted in respect of the 2nd charge, and of the 3rd charge, that there was no evidence that the Applicant managed the premises. This submission turned upon two points. First that there was no evidence of management. We are unable to accept that contention which, it must however be said, preceded our rejection of the renewed challenge to the admission of the Applicant's 3rd statement. Second it was submitted that the

Applicant's statements upon which a finding of management must rest, all claim that he was only looking after the premises for his sub-tenant, one Ah Ying, while she was absent. The distinction, which we accept, between managing and assisting in the management of premises as separate offences of different gravity was stressed and it was submitted that it was wrong that the Applicant's claim in effect that he was assisting in the management of premises was rejected while the statements were yet relied upon by the Crown. However, it is clear from his rejection of the Applicant's evidence in the voir dire that the Judge had reservations about the Applicant's credibility. He was moreover entitled to reject the exculpatory parts of the Applicant's statements. Whether or not the Judge did so in the present context, it is material that the Applicant in his statements admitted attending to customers, introducing them and the females on the premises to each other, charging the customers several hundred dollars each, and paying part of those charges to the females, adding that Ah Ying was under aged and because of that he did not issue her with a rent receipt. Furthermore there was evidence that the door key was found in his possession and that vice establishment paraphernalia was stored in his room. In our view there was ample evidence upon which it was open to the Judge to reject the Applicant's claim and to make a finding that he managed the premises. Indeed, we think the contrary conclusion would have been surprising. Furthermore that the Judge could also have reached his conclusion upon the basis of management at the particular time, in the absence of Ah. Ying, notwithstanding the following words of Lord Parker C.J. in *Gorman v. Standen* [1964] 1 QB 294, 303, upon which Miss Sze Kin relied: "I take it that it must be right that the mere fact that a woman participates in the activities being conducted in the brothel does not make her a person assisting in the management of a brothel. 'Assisting in the management of a brothel' seems to me to contemplate in the ordinary way the case of a man who runs a brothel not living there himself; he keeps and manages it but he has on the premises a woman who assists in the management." We think the situation there contemplated, of an employee engaged to assist a manager of a brothel, is materially different to that before us:

8. We concluded, therefore, that the appeal in respect of the 2nd and 3rd charges could not succeed.
9. As to the Applicant's conviction on the 4th, 5th and 7th charges, it was submitted that there was no evidence of the Applicant living on the earnings of prostitution. That submission, we were satisfied, was untenable given the Applicant's admission that he charged customers about \$300 to \$500 each time with only about \$200 being given to the girl concerned. However, the point was pursued with reference to the rent the Applicant received. In that respect we think that on the facts before him it was open to the Judge to convict upon the authorities referred to at para. 20-135 and 20-136 of Vol. 2 of Archbold 1992. It followed that the appeal would also fail in respect of the 4th, 5th and 7th charges.
10. For those reasons we granted leave, treated the hearing of the application as that of the appeal, allowed the appeal in respect of the 1st charge and dismissed it in respect of the remaining five charges. (K.T. Fuad) (Neil Macdougall) (G.P. Nazareth) Vice President Justice

of Appeal Justice of Appeal Representation: Miss Sze Kin (D.L.A.) for the Applicant Mr. C. Coghlan for the Crown/Respondent " % & ' 2 t% CACC000415/1991 Judiciary Normal.dot Judiciary Microsoft Word 9.0 Unisys CACC000415/1991 Title Microsoft Word Document MSWordDoc Word.Document.8

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