

The Attorney General of Hong Kong

Appellant

v.

Siu Yuk Shing

Respondent

FROM

THE COURT OF APPEAL OF HONG KONG

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE
25TH JANUARY 1989

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD BRANDON OF OAKBROOK
LORD GRIFFITHS
LORD OLIVER OF AYLMEYTON
LORD GOFF OF CHIEVELEY

[Delivered by Lord Griffiths]

On 3rd October 1986 the respondent was found guilty of four offences relating to membership of a Triad Society. The Court of Appeal, by a majority, allowed his appeal against those convictions upon the ground that the judge had wrongly admitted evidence of a previous conviction and ordered a re-trial. This appeal is brought by special leave of the Judicial Committee of the Privy Council.

The Triad Societies in Hong Kong manage organised crime on a scale that is a menace to the community. They are outlawed by section 18(2) of the Societies Ordinance [Cap. 151] which provides:-

"Every Triad Society, whether or not such society is a registered society or an exempted society and whether or not such society is a local society, shall be deemed to be an unlawful society."

The respondent was found guilty of the four following offences:-

" 1A Charge

STATEMENT OF OFFENCE

Membership of a Triad Society, contrary to section 20(2) of the Societies Ordinance, [Cap. 151].

PARTICULARS OF OFFENCE

SUI Yuk-shing also known as SIU Wah also known as SIU Chi-wah, on or about the 26th day of February, 1986, in Hong Kong, was a member of a Triad Society, namely the 14K, Chung Yee Tong Society, also known as the Chung Yee Wui.

3rd Charge

STATEMENT OF OFFENCE

Assisting in the management of an unlawful society, contrary to section 19 of the Societies Ordinance, [Cap. 151].

PARTICULARS OF OFFENCE

SIU Yuk-shing also known as SIU Wah also known as SIU Chi-wah and HO Fuk-shing also known as HO Tai-shing also known as HO Sing, on or about the 26th day of February, 1986, in Hong Kong, assisted in the management of an unlawful society, namely a Triad Society, known as the 14 Chung Yee Tong, also known as the Chung Yee Wui.

4th Charge

STATEMENT OF OFFENCE

Possession of insignia relating to a triad society, contrary to section 20(2) of the Societies Ordinance, [Cap. 151].

PARTICULARS OF OFFENCE

SIU Yuk-shing also known as SIU Wah also known as SIU Chi-wah and HO Fuk-shing also known as HO Tai-shing also known as HO Sing, on or about the 26th day of February, 1986, at 232, Nathan Road, 2nd floor, Rear Portion, Kowloon, Hong Kong, had in their possession insignia, namely an altar bearing the name Chung Yee Tong, relating to a Triad Society, namely the 14K Chung Yee Tong, also known as the Chung Yee Wui.

6th Charge

STATEMENT OF OFFENCE

Possession of writing relating to a triad society, contrary to section 20(2) of the Societies Ordinance, [Cap. 151].

PARTICULARS OF OFFENCE

SIU Yuk-shing also known as SIU Wah also known as SIU Chi-wah, on or about the 28th day of

February, 1986, at 232 Nathan Road, Third Floor, Rear Portion, Kowloon, Hong Kong, had in his possession writing, namely one white paper fan bearing triad writings marked SIU Wah with a seal, two scrolls bearing triad writings, and a box of approximately 150 red cards bearing a list of members and triad writings, relating to a Triad Society, namely the 14K Chung Yee Tong also known as the Chung Yee Wui."

The evidence against the respondent was that the triad altar and the various other triad related articles, the subject of the sixth charge, were found by the police in premises he occupied both for business and living purposes. Expert witnesses identified the altar and the other articles as associated with the ritual of the 14K which is the largest Triad Society in Hong Kong. The witnesses for the prosecution were cross-examined on behalf of the respondent to suggest that all the items they found upon the premises were common place items that could be purchased in many shops in Hong Kong and that the writings and inscriptions on the articles were capable of innocent interpretation. The expert witnesses agreed that looking at each article separately this was so, but asserted that it was the combination of the items gathered in the same premises that led to the conclusion that they were used for triad rituals and identifiable as associated with the 14K Triad Society.

In the light of this line of cross-examination the prosecution concluded that the respondent proposed to raise as an issue in the case that he did not know that the articles in his possession related to a Triad Society.

Section 20(2) makes it an offence to possess triad related articles in the following terms:-

"Any person who is or acts as a member of a Triad Society or professes or claims to be a member of a Triad Society or attends a meeting of a Triad Society or is found in possession of or has the custody or control of any books, accounts, writing, lists of members, seals, banners or insignia of or relating to any Triad Society or to any branch of a Triad Society whether or not such society or branch is established in the Colony, shall be guilty of an offence and shall be liable on conviction on indictment -

- (a) in the case of a first conviction for that offence to a fine of \$2,000 and to imprisonment for 3 years: and
- (b) in the case of a second or subsequent conviction for that offence to a fine of \$5,000 and to imprisonment for 7 years."

The prosecution concede that the burden lies upon them to establish that a defendant knows that the items in his possession are triad related before he can be convicted of possession under this section. Bearing in mind that such articles might be innocently purchased by a tourist in Hong Kong this concession was rightly made and was accepted both by the judge and the Court of Appeal.

