



## Summary of Judicial Decision

**HKSAR v Leung Tin Kei (D1) (“the 1<sup>st</sup> Applicant”), Lo Kin Man (D3) (“the 2<sup>nd</sup> Applicant”) and Wong Ka Kui (D5) (“the 3<sup>rd</sup> Applicant”) (collectively “the Applicants”)**

**CACC 164/2018; [2020] HKCA 275**

**Decision** : **Application by the 1<sup>st</sup> Applicant for leave to appeal against sentence granted; appeal dismissed**  
**Application by the 2<sup>nd</sup> Applicant for leave to appeal against conviction and sentence refused**  
**Application by the 3<sup>rd</sup> Applicant for leave to appeal against sentence refused**

**Date of Hearing** : **9 October 2019**  
**Date of Judgment** : **29 April 2020**

### Background

1. On 8 and 9 February 2016, incidents of riot and other offences took place in the Mongkok area. Their acts caused injury to police officers and damage to properties. In brief, the incident of riot began in Portland Street where a large number of persons assembled thereat in confrontation with the police. (**“the Portland Street incident”**) Upon dispersal action taken by the police, the persons assembled moved into Argyle Street where they assaulted traffic police officers and desisted only when a warning shot was discharged by an officer. (**“the Argyle Street incident”**) The situation later escalated into acts of arson, criminal damage and other acts of violence against police checklines formed to restore order and traffic in the Mongkok area.
2. In respect of the 1<sup>st</sup> Applicant, he pleaded not guilty to the offences of incitement to riot and riot both in the Portland Street incident, and of riot in the Argyle Street incident. He was convicted by the jury of the offence of riot in the Argyle Street incident, but was acquitted by the jury of the offence of incitement to riot and the jury could not return a majority verdict in respect of the offence of riot in the Portland Street incident. The 1<sup>st</sup> Applicant had earlier pleaded guilty to an offence of assaulting a police officer in due execution of his duty in the Argyle Street incident. For that offence, together with his conviction for the offence of riot in the same incident, he was sentenced to imprisonment for 6 years.
3. In respect of the 2<sup>nd</sup> Applicant, he pleaded not guilty to the offence of riot



in the Portland Street incident. He was convicted by the jury in the same trial as the 1<sup>st</sup> Applicant, and was sentenced to imprisonment for 7 years.

4. In respect of the 3<sup>rd</sup> Applicant, he pleaded guilty to the offence of riot in the Argyle Street incident. His other charge of assaulting a police officer in due execution of his duty was left on court file. He was sentenced to imprisonment for 3.5 years.

### **Issue in dispute**

5. What is the requirement of “common purpose” for the offence of unlawful assembly and riot?
6. Whether the sentences imposed on the Applicants were wrong in principle and/or manifestly inadequate.

### **Department of Justice’s Summary of the Court’s rulings**

(full text of Court of Appeal’s judgment at

[https://legalref.judiciary.hk/lrs/common/search/search\\_result\\_detail\\_frame.jsp?DIS=127622&QS=%2B&TP=JU;](https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=127622&QS=%2B&TP=JU;)

press summary issued by the Judiciary at

[https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2018/CACC000164\\_2018\\_files/CACC000164\\_2018ES.htm](https://legalref.judiciary.hk/doc/judg/html/vetted/other/ch/2018/CACC000164_2018_files/CACC000164_2018ES.htm))

7. Upon proper understanding of section 18 of the Public Order Ordinance which defines the offence of unlawful assembly, there was no requirement for the prosecution to prove that persons taking part in an unlawful assembly had a “common purpose” other than conducting themselves in a disorderly, intimidating, insulting or provocative manner. It is not necessary for the prosecution to prove, other than conducting themselves in such a way with the necessary connection or nexus among their conduct, those persons in fact shared some other “common purpose” in order to constitute the offence of unlawful assembly. In respect of the offence of riot against the 2<sup>nd</sup> Applicant, the summing-up and directions of the trial judge was correct and was given based on the facts of the case and the prosecution case at trial. (paragraphs 56-64) [Note: Under section 19 of the Public Order Ordinance, if any person taking part in an assembly which is an unlawful assembly commits a breach of the peace, the assembly is a riot and the persons assembled are riotously assembled.]
8. The Court of Appeal emphasized that, in sentencing for the offence of riot, a major consideration is to protect the rule of law and public order which



- is greatly undermined by acts of riot and violence. Immediate imprisonment is inevitable for the sentence to have punitive and deterrent effect. (paragraphs 66-75)
9. The personal circumstances or political ideals of a person committing the offence of riot do not constitute mitigation in sentencing for the offence of riot. (paragraphs 76-77)
  10. In terms of sentencing considerations, the Court reiterated that the gravamen for the offence lies in the fact that the offenders sought to achieve their aims by their numbers and with violence. A number of general sentencing considerations include (1) whether the riot was spontaneous or premeditated and, if so, the degree of premeditation, (2) the number of persons taking part in the riot, (3) the degree of violence used by the rioters (such as whether weapons were used), (4) the scale of the riot, including the time and number of places or areas involved, (5) the duration of the riot and whether it was prolonged or had persisted despite repeat warnings, (6) the harm caused by the riot to persons and properties, (7) the threat and the proximity of the violence caused by the riot, (8) the nuisance caused by the riot to the public, (9) the impact on community relations caused by the riot, (10) the public expenditure which was resulted from the riot, (11) the role and degree of participation of the offender, such as whether he led, arranged or incited others to take part in the riot, and (12) whether the offender committed other offences during the riot. (paragraphs 78-80)
  11. Applying the above principles, the Court held that the sentences imposed on the Applicants were not wrong in principle or manifestly excessive. In relation to the 2<sup>nd</sup> Applicant, there was a wealth of evidence supporting the finding that the riot in the Portland Street Incident was premeditated. The scale of the riot was large, the duration was long, there were a lot of offenders and a certain degree of premeditation. The offence was committed in Mongkok where many people frequented. As the offence took place at night time of the 1<sup>st</sup> day of the Lunar New Year, there were even more people present. This posed a huge danger and threat to public order and the personal safety and property of the public. The rioters targeted police officers and the degree of violence used was serious. The starting point of 7 years was not manifestly excessive. (paragraphs 82-85)
  12. In relation to the 1<sup>st</sup> Applicant who was sentenced for the offence of riot in the Argyle Street incident, that incident was not spontaneous or isolated but a continuation of the Portland Street incident. The 1<sup>st</sup>



Applicant was present in the area since the Portland Street incident and had full knowledge of the circumstances, and it could not be said that the assault of police officers and riot in the Argyle Street incident were beyond his expectation. The Court held that the trial judge was entitled to consider the events in the Portland Street incident as part of the factual context. (paragraphs 87-92)

**Prosecutions Division  
Department of Justice**

**May 2020**