

Wong Kan-Po

Appellant

v.

The Queen

Respondent

FROM
THE COURT OF APPEAL OF HONG KONG

REASONS FOR REPORT OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL OF THE
9TH MAY 1988, DELIVERED THE 19TH MAY 1988

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD ELWYN-JONES
LORD FRASER OF TULLYBELTON
LORD GRIFFITHS
LORD ACKNER

[Delivered by Lord Ackner]

On 28th May 1985 in the Supreme Court of Hong Kong, the appellant was convicted by a jury, at a trial presided over by Barnes J. of one offence of possession of dangerous drugs, for the purpose of unlawful trafficking, contrary to section 7(1) of the Dangerous Drugs Ordinance, Cap. 134 of the Laws of Hong Kong. On 19th December 1985 the Court of Appeal of Hong Kong (McMullin V.-P., Cons and Silke JJA.) dismissed his appeal. The appellant appealed to Her Majesty in Council by special leave, and on 9th May 1988 their Lordships, having heard the appeal, decided humbly to advise Her Majesty that the appeal ought to be allowed and the conviction quashed for reasons to be delivered later. This they now do.

The appellant was the fifth of seven accused who were all jointly charged with this offence. However the second accused Ng Chiu-Ming was granted immunity by the Crown in exchange for giving evidence as a prosecution witness. The first and fourth defendants were convicted unanimously, whereas the appellant was convicted by a majority of 5:2. All the remaining defendants were acquitted.

The facts out of which the prosecution arose can be stated quite shortly. On 26th November 1984 a fishing vessel was intercepted by officers of the Customs and Excise Department in waters off Hong Kong and the seven defendants were all found on board. Carefully concealed in the vessel there were found 134.726 kilograms of a mixture containing 115.487 kilograms of esters of morphine. It was the prosecution's case that the appellant was knowingly involved with the other defendants in the importation of this heroin into Hong Kong as a joint venture. As the Court of Appeal made clear, the Crown had expressly declined to rest its case on the basis of mere membership of the crew. It relied upon the evidence of Mr. Ng to implicate both the fourth defendant and the appellant. In regard to the fourth defendant Mr. Ng's evidence was led to establish that the fourth defendant was the man in charge of the Hong Kong end of the operations, having held a number of meetings at his flat in Minden Terrace to discuss the preparations for the voyage. According to his evidence, many telephone calls had been made from that flat to a particular number in Thailand and that number Mr. Ng said, was the number of the contact in Thailand. As regards the appellant, Mr. Ng gave evidence to the effect that, during one of the discussions in the flat in Minden Terrace concerning arrangements to pick up the drugs, the appellant was present.

Mr. Ng being an accomplice, the trial judge gave the appropriate directions as to the requirement for corroboration. When directing the jury as to material which could be treated by the jury as corroboration in relation to the fourth defendant, he identified six items. There is no need for their Lordships to set out each of those items except to refer to item 5 and 6, which equally apply to the appellant. Item 5 was that he had signed up as a crew member of the vessel and item 6 was that he had helped with the actual transshipment of the goods. The Court of Appeal concluded that the trial judge misdirected the jury when he said that these six items were capable of amounting to corroborative evidence. Cons J.A. delivering the judgment of the Court stated:-

"In the circumstances of this trial the question of corroboration was one of importance, and we feel the misdirection in this respect was serious and may substantially have misled the jury. They may not have believed Ng without what was said in this way to be corroboration."

The Court of Appeal accordingly allowed the appeal of the fourth defendant. A new trial could not be ordered, since by then Mr. Ng had died. The fourth defendant's conviction was therefore quashed.

The trial judge, in directing the jury as to the evidence which was available to corroborate Mr. Ng in relation to his testimony concerning the appellant, referred to his having signed up as a member of the crew and having helped with the actual transshipment of the goods (items 5 and 6 referred to above). He then pointed out that although there was evidence of a fingerprint of the appellant being found on a glass in the flat in Minden Terrace, as the appellant was a friend of the fourth defendant, there was nothing out of the ordinary in the appellant visiting the fourth defendant at his flat. Accordingly the fingerprint evidence did not corroborate Mr. Ng's evidence that the appellant was present at the discussion referred to above. Thus although the prosecution's case against the fourth defendant and the appellant depended upon the jury's acceptance of the evidence of Mr. Ng, the case against the appellant, as presented to the jury, was weaker than that presented against the fourth defendant. However, in each case the credibility of Mr. Ng was crucial. The Court of Appeal, rightly in their Lordships' view, concluded that the learned judge's misdirection as to the six items of potentially corroborative evidence might have enhanced Mr. Ng's credibility and thus have led them to convict the fourth defendant. That was the basis upon which the Court of Appeal decided that the conviction was unsafe or unsatisfactory. But the same reasoning should, a *fortiori*, have been applied by the Court of Appeal to the appellant's conviction. Accordingly the Court of Appeal, having for the reasons which they gave allowed the appeal of the fourth defendant and quashed his conviction, should have treated the appellant's appeal in the like fashion.

