



Summary of Judicial Decision

HKSAR v Harjani Haresh Murlidhar (“the Appellant”) FACC No.17 of 2018; [2019] HKCFA 47

Decision	: Appeal unanimously dismissed
Date(s) of Hearing	: 27 November 2018 and 10 June 2019
Date of Judgment	: 5 December 2019

Background

1. The Appellant was charged with “Conspiracy to deal with property known or believed to represent proceeds of an indictable offence”, contrary to s.25(1) and (3) of the Organized and Serious Crimes Ordinance, Cap.455 (“OSCO”) and ss.159A and 159C of the Crimes Ordinance, Cap. 200.
2. The prosecution case alleged that arising from the email fraud, between 26 April and 21 July 2014, the Appellant and other unindicted co-conspirators including Dialbo Ibrahima, who was originally a prosecution witness, conspired together to deal with property namely, a sum of US\$539,375 in a bank account held in the name of Sino Investment and Trading Ltd, knowing or having reasonable grounds to believe that the said property represented the proceeds of an indictable offence. The Appellant was convicted after trial and was sentenced to 3 years and 9 months’ imprisonment.
3. The Appellant’s appeal to the Court of Appeal (CA) was dismissed. The CA held that despite the trial judge had erred in law regarding the *mens rea* requirements of the offence, the judge’s repeated use of the word “ill-founded” and the phrase “turning a blind eye” quite clearly showed that he did not believe the Appellant’s testimony and did not accept his claim that he held a genuine belief in the legitimacy of the transaction. The CA upheld the verdict on the basis that by a perfectly proper route, the judge reached a concluded view that the defendant’s claim as to his beliefs was not truthful and that the offence had accordingly been duly proved (full text of the CA’s judgment at https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.js?p?DIS=111300&QS=%2B&TP=JU). The Appellant appealed to the Court of Final Appeal (CFA) on both the point of law limb and the substantial and grave injustice limb.

Issue in dispute

4. In the substantive appeal, the CFA raised a number of important questions of law for argument and determination:



- (1) What is the meaning of “having reasonable grounds to believe that any property ... represents any person’s proceeds of an indictable offence” (abbreviated to “the property is tainted”) in section 25(1) of the Organized and Serious Crimes Ordinance, Cap.455 (OSCO)? (**Issue 1**)
- (2) What is the relevance of the defendant’s actual belief in determining whether the statutory test is satisfied? (**Issue 2**)
- (3) To what extent is “wilful blindness” relevant in determining whether the statutory test is satisfied? (**Issue 3**)
- (4) In the light of section 159A of the Crimes Ordinance (**Issue 4**):
 - (a) given the requirements of subsection (2), can there be an offence of conspiracy to deal with property having reasonable grounds to believe that such property ... represents any person’s proceeds of an indictable offence?
 - (b) given the requirements of subsection (1)(a), where defendants have reasonable grounds to believe that property is tainted, will they be guilty of conspiracy if they agree to deal with the property notwithstanding that those grounds may not exist at the time of the dealing?

Substantial and grave injustice

5. The Appellant contended that there was no valid basis upon which to conclude that he did not believe the transaction in question to be a genuine transaction and that one cannot properly discern from the reasons for verdict that the trial judge had made that finding.

Department of Justice’s Summary of the CFA Judgment

(full text of CFA’s judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=125867&QS=%2B&TP=JU)

Questions of law

Issue 1

6. To determine whether a defendant had reasonable grounds to believe that the money in question was tainted for the purposes of the money laundering offence, the CFA affirmed the approach adopted in previous authorities but in the interests of clarity, reformulated the test as follows:
 - (i) What facts or circumstances, including those personal to the



defendant, were known to him that may have affected his belief as to whether the money was tainted?

- (ii) Would any reasonable person who shared the defendant's knowledge be bound to believe that the money was tainted?
- (iii) If the answer to (ii) is "yes", the defendant is guilty. If "no", the defendant is not guilty. (para. 26)

Issue 2

- 7. As to the relevance of the defendant's actual belief in the context of s.25(1) of OSCO, where a defendant believed or may have believed that the money was clean, it is the facts and circumstances that the defendant asserts led him to that belief that are significant, rather than that belief itself. If a reasonable person who shared the defendant's knowledge of the relevant facts and circumstances would be bound to believe that the money was tainted, the offence is still made out even though the defendant subjectively believed or may have believed otherwise. However, his subjective belief may well be a mitigating factor when he is sentenced. (paras. 33 and 49)

Issue 3

- 8. The term "wilful blindness" is a concept which treats a defendant as having the required knowledge if he suspects the likely truth but deliberately avoids making the enquiries that would have given him knowledge of the truth. In principle, the concept can be used to infer that the defendant actually knew that the money was tainted in a money laundering case where the prosecution alleges that the money was tainted and the defendant knew about it. However, in practice, since "having reasonable grounds to believe" is the statutory alternative to having knowledge for the money laundering offence, it will normally not be necessary or helpful to apply such concept to prove the offence. (paras 70 and 71)

Issue 4

- 9. Section 159A(2) of the Crimes Ordinance requires a defendant charged for conspiracy to commit an offence to "intend or know" the future existence of any particular "fact or circumstance necessary for the commission of" that offence. This subsection is not engaged in the conspiracy offence because the tainted character of the money is not required to be proved as a "fact or circumstance necessary for" committing the money laundering offence. This was the conclusion reached by the CA in *HKSAR v Lung Ming Chu* [2009] 3 HKC 137. A defendant is guilty of the conspiracy offence where he agrees and intends with another to deal with money in the future, "having reasonable grounds to believe" at the time of the conspiratorial agreement that the money is and would remain tainted. He is guilty because such an agreement, if carried out in accordance with the conspirators' intentions, "will necessarily"



involve the commission of the money laundering offence, even if it does not actually materialise in the end. (paras 83, 84 and 103)

Substantial and grave injustice

10. It was plainly obvious that the trial judge did not believe the Appellant's exculpatory assertions and that there was ample evidence to justify the conclusion he reached as to the suspect facts and circumstances of which the Appellant was well aware and that they constituted reasonable grounds to believe the funds to be the proceeds of an indictable offence. (para 112)

**Prosecutions Division
Department of Justice**

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