

37/81

O N A P P E A L

FROM THE COURT OF APPEAL OF HONG KONG

B E T W E E N :

TSANG PING NAM

Appellant

- and -

THE QUEEN

Respondent

CASE FOR THE RESPONDENT

Record

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1. The Appellant was convicted by His Honour District Judge Bewley on three charges. The first charge was as follows :

Statement of Offence

Attempt to pervert the course of public justice contrary to Common Law.

pp.52 - 53

Particulars of Offence

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Tsang Ping Nam, on a date unknown between 31st January 1977 and 21st June 1978, in this Colony, attempted to pervert the course of public justice relating to the prosecution of So Siu-Kuen, Police Sergeant 6691 of the Royal Hong Kong Police Force, for the offences relating to the involvement of the said So Siu-Kuen in a corruption conspiracy in the Mongkok Division of the Royal Hong Kong Police Force.

The second charge was identical save that the police officer named therein was Wong Kam-tai. The third charge was likewise identical save that the police officer named therein was Wong Yu-Keung.

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2. On 2nd October 1979 the Hong Kong Court of Appeal dismissed the Appellant's appeal against the conviction. On 28th July 1980 an Order was made granting special leave to appeal in forma pauperis to the Appellant to Her Majesty in Council. The Respondent had not opposed the Appellant's Petition in view of the importance of the points of law concerning the administration of justice in Hong Kong.

p.190

Record

p.1

3. On 1st February 1977 the Appellant was arrested by officers of the Independent Commission Against Corruption (I.C.A.C.) as a suspect in a corruption syndicate which had been operating in the Mongkok Police Division of Hong Kong between 1972 and 1975. At the material time the Appellant had been police sergeant in the special duties squad.

p.1
lines 20-32
p.2, lines 1-3

pp.142-147

10 4. Initially he was interviewed by John Edward Picken, a senior investigating officer with I.C.A.C. and a Chinese officer. During the interview the Appellant denied any knowledge of the matters alleged. A note was left of this interview and was marked Exhibit P2.

p.2
lines 20-45
p.3
lines 1 - 4

pp.147-150

20 5. Later on the same evening the Appellant was further interviewed by the officers. At the end of this interview he made the first written statement Exhibit P3. He admitted being involved in the corruption in Mongkok and to receiving substantial funds of corrupt money each week which had come from "sex joints", "gambling stalls", "tsz fa stalls", and opium stalls. He directly implicated So Siu Kuen (nicknamed "Tai Tau So") and also, but to a lesser extent, Wong Kam-tai.

6. On the following day, 2nd February 1977, the Appellant made a second statement giving further information as to how the syndicate operated in Mongkok. This statement was Exhibit P4.

p.150

30 7. On 4th February 1977 the Appellant made a third statement, Exhibit P5. In this statement whilst giving still further information as to the corrupt practices in Mongkok he directly implicated both So Sui-Kuen and Sergeant Wong Yu-Keung.

p.153

40 8. On 23rd February 1977 the Appellant was invited to make a full witness statement, which provided that the Appellant told the whole truth, would not be used against him in any prosecution for corruption offences. It was made clear that the Appellant might still be prosecuted. The invitation to make a witness statement was made upon advice from the Attorney-General's Chambers. The Appellant agreed to make a witness statement.

9. On 15th April 1977 the Appellant was invited to the I.C.A.C. office to make the witness statement. This was composed by an I.C.A.C. officer from the previous statements made by the Appellant and from additional

p.12, lines 3 -
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p.13, lines 1-3

information he gave. This was Exhibit P6, the first twenty-four paragraphs of which were completed on this day. The remaining paragraphs were added on 20th June 1977 when the Appellant was asked further questions. The statement when completed on 15th April 1977 was read over to the Appellant who then signed it as being correct.

10 10. In this statement the Appellant related his own involvement in the corruption in Mongkok Division and also directly implicated So Siu-Kuen ("Tai Tau So"), Wong Kam-tai and Wong Yu-Keung as the following extracts show :

(a) "when I took over Tai Tau So told me that the "vice" squad got \$2,000 per week, \$200 for each policeman, \$100 for the policewoman and \$1,500 for the sergeant (i.e. myself) ..."

