

**Tan Siew Gim**

*Appellant*

v.

**The Queen**

*Respondent*

FROM

**THE COURT OF APPEAL OF HONG KONG**

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JUDGMENT OF THE LORDS OF THE JUDICIAL  
COMMITTEE OF THE PRIVY COUNCIL,  
Delivered the 19th June 1995  
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*Present at the hearing:-*

Lord Keith of Kinkel  
Lord Mustill  
Lord Lloyd of Berwick  
Lord Nicholls of Birkenhead  
Lord Steyn

*[Delivered by Lord Keith of Kinkel]*

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This is an appeal from a judgment of the Court of Appeal of Hong Kong (Kempster, Penlington and Litton JJ.A.) dated 14th January 1993. By that judgment the court dismissed the appellant's application for leave to appeal against her conviction on 24th January 1991, before Ryan J. and a jury, upon one count of conspiracy to defraud and nine counts of false accounting. The sentences imposed required the appellant to serve three years' imprisonment.

The conspiracy count was in these terms:-

" STATEMENT OF OFFENCE

Common Law Conspiracy to defraud, contrary to  
Common Law.

PARTICULARS OF OFFENCE

Michael CHUA Yong-lim, TANG Wee-lip and TAN Siew-gim, between about the 27th day of July 1984 and about the 21st day of June, 1985 in Hong Kong conspired

together and with LOW Chang-hian, LOW Chung-song, LOW Chun-seng (the LOW brothers), Victor TAN Khai Chong (Victor TAN), and others to defraud Asean Resources Finance Limited (ARFL) its existing and potential shareholders, creditors and depositors by dishonestly:

- (a) Causing and permitting the disbursement of funds of ARFL to the bank accounts of individuals and companies under the control of the LOW brothers and Victor TAN.
- (b) Causing and permitting the entry into the records of ARFL of false, misleading and forged documentation so as to disguise the said disbursements as true loans to genuine corporate and individual borrowers from ARFL.
- (c) Causing and permitting the disbursement of the said funds as purported loans without any or any adequate, security being provided to ARFL or any proper provision being made for the repayment of the funds to ARFL.
- (d) Causing and permitting the disbursement of the said funds as purported loans without any intention that the said funds should be repaid by the purported borrowers."

The indictment thereafter proceeded to set out sixteen counts of false accounting, of which the first is typical:-

" STATEMENT OF OFFENCE

False accounting, contrary to section 19(1)(a) of the Theft Ordinance, Cap. 210.

PARTICULARS OF OFFENCE

Michael CHUA Yong-lim, TANG Wee-lip and TAN Siew-gim, on or about the 25th day of June, 1985, in Hong Kong, dishonestly with a view to gain for themselves or another or with intent to cause loss to another, falsified a document made or required for an accounting purpose, namely a loan ledger account of Asean Resources Finance Limited in the purported name of LI Wo Sang and numbered FL/4/I/48 (A/C2)."

The company ARFL was a subsidiary of another company, Asean Resources Limited, which was publicly listed but under the control of the Low brothers and Victor Tan, who also held important interests in the Ka Wah Bank. Asean Resources Limited acquired ARFL in July 1984. It then had a different name, which was changed to ARFL. The directors of ARFL were

the first and second accused, Michael Chua Yong-lim and Tang Wee-lip, and one Thomas Kam. The latter never took any active part in the company's affairs. The appellant, who was a university graduate with extensive experience of banking matters, was manager of ARFL.

The evidence led for the Crown disclosed that between July 1984 and June 1985 ARFL, using some HK\$200m advanced to it by Asean Resources Limited, which had obtained the money from the Ka Wah Bank, made 63 purported loans to various individuals and companies, the money lent eventually making its way to accounts controlled by the Low brothers or Victor Tan. Some of the moneys purported to be repaid and used to make further loans. In June 1985 ARFL had a balance of some HK\$126m outstanding. The false accounting counts in the indictment related to false entries made in the books of ARFL in order to cover up what had been going on.

The procedure was that the appellant, in her capacity as manager of ARFL, prepared applications for credit facilities and other documents in the name of the purported borrowers and recommended approval of the proposed loans, which was then given by the first and second accused. None of the purported borrowers was ever seen at the offices of ARFL. In many instances the signatures of the purported borrowers were forgeries. In other cases documents had been signed in blank. The appellant signed the documents as witness to these signatures. The documents included comments by the appellant on the standing and personal resources of the purported borrowers, who were for the most part persons associated with the Low brothers' companies in Singapore and Malaysia, including security guards and boatmen. It appeared that the proposals for the various loans usually emanated from one Doreen Yong, who was personal assistant to one of the Low brothers, working at the Ka Wah Bank.