The prosecution, therefore, in order to prove that the respondent knew the significance of the altar and other articles and that they were related to the 14K Triad Society asked leave to prove that the respondent had been previously convicted of membership of a Triad Society in 1975. The judge indicated that he would not be prepared to admit evidence of this conviction unless it could be proved that it was a conviction for membership of the 14K Triad Society. This was an entirely correct approach for if it could be proved that the conviction was for membership of the 14K this would fix the respondent with knowledge of the ritual of that society. On the other hand if it was for membership of some other Triad Society it would not prove knowledge of the 14K ritual and would merely be evidence of a propensity to commit crime of a certain type, which as such is not accepted in English law as probative of the commission of the particular crime of which the defendant is accused see: *Makin v. Attorney General of New South Wales* [1894] A.C. 57.

The prosecution indicated that they were in a position if necessary to prove that the conviction was for membership of the 14K Society and the defence then admitted that the conviction in 1975 was for membership of the 14K. The conviction was then proved by the prosecution.

The defendant did not give evidence. The judge placed some reliance upon the conviction although it seems probable from the terms of his judgment that he would have been prepared to find guilty knowledge established from the surrounding circumstances without recourse to the evidence of the conviction for he said:-

"However 1st Accused is a mature man and the plethora of material evidence makes it inconceivable that he did not know the nature and significance of the material in his possession. The fact that he was convicted in 1975 for membership of 14K Triad Society is an additional matter the effect of which is to leave me in no doubt whatsoever that he knew the nature and purpose of the exhibited material of some of which I am satisfied he was the author (in the sense of writer)."

The majority of the Court of Appeal after a discussion of a number of the authorities on "similar fact" evidence gave the following reasons for allowing the appeal expressed in the judgment of Silke J.A.:-

" Despite the nature of the exhaustive cross-examination as to the individuality and accessibility of the items found, and in this I include the altar and its attachments, there was evidence upon which the judge could have found, without the aid of any previous conviction that, taken together, these materials were triad related. This cross-examination was not, as we see it, raising an explicit defence that D1 was without knowledge of triad activities. Had D1 gone into the witness box and asserted lack of knowledge then it might well have been possible to introduce evidence of the conviction in rebuttal.

I do not think that the evidence of the previous conviction was properly admissible in the circumstances here. Additionally it does appear from the Reasons for Verdict of the trial judge that the conviction was used for the purpose of showing knowledge. Had the admission been a proper one, it would still not have been available for that purpose. It influenced the trial judge to such an extent that all the convictions as recorded against D1 are rendered unsafe and unsatisfactory. The application for leave is, therefore, granted, the appeal treated as the hearing of the appeal, conviction quashed and the sentence set aside."

In so far as the second paragraph in this passage appears to suggest that the previous conviction could not be introduced to prove knowledge unless the accused himself denied knowledge in the witness box it is with all respect not correct. Subject to the hearsay rule evidence that is probative of any element of an offence is admissible. The common law, however, unlike some other systems, does not regard a propensity to commit crime as probative of the commission of the particular crime with which the accused is charged. Hence the general rule that evidence of previous convictions is inadmissible. On the other hand evidence which is, for reasons other than a mere propensity to commit crime, logically probative of the crime charged is not rendered inadmissible merely because it discloses the commission of another offence. In the present case the prosecution had the burden of proving that the respondent knew that the articles in his possession related to the 14K Triad Society. The cross-examination on behalf of the accused was equivocal. It may have been directed to show lack of knowledge in the accused or it may have been directed to suggest that the articles were not of a kind used in the ritual of the 14K. In the discussion with the trial judge about the admissibility of the previous conviction the prosecution made it plain that they wished to introduce it to prove the guilty knowledge necessary to establish possession of the articles. The defence then had the opportunity if they so desired to admit knowledge of the Triad significance of the articles. If the defence had made this admission knowledge would no longer

have been in issue and no proper purpose would have been served by proof of the previous conviction. The defence, however, did not make this admission and the only conclusion that could be drawn from their failure to do so was that the question of knowledge remained an issue to which the defence were putting the prosecution to proof. The previous conviction for being a member of the 14K was powerful probative evidence that the accused knew the 14K ritual and the significance of the articles associated with it and it was in the circumstances properly admitted by the learned judge to prove such knowledge.

It is not without significance that this was a trial by judge alone. If the judge had been sitting with a jury he would have had to weigh carefully the probative value of such a previous conviction against the prejudice to the accused that would be likely to arise in the minds of the jury. The risk of such prejudice overbearing the probative value of evidence is of infinitely less significance when a case is tried by a judge alone. The judge must of course guard against any such result but his whole background and training have fitted him to do so. In a trial by a judge alone the exercise of excluding the evidence on grounds of prejudice becomes somewhat unreal when it is remembered that the judge must be informed of the nature of the evidence in order to rule upon whether or not it is admissible. If the judge having ruled it inadmissible is to be trusted to put the evidence out of his mind he can surely be trusted to give it only its probative, rather than its prejudicial, weight if he rules that it is admissible. The trial judge in the present case showed an entirely correct approach to this aspect of the case when he said:-

" The evidence of previous conviction will have prejudicial effect but as I am sitting as both judge of fact and of law I can see it will be minimal compared with its possible effect on a jury."

For these reasons their Lordships will humbly advise Her Majesty that this appeal ought to be allowed and the convictions of the respondent restored.

