

HONG KONG / JUDGMENT

R. v. WONG KI MING

COURT

Court of First Instance

DECIDED

28 August 1996

CASE / FILE NUMBER

HCMA642/1996

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bjbj IN THE SUPREME COURT OF HONG KONG (Appellate Jurisdiction) MAGISTRACY APPEAL
No.642 of 1996

BETWEEN THE QUEEN Respondent and WONG KI MING Appellant

Coram : Hon Stock, J. in Court Date of hearing : 28th August 1996 Date of judgment : 28th August 1996

J U D G M E N T

This is an appeal against conviction. The appellant was charged with one other, a female called Tsui Ping, with conspiring in November 1993 together with Lai Keung to keep certain premises, namely Flat 7C, Lee Wai Building in Nathan Road as a vice establishment. Lai Keung used to be a Senior Inspector of Police and he was the only prosecution witness. He was a corrupt officer who from 1992 was attached to Mongkok Police Station and his main duties were operations against vice establishments. His evidence was that he came to know Tsui Ping in November 1993 when he led a raid on premises on the 8th Floor, 648 Nathan Road. She and others were arrested. When he was at the Mongkok Police Station, somebody came to bail her out and that is when he met her. He then formed an alliance with her in the sense that he agreed to tip her off when the police were to raid her establishment, and in return he would receive tea money. She had told him that she owned half the establishment. Then she told him that she wanted to open another premises, and to discuss that, a meeting was arranged. That meeting took place at the Golden Horse Cafe in Mongkok. His evidence was that there were three persons at that meeting : the officer himself, Miss Tsui and somebody called Ah Ming. He met Ah Ming at the raid on the Sun Sun Health Centre, the name of the premises which had been raided. The meeting lasted half an hour and although the lighting was dim, he could see Ah Ming well enough to see his face. He described Ah

Ming in this way ... He was a little shorter than me, thinner than me - thin build. He wore spectacles. After that meeting I saw Ah Ming again for about 5 6 times. The nearest meeting was about 1 2 weeks after the Golden Horse Cafe meeting. That subsequently meeting lasted for about 1/2 hour at the same place - we had tea i.e. the 2nd meeting. The 3rd meeting was in about January

1994. On that occasion we intended to have a look at a flat but we couldn't obtain the key. So that meeting lasted about 5 minutes only. The 4th and 5th meetings were about in August
1994. On those 2 occasions, Ah Ming met me on behalf of Tsui Ping, to give me some money. Each meeting only lasted a few minutes. The last time, in September 1994, or maybe still in August - well, in that month he looked for me 1 or 2 times, because other police officers had raided Sun Sun Health Care for 1 or 2 times and he just asked me for my advice. As for those 1 or 2 occasions, every meeting would not last more than 1/2 hour. He then identified the defendant as that person Ah Ming. He said that at the first meeting there was discussion between himself, Tsui and the defendant. The defendant and Miss Tsui wanted to open another premises. He was asked to give them police protection or cover. They discussed the options open to them - whether the establishment should have signboards outside and so on. It was quite clear that all three options envisage vice operations to be conducted from the premises. His evidence was that the defendant said that if a new business was opened, he, the defendant, would take customers from the existing establishment at 648 Nathan Road to the new proposed place. At the second meeting, according to his evidence, which was shortly after the first, it was said that they would try to operate two or three women from premises on the 7th Floor where the tenancy was coming to an end. If business turned out to be good, they would secure the renewal of the tenancy of those premises so that the newly established business could continue. If business was not good, the tenancy could be allowed to lapse. Accordingly, the trial run was put into operation, and in the event the business did not last for more than about 7 to 10 days. It was these discussions that constituted the conspiracy alleged by the Crown. In cross-examination, it was made clear that the officer's evidence was challenged, and it was not accepted that the person with whom he said he had the meetings was the defendant. It was evident that the defendant was in fact taller than the officer and that he was also fatter, not thinner. The court asked him to explain this and he said he could not; perhaps he was just speaking in chief of an impression. He insisted, however, that the defendant in court was the man with whom he and Miss Tsui had had that the discussions. There was then admitted into evidence a statement of agreed facts. It said that the defendant had on 18th November 1993 entered upon a tenancy agreement whereby he took a tenancy of the flat in question, that is Flat 7C, for a period of two years from 17th November 1993. There was also admitted into evidence the transcription of a taped interview with the appellant which took place in September