The appellant's ground of appeal relates to a ruling made by the trial judge upon an application made by counsel for the first accused and by the second accused (who was unrepresented). On 23rd January 1987 the appellant was interviewed by officers of the ICAC, and the record of the interview was tendered in evidence by the Crown at the trial. The relevant questions and answers were these:-

"Q.11: Did you keep individual files of your customers?

A: Yes

Q.12: What information would be contained in this files?

A: Personal particulars of customers, estimated assets. The customers have and the business the customers are doing, etc.

Q.13: How did you prepare those credit reports?

A: Base on information submitted by the borrowers, and sometimes also whatever discussions with Michael CHUA and TANG Wee-lip.

Q.14: After you have prepared the credit reports, what would you do?

A: Submitted to Michael CHUA for personal and approval. Actually, before the credit reports were prepared after I was told by Mr. CHUA. That we were going to grant the loan.

Q.15: Did you have to verify the truthfulness of the credit information about the borrowers?

A: No.

Q.16: Why not?

A: I have discussed with Mr. TANG before whether we had to verify the information. He said that we can take it on prima facie bases something to the effect and what was most important was business decision on the directors part."

Counsel for the first accused submitted to the trial judge that question and answer 14 should be edited out of the record before it was put to the jury on the ground that that part of the record was prejudicial to the first accused. The second accused made a similar submission in regard to question and answer 16. Counsel for both the prosecution and for the appellant opposed these submissions. The trial judge, however, acceded to them with the result that the record of the interview was read to the jury with the omission of question and answer 14 and question and answer 16.

There can be no doubt that the ruling of the trial judge was erroneous. This has been made clear by the decision of this Board in *Lobban v. The Queen* (6th April 1995 unreported: Privy Council Appeal No. 23 of 1993), an appeal from the Court of Appeal of Jamaica. The principal ground of appeal was that the trial judge had wrongly refused to edit out of a statement under caution by one accused a passage which was inculpatory of another accused. The statement, which was tendered by the prosecution as evidence against the accused who made it, was a "mixed" one, containing admissions as well as explanations of an exculpatory nature. It was held that the court had no discretion to edit out part of such a statement on the ground that it was prejudicial to a co-accused, but must admit the statement in its entirety, provided that the prejudicial part was relevant for the defence of the maker of it. Lord Steyn, giving the advice of the Board, said:-

"The discretionary power to exclude relevant evidence applies only to evidence on which the prosecution proposes to rely. It exists to ensure a fair trial to the defendant, or, in a joint trial, to each defendant without seeking to differentiate between the quality of justice afforded to each defendant. It does not extend to the exculpatory part of a 'mixed statement' on which a co-defendant wishes to rely."

and later:-

"The principled objection to the discretion envisaged by counsel is that it conflicts with a defendant's absolute right, subject to considerations of relevance, to deploy his case asserting his innocence as he thinks fit."

The trial judge's ruling in the present case therefore constituted an irregularity. The question is whether the irregularity was so material as to deprive the appellant of a fair trial and to result in a miscarriage of justice. In their Lordships' opinion it was not. On the evidence as a whole, as gathered from the trial judge's summing up and the documents put before the Board, there was an overwhelming case against the appellant. Not a single one of the transactions entered into by ARFL was genuine, and the jury was entitled to draw the inference that the appellant was aware of this. The trial judge did not, in the course of the summing up, make any reference to the record of the appellant's interview with the ICAC officers, and he did very fairly put to the jury the appellant's case as submitted by her counsel that all the proposals for loans and information about the borrowers come to her from C.H. Low through Doreen Yong, and that she had no reason at the time to suppose that C.H. Low was other than an honest and responsible businessman. It is a significant feature of the case that the appellant did not give evidence in her defence. The matters revealed by the evidence for the prosecution cried out for some explanation on the part of the appellant which might be consistent with her innocence. The nature of these matters was such that the jury would have been well entitled to consider that in the absence of any evidence to the contrary from the appellant she must be taken to have been aware of the true character of ARFL's activities. In the circumstances there is no room for the view that had the omitted questions and answers been before the jury their verdict on the appellant's case might have been different.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be dismissed. There will be no order for costs.