



Summary of Judgment

SECRETARY FOR JUSTICE (“SJ”) v LI KWOK-WING (李國永) (“D1”)

& LAI SHUI-YING (賴瑞英) (“D2”)

HCMP 2254/2020; [2024] HKCFI 2107

Decision : D1 and D2 both found guilty of criminal contempt
Dates of Hearing : 9, 11-12, 15-16 January 2024 and 27 February 2024
Date of Judgment : 26 August 2024

Background

1. D1 and D2 face committal proceedings commenced by SJ for criminal contempt constituted by witness interference.
2. On 24 August 2020, a Death Inquest (“**the Inquest**”) was held at the Coroner’s Court at the West Kowloon Law Courts Building (“**the Premises**”) to inquire into the death of the deceased. PW1-3 were among others listed as witnesses in the Inquest.
3. After the hearing on the first day of the Inquest, as PW1-3 exited the Premises upon completing their evidence, they were surrounded by a group of people, some journalists and some civilians. Members of the civilian followed PW1-3 and persistently shouted threatening and/or insulting words towards them; some raised their middle fingers. In the ensuing chaos, the advancement of PW1-3 towards a private vehicle which was due to pick them up outside the main entrance of the Premises (“**the Vehicle**”) became impeded despite efforts by the escorting police officers to clear the way. After PW1-3 boarded the Vehicle, the crowd continued to shout abusive language towards the Vehicle and blocked its path for a brief moment before it was driven away (“**the Incident**”).
4. D1 and D2 were among this crowd. At the material time:-
 - i. D1 followed PW1-3 from behind shortly after they walked out of the Premises. He followed them in close proximity and at one point briefly held up both middle fingers towards the back of PW1. He then walked up close to PW1-3, held up his middle fingers and

repeated shouted in foul language towards the direction of PW1-3. After PW1-3 boarded the Vehicle after some impediment, D1 and several other people stood in front of the Vehicle.

- ii. D2 followed PW1-3 from the side and behind and shouted abusive language towards them clearly despite wearing a mask when the surrounding hostile crowd persistently shouted insulting words towards PW1-3.

- 5. On 21 December 2020, SJ commenced the present committal proceedings against D1 and D2. SJ contended that the conducts of D1 and D2 created a real risk of interference with the due administration of justice by interfering with witnesses, by harassing, insulting and/or intimidating them leaving the court premises after giving evidence.
- 6. Both D1 and D2 contested liability. Among other things, D1 contended that he did not have knowledge of PW1-3's status as witnesses of the Inquest and D2 contended that her conducts were of insufficient severity to amount to criminal contempt and no specific intent to do so could be inferred therefrom.

Issues in dispute

- 7. The issue for determination is whether D1 and D2 are guilty of contempt.
- 8. In relation to D1, the key issues for determination in this regard were:-
 - (a) Whether D1 was, at the time of the Incident, aware of the holding of the Inquest, the identities of PW1-PW3 and whether his conducts and words were directed at PW1-3;
 - (b) whether D1's conduct had put PW1-3 in fear for their safety and well-being for giving evidence in the Inquest; and
 - (c) whether SJ must prove that D1 and D2 not only intended to do the acts which they did, but they also intended to impede the due administration of justice.
- 9. In relation to D2, the main issue for determination was whether D2 also participated in the shouting of insulting and abusive language towards PW1-

PW3 knowing them to be witnesses.

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

(Full text of the judgment at

https://legalref.judiciary.hk/doc/judg/word/vetted/other/en/2020/HCMP002254_2020.docx)

10. The Court recognised that it had long been accepted in English law that victimisation of witnesses, including witnesses who had already given evidence in court, constitutes a criminal contempt of court (§6). The power to hold persons in criminal contempt extended to protect anyone who had a duty to perform at a court, including witnesses, such that they should be entitled to go to and from a court free from “molestation” or “the fear of molestation” (§10).
11. The *actus reus* for this type of criminal contempt was not confined to a mere consideration of the protection of the witnesses, it also encompassed acts which created a real risk of interference with the due administration of justice (§12).
12. In this regard, the Court observed that the administration of justice relied upon the willingness of witnesses to come forward to testify and speak the truth. The chaos caused by the alleged contemnors would undoubtedly cause alarm and create fear for people from coming forward to court. It would be of grave concern should witnesses generally become less willing to testify because witness victimisation had gone unpunished. In Hong Kong where the rule of law reigns, the due administration of justice could in no way be interfered with (§20).
13. The Court was of the view that the behaviour of the members of the crowd in the present case were totally unacceptable in any civilised society governed by the rule of law, and that the impact of the harassment and intimidation from them could have posed adverse effects and real risks for PW1-3 and other witnesses to come (§§35 and 36).
14. On *mens reas*, the Court held that whether a specific intent or a basic intent was required depended on the actual form of contempt before the court and the public policy consideration involved: the Court of Appeal's judgment

in *Secretary for Justice v Wong Ho Ming* [2018] HKCA 173 was applied (§16). Given the factual matrix of this particular case, the Court observed that the the two *mens reas* (basic or specific intent) were of little difference, since the acts of D1 and D2 could be self-evident of an obstruction and interference with the administration of justice, being acts either inherently likely to interfere with the administration of justice or deliberately performed to interfere with the administration of justice (§22).

15. In relation to D1, the Court upon careful consideration of the evidence rejected his defence that he had misidentified PW2 to be the defendant in an unrelated private prosecution proceedings which he had attended as an observer shortly before the Incident (§§25 and 27). On the evidence, the Court found that (i) D1 was fully aware of the holding of the Inquest and the identities of PW1-3 as witnesses having given their evidence in the Inquest (§§25-33); (ii) he deliberately followed PW1-3 with the intention of harassing, insulting or intimidating them together with other protestors (§§33-34); and (iii) caused PW1 to PW3 to be in fear of their safety (§§35-36). The Court also found that D1 participated with other protestors in their harassment and intimidation towards PW1-3 (§34).

16. In relation to D2, the Court found on the evidence that she shouted in unison with other female protestors in harassing and intimidating in particular PW1, and her actions reinforced the action taken by others (§§38-39). The Court also found that she was fully aware of the holding of the Inquest and PW1 being accused by members of the crowd of having given false evidence at the Inquest after receiving money (§40). The Court found it immaterial whether D2 knew or acquainted with other members of the crowd, for they had a common objective in mind, namely victimising the witnesses for giving evidence to their displeasure, and thereby acted in concert with each other and supported each other (§40).

17. In light of the above, the Court had no doubt that SJ had proven the case beyond reasonable doubt against D1 and D2 and that they were each guilty of criminal contempt (§§37 and 41).

Civil Division

Department of Justice

26 August 2024