1995. The English translation of the taped transcription runs to some 60 pages and is not easy to follow. But it is a document upon which the magistrate places some reliance. In it, the appellant said that the Sun Sun Health Centre occupied two floors, the 7th and 8th. His job was that of an odd job labourer attending to every detail. He asserted that he had no shares in the business. The premises, it was not clear whether both floors or just one, were rented, he said, by a man called Wu Chan. He, the defendant, worked for Chan. He had no idea about Miss Tsui taking over the business. The tenancy of the 8th Floor had indeed been transferred to his name, that is the name of the appellant, and that was also the case with the 7th Floor. There was apparently some advantage to the real lessee in having the premises in another's name. He, the appellant, did not pay the rent. The company did that. His role was to check that the premises were clean and tidy, sweep the floors and wash the towels, and he also deposited the daily takings into the bank account of Mr Chan. He admitted in the interview that he knows Senior Inspector Lai. He met him when he came to raid the premises, and after that the officer associated with Miss Tsui. The appellant said he had however no dealings with the officer. He denied flatly that he kept a brothel with the officer and Miss Tsui. All he knew about what went on in the premises was that kneading took place, by which I understand him to mean massage. His only transactions as far as the premises were concerned were with the man Chan. He knew that Tsui lent the officer money. He was asked whether he had had tea with Lai. He said he had, just to talk casual sometimes when he passed by ... we were not familiar with each other at all, only that we had tea together though not more than once. They talked then about casual things, but he had no business with him. He said that 7C always belonged to Chan and was kept by himself for Chan. In other words, that is why the premises were in his name. He then denied that he had shares in Miss Tsui's business. It is not easy to draw the threads together from that. But the defendant was clearly saying that he knew Lai; he had a meeting with him in a restaurant but for wholly innocent purposes. The appellant was much in evidence in the premises in question because he was employed there but had no part in the control or management of the place. The defence case, so it appears from the cross-examination of Lai, was directed not so much at the question of whether the man Lai had identified the right man, but whether there was any conspiracy at all of the kind mentioned. The cross-examination was directed to establishing that Lai was of thoroughly disreputable character, who was involved in multifarious criminal activities and who had good reason to implicate others, thereby ingratiating himself with the authorities in the hope of some advantage to do with pending prosecutions. It was put that what he had told the court about the agreement with the defendant and the woman Tsui was a fabrication; not, be it noted, a question of mistaken identity; although it was then put that the defendant was not the man Ah Ming to whom he referred in his evidence. From the brief notes of the submissions made to the magistrate, it would not appear that the question of identification features at all. The magistrate in his Statement of Findings said that the issue of identification was strenuously challenged. He noted that the witness Lai had given a description of the man which was inconsistent with the defendant in the sense that I have related. But he concluded that the issue of identification was in reality, as he put it, a non

issue, because, he said, the defendant admitted that he had met Lai in the same restaurant to which Lai had referred. He said that whatever doubts he might have entertained about the accuracy of the identification were removed by the contents of the interview. He then said that ... the contents of the record of interview ... independently demonstrated the accuracy of other parts of Lai's testimony, and as such it was capable of amounting to support, if not corroboration. He acknowledges in saying this that the defendant did not in the interview admit the offence. On the issue of the accuracy and reliability of the identification alone, the interview record was, he said, highly relevant and then a little later he said My one area of real doubt is completely resolved by the admissions of the accused in his record of interview. Furthermore, there are points in the record of interview which tended, he said, to give credence to the evidence of PW1, and firmly suggest that PW1 has not concocted an untrue allegation against this accused. These points he identifies as the admission that he worked at the premises; that the premises were registered in his name; that he had met Lai at the police raid; that he knew of dealings between Lai and Tsui; and matters of that ilk. It is said in this appeal that the magistrate did not give proper consideration to the parts of the record of interview which support the defence of the appellant and that he wrongly relied on the record of interview to support an inadequate and incorrect identification. I think that that is a misinterpretation of what the magistrate said. He was well aware of the fact that the appellant was saying that he was not party to the management of the premises and that he did not partake in discussions if there were any. That seems to me is clear in his Statement of Findings, and he expressly referred to the appellant's assertion that the defendant was an odd job labourer. What the magistrate was saying, in my view, was that the statement and its contents show quite clearly that there was scant room for this to be a misidentification case. On the appellant's own admission, he knew Lai and had seen him on several occasions. That is also what Lai said, although he, Lai, puts the amount and content of the meetings on a different footing. This, therefore, is a case which is very different from a dangerous identification case concerned with identification of strangers. These men knew each other and that is why the magistrate concluded, rightly in my view, that the whole issue of identification was a non issue. Mr Mathews today complains that the magistrate said in his Statement of Findings that he gave full weight to the interview, and yet, it is argued that he could not have done that because he does not address the exculpatory parts : had he given full weight to the whole record and given full weight to the exculpatory parts, an acquittal was bound to follow. I do not think that the magistrate was by that comment excluding those parts helpful to the appellant and choosing only the unhelpful. The contents, he said, did not corroborate PW1 and in saying that he is recognising that the statement departs materially from PW1's evidence in essential parts, but that it contains pointers or hallmarks which, as he puts it, give credence to PW1's evidence. It is also said that the magistrate uses the admission of the one meeting in the record of interview as being the very meeting at which the conspiracy took place, and there is, says Mr Mathews, no evidence that that meeting took place in November

1993. I do not think that the magistrate was necessarily insisting that it was the very meeting. It was simply that there was evidence that the two had met and in that restaurant, a further factor underlining the contention that this was not really an identification issue. In my judgment, there is, in the event, nothing in the points which have been raised in support of this appeal, and the appeal against conviction is dismissed. (F. Stock) Judge of the High Court Mr Alain Shum, S.C.C., for Crown Mr Jerome Mathews, inst d by M/s Wong & Partners, for Appellant - PAGE - "@AB @\\SERVER\\HP LaserJet 4 Plus (Copy 2) Ne02: winspool HP LaserJet 4 Plus \\SERVER\\HP LaserJet 4 Plus (Co \\SERVER\\HP LaserJet 4 Plus (Co & 6" IN THE SUPREME COURT OF HONG KONG Registrar, Supreme Court Normal Microsoft Word 8.0 judiciary IN THE SUPREME COURT OF HONG KONG Title _PID_GUID 5.doc CC001 E0EC Microsoft Word Document MSWordDoc Word.Document.8

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