



Summary of Judicial Decision

HKSAR v Liu Chi Fung (“the Applicant”)

CACC 108/2020; [2020] HKCA 309

Decision : **Appeal against sentence dismissed**
Date of Hearing : **5 March 2021**
Date of Judgment : **5 March 2021**
Date of Reasons : **17 March 2021**

Background

1. This case arose from an undercover police operation. An undercover police officer “Wah Jai” (pseudonym) took part in a triad investigation and collected evidence using a disguised identity. On the night of 18 January 2018, a total of about 50 men from two gangs were involved in a confrontation on both sides of the cross junction of Saigon Street and Woosung Street. One gang was led by Lam Wing Sum (D2) and Ng Wing Ho (D3). The Applicant arrived, and together with D2, moved to the middle of the road where he gave D2 a dressing-down in his capacity as the “former branch leader”. Another man joined in and entered a restaurant with the Applicant and D2 to settle the dispute, while other people waited outside. After a while, police sirens were heard and everybody left.
2. The Applicant pleaded not guilty to one charge of acting as a member of a triad society. He was convicted after trial and was sentenced to 15 months’ imprisonment. He had been sentenced to two months’ imprisonment for one charge of claiming to be a member of a triad society ten years ago.

Issues in dispute

3. Whether the trial judge had erred in adopting a starting point of 12 months’ imprisonment in sentencing based on the leading role of the Applicant in this case and the circumstances at the scene.
4. Whether the trial judge had erred in enhancing the sentence by three months on the basis of the Applicant’s previous conviction of a similar nature ten years ago.



Department of Justice's Summary of the Court's Rulings

(Full text of the reasons for judgment of the Court of Appeal (CA) of the High Court (Chinese version only) at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=134255&QS=%2B&TP=JU)

5. The CA reiterated that the offence of acting as a member of a triad society could be committed in an infinite variety of circumstances. It would be extremely difficult, if not impossible, to lay down clear sentencing guidelines for the offence committed in different circumstances. A triad leader who brings with him a horde of subordinates and takes advantage of their triad status by using triad language and behaving in an overbearing manner to intimidate and coerce law abiding citizens into succumbing and acceding to their unreasonable demands is certainly far more serious than a youngster who merely boasts about his triad membership in front of his friends. The sentences to be imposed on the former and the latter can be worlds apart. Acting as a member of a triad society is itself a serious offence. Triad-related offences have a long history in Hong Kong, and have caused immense social distress and agonising pain to the community (paragraphs 30-31).

6. No matter how long ago it was from this case since the Applicant last committed the same offence, the fact that he did it yet again indicated that he still had not broken away his triad affiliation despite the long lapse of time, and further demonstrated the seriousness of the case. The commission of the same offence by the Applicant after ten years was no doubt one of the aggravating factors. A failure by the court to consider this factor in sentencing would not only be irrational but would also be contrary to the clear intent of the lawmakers. It was a discretionary decision of the trial judge to enhance sentence based on that aggravating factor. Unless the decision of the trial judge was unfound or extremely unreasonable, the CA would not vary the sentence (paragraph 34).

7. It is questionable whether the Applicant arrived at the scene alone in the case. According to the background information, there was to be a fight after negotiation broke down between the Applicant and D2, and over 30 people were summoned to the scene. Over 50 people from the two gangs were already confronting each other on both sides of the cross junction at the time of the offence. The Applicant must have known that people were there to support him. While what the Applicant said to D2 showed his intention not to escalate the matter, it may well be a coincidence that the incident had ended peacefully.



It could have developed into something much worse (paragraph 35).

8. To a certain extent, this was also a case of street confrontation between two groups of triad members. Though the offence took place at 11pm, there were still passersby on the street. The fear aroused in other passersby due to the confrontation by two triad gangs on a busy street was obvious. The court cannot ignore the risk that the incident may result in a large scale gang fight between the two groups of people in a public place (paragraph 36).

9. Having considered the background of the entire incident and the role of the Applicant (clearly the leader) therein, the CA held that the starting point of 12 months' imprisonment adopted by the trial judge was appropriate and not manifestly excessive. Given the Applicant's previous conviction of the same offence, the exercise of discretion by the trial judge to enhance the sentence by three months to 15 months was also well-founded and appropriate (paragraphs 37-38).

Prosecutions Division
Department of Justice
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