20 (b) "Tai Tau So also told me that Lo Wing-pong was the caterer. He sent Koo Ming to collect the account."

(c) "After I took over the "vice" squad Tai Tau So gave me \$2,000 every Wednesday ..."

(d) "In the second week after I took over the "vice" squad, Tai Tau So brought me to Tak Shing Hong to see Koo Ming with a view to introduce us to each other so that we could get into direct contact if there was trouble".

30 (e) "At that time $\sqrt{30.5.73}$ the Barrack Sergeant was Wong Yu-Keung 4324. He invited me to his office for a meeting. I went to his office to see him. He asked me if I could re-arrange and manage the "Nuisance Squad" account. I agreed with him. However, he said Lo Wing-pong's approval was required for me to be the "Nuisance Squad" caterer. Lo indicated that he had no objection and asked me to go ahead".

40 (f) "The weekly collection totalled about \$11,000 to \$12,000. The collection and distribution of money were all on a weekly basis. The method of distribution was as follows : \$1,200 to Lo Wing-pong, increased to \$1,500 four weeks afterwards. Payment was made at his office by me direct

every week. \$500 to Barrack Sergeant Wong Yu-Keung 4324. Money was handed to him by me at the Barrack Sergeant's office every time. Because the Barrack Sergeant had frequent contacts with superior officers, so he got a share from each account".

10 (g) "In October 1973 Lo Wing-pong was on vacation leave and transferred away from Mongkok. His place was succeeded by Wong Kam-tai. Shortly after Wong came I met him in Ngan Kung Restaurant, Boundary Street, to talk about the "Nuisance Squad" account. At that time Wong agreed to the weekly payment of \$1,500 as before, but payment was to be changed to once a month at \$6,000 each time because he did not want to see me too often. I felt somewhat difficult to pay him \$6,000 a month and
20 both parties finally agreed on a fortnightly payment of \$3,000 each time. Two or three days afterwards I met Wong at Mei Lin Restaurant opposite Pui Ching Middle School in Waterloo Road. I gave him \$3,000 in cash. After that, I went to his office to give him \$3,000 every fortnight."

11. On 16th June 1978 the Appellant was given his witness statement to re-read (page 6). When asked by the I.C.A.C. officer whether the contents were true and accurate the Appellant replied "Yes. I can still
30 remember everything very clear. It's all true." On this occasion the Appellant was handed Exhibit P11 which was a letter dated 14th April 1978 from the Attorney-General giving him immunity "on condition that you give full and true evidence in the proceeding of R. v. Edwards and others ..."

p.23
lines 1 - 3

p.173

12. Between 15th April 1977 and 16th June 1978 the Appellant had been interviewed on other occasions. In particular, on 10th October 1977 he had made another
40 statement under caution and on 9th May 1978 he had made a further statement under caution .

p.170
p.172

13. On 25th October 1977 the Defendants in the Mongkok Conspiracy were charged. This included the officers named in the charges laid against the Appellant. The trial itself commenced on 17th April 1978.

pp.174-189

14. On 19th - 20th June 1978 the Appellant gave evidence as a prosecution witness at the trial. He implicated on oath a number of persons who were either
50 prosecution witnesses or not charged. He claimed on

Record

oath that So Siu-Kuen, Wong Kam-tai or Wong Yu-Keung who were defendants at the trial had been involved.

- 10 15. The Appellant said in evidence that those three persons had been named by the I.C.A.C. officers and that he knew the allegations concerning them which he made were false. He said he had agreed to sign the statement implicating these defendants to ensure that he got a letter of immunity from prosecution from the Attorney-General and out of fear that he would be charged with respect to his financial assets, for giving false information to I.C.A.C. and with the corruption to which he had already confessed. Further, if charged, he would be required to put up bail in the amount of ten thousand dollars. p.109 lines 35 - 41 p.110 p.111
- 20 16. At the trial before His Honour Judge Bewley D.J. the learned Judge found that the Appellant had admitted in cross-examination during the trial that he had led the I.C.A.C. officers to believe that he was going to give evidence in Court along the lines of his witness statement, which he knew would be considered by the Attorney-General when deciding who should be prosecuted. He had said that at the time he made the witness statement (15th April) he was prepared to stick to that story and repeat those falsities in Court but had changed his mind on 20th June 1977. The Appellant had said in evidence that he had signed the statement on the basis that he would get immunity and would then tell a different story in the witness box, but this was only partly the case since part of his statement to the I.C.A.C. had not been taken down. The learned Judge held that there was no possibility that the Appellant's allegations against the I.C.A.C. could be true. p.68 lines 13 - 29 p.69 lines 37 - 40 p.72 lines 11 - 21
- 30 40 17. The Respondent contended that the evidence proved that the Appellant had lied either to the Court or to the I.C.A.C. and that in the circumstances either alternative proved he had attempted to pervert the course of public justice. p.73 lines 11 - 20
18. His Honour Judge Bewley D.J. held that if the Appellant committed perjury ipso facto this amounted to an attempt to pervert the course of public justice. p.73 lines 21 - 26
19. The learned Judge held that telling lies

to the I.C.A.C. in the knowledge that the Appellant's fellow officers were thereby jeopardised and put at risk of prosecution for corruption also amounted to an attempt to pervert the course of public justice.

p.73
lines 27-44
pp.74 - 45
p.76,lines 1-36

10 20. The learned Judge further held since there was no interpretation of the Appellant's action that was consistent with his innocence the offence was proved beyond reasonable doubt. It was not necessary to prove the precise manner in which the offence had been committed. This approach carries with it no prejudice to the person accused and the Appellant had been well aware of the case he had had to meet. Accordingly he found the Appellant guilty as charged.

p.78
lines 18 - 4
p.79
lines 1 - 11

21. On 2nd October 1979 the Hong Kong Court of Appeal (Roberts C.J., McMullen J.A., and Leonard J.) dismissed the Appellant's appeal against conviction on the following grounds :

20 (a) the making by the Appellant of statements to the I.C.A.C. officers which contained false allegations against the three officers who were charged would amount to an attempt to pervert the course of public justice

p. 198
lines 30 - 35

(b) the giving of false evidence or perjury would amount to an attempt to pervert the course of justice

p.198
lines 37 - 4
p.199
lines 1 - 9

30 (c) that an accused may be properly convicted of the offence of attempting to pervert the course of public justice if the Crown establishes -

(i) that a statement was given by him to a law enforcement officer in relation to criminal activities (other than a statement which implicates himself);

40 (ii) that he subsequently gives evidence which is irreconcilable in one or more material particulars with the statement;

(iii) that he gives no satisfactory explanation of the conflict (e.g.that the statement was not voluntary) notwithstanding that the Crown is

p.200
lines 31 - 41
p.201

unable to prove whether either,
or both, is untrue.

22. The Respondent submits that the appeal should be dismissed with costs for the following among other

R E A S O N S

10 (1) In order to prove the offence charged the Respondent had to and did in fact prove that the Appellant had by his conduct committed an act or several acts which had the tendency and was intended to pervert the administration of public justice. The evidence of the inconsistencies between the written statement and his sworn evidence at the Mongkok conspiracy trial coupled with the evidence which the trial Judge accepted as to the Appellant's intention constituted the offence charged.

20 (2) In order to prove the offence as charged it was unnecessary for the Respondent to prove affirmatively by which of two probable means the Appellant had committed the offence if the offence could be committed only in one or other of those two ways.

(3) For the reasons given by the Court of Appeal.

ANTHONY SCRIVENER Q.C.

IN THE PRIVY COUNCIL

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Appellant

-- and --

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Respondent

CASE FOR THE RESPONDENT

CHARLES RUSSELL & CO
Hale Court
Lincoln's Inn
London W C 2