

FACC No. 4 of 2004

IN THE COURT OF FINAL APPEAL OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION  
FINAL APPEAL NO. 4 OF 2004 (CRIMINAL)  
(ON APPEAL FROM HCMA NO. 39 OF 2003)

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Between:

LAU CHI WAI

Appellant

and

HKSAR

Respondent

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Court: Mr Justice Bokhary PJ, Mr Justice Chan PJ, Mr Justice Ribeiro PJ, Mr Justice Litton NPJ and Sir Anthony Mason NPJ

Date of Hearing and Decision: 7 October 2004

Date of Handing Down of Reasons: 18 October 2004

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J U D G M E N T

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**Mr Justice Bokhary PJ :**

1. At the conclusion of the hearing we allowed the appeal, quashed the conviction and awarded the appellant his costs to be taxed of the trial, the intermediate appeal, the proceedings before the Appeal Committee and this appeal. We said that we would hand down our reasons later, and we now do so, our reasons being those given by Mr Justice Litton NPJ for the Court.

Mr Justice Litton NPJ :

*Background facts*

2. This appeal arises from events which occurred over 2½ years ago. They centre around Nicholas Tse, then aged 21, a performer much idolized by the popular media.

3. In the early hours of 23 March 2002 Nicholas Tse was driving home in his powerful sports car, a Ferrari. He was alone. As he was going up Cotton Tree Drive in Central, on his way to Old Peak Road, he lost control; his car collided with the railing bordering the squash centre. Part of the railing was damaged and so was his car; it rested immobilized across the nearside lane of the carriageway. Tse was uninjured. The time was then about 6 a.m. The sky was dark and there was heavy rain.

4. Tse contacted by mobile phone a man called Shing Kwok-ting at home, arousing him from his bed. Shing was employed as a driver by the Emperor Entertainment Group, with whom Tse had a contract as an "artiste". Shing had often acted as driver for Tse. Tse told Shing that there had been a car crash, that he was uninjured, no-one else was injured and a railing had been damaged. Shing told Tse to leave the scene. He was concerned at the time, as he subsequently testified in court, to protect Tse's reputation.

5. Shing got changed, called a towing company to tow away the car, and went by taxi to Wanchai to collect a car belonging to the Emperor Entertainment Group. On his way Shing received a second call from Tse asking whether he had arrived. Shing said he was on the way. Shing collected the car in Wanchai and drove to the scene of the accident. On the way, he received another phone call from Tse. In the course of this phone call Shing asked Tse if he had been photographed at the scene. Tse said no. Upon arrival at Cotton Tree Drive Shing found there were already police officers present.

6. So far, what has been recited above is undisputed between the parties : What happened thereafter was hotly contested in the courts below.

*The charge*

7. The charge which led to these proceedings was a charge of conspiracy to pervert the course of justice, involving Tse, Shing, an employee of Tse's called Chow Chu-fai, and also a police constable Lau Chi-wai (the appellant) who had arrived at the scene of the accident at around 6.40 that morning. The plot, as alleged by the prosecution, and on which Tse and the appellant stood convicted after trial in the magistrates' court, was "to pervert the course of public justice by allowing Shing ... to falsely present himself, in substitution for ... Tse ... as the driver of [the] private car ... in the police investigation of [the] traffic accident ...".

### *The appellant*

8. The appellant was, at that time, a police constable attached to the accident investigation unit at Central Police Station. He was a married man, aged 28, having been in the police force for nearly 10 years. He was part of Team 7 stationed at Central Police Station, the team comprising a senior inspector and three police constables. The appellant had gone on duty at 11 pm the previous night; he had been working on three other traffic cases right through the night when, shortly after 6 am on 23 March, he received a call on his radio to investigate the accident at Cotton Tree Drive. He was on his motorcycle at Wong Chuk Hang, on the south side of Hong Kong island, when he received the order. He arrived at the scene at around 6.40 am. By that time a police vehicle was there, with blue lights flashing, diverting traffic from the nearside lane of Cotton Tree Drive. A number of police officers were present, as were about 8 to 10 reporters : Their vehicles were parked also on the side of the carriageway, uphill from the crashed Ferrari.

### *The appellant's version of events*

9. As far as the appellant was concerned, this was a routine investigation. The only unusual feature was this : When he arrived at the scene and asked one of the officers there ( a PC50063) what the situation was, PC50063 pointed to Shing and said : "This guy returned after the event and said he was the driver" : Shing had returned to the scene of the accident in a seven-seat vehicle, which was also parked on the side of the carriageway, uphill beyond the crashed Ferrari : Shing was walking down the

road towards the police officers when he was pointed out as the driver by PC50063.

10. The appellant's version of events; as he stated in court, was this : He looked at Shing and asked : "Are you the driver" and Shing said yes. He asked Shing to step aside and the appellant then proceeded with his routine investigations at the scene : He took a few photographs, did a rough sketch, made some inquiries and then asked Shing how the accident had happened. Shing said he was driving uphill and skidded, crashing into the railing. The appellant made no note of the conversation as it was raining heavily at the time. Then, in accordance with standard procedure, he told Shing he needed to have a breath test : Shing could either wait at the scene for the equipment to arrive, or go to Central Police Station in the police vehicle to have the test done there. (There were officers from the Enforcement and Control division, carrying breathalysers on their motorcycles, cruising around the island, who could have been asked to attend at the scene.) There were reporters milling about at that time : Shing said he would do the test at the police station. When the appellant asked Shing to board the police vehicle, Shing said he had a car himself. The appellant then asked : "How come there's a car after you just had a car crash?". Shing said he did not have a phone with him when the accident occurred so he returned to Old Peak Road to collect a phone and the car. The appellant then asked Shing to follow him back to the police station.

11. When the appellant arrived at the compound of the police station he put through a radio call to the traffic central console to ask for an officer from the Enforcement and Control division to help with the breathalyser test : That officer had earlier, to the appellant's knowledge, escorted a driver back to Central Police Station for a test with a "large machine" : One that recorded the data collected. That radio call was tape-recorded and a transcript of that portion of the tape was subsequently produced in court as Ex D5A : It proved conclusively that the appellant had, indeed, sought assistance with the breathalyser test, as he claimed in the witness box. As it turned out, that officer was unable to help that morning.

12. The appellant brought Shing to the floor where Team 7 was located :

It was a large space used by many different officers. Shing was asked to sit on a bench whilst the appellant went to the duty officer to collect a breathalyser and, in the meanwhile, he went to the computer to retrieve information about the car owner and the driver; he also checked to see if the car had been reported lost and whether the driver was a wanted person. He then returned to the room where Team 7 was located, to remove his helmet and raincoat and report to the senior inspector. His two other colleagues (the other two police constables) were also there : He remarked to these two, in conversational tones, that "that guy" (meaning Shing) "only returned afterwards and said he was the driver"; he also mentioned that Shing had subsequently turned up at the scene in a seven-seat vehicle, and said that Shing looked fishy : He made that remark, he said, because he saw Shing talking on his cell phone, using his hand to cover the phone. He then reported to the senior inspector. Senior Inspector Lo subsequently testified in court as a prosecution witness and, in effect, corroborated this portion of the appellant's story : That, in reporting to her, the appellant told her that the driver had left the scene of the accident and later returned; the driver had been brought back for a breath test.

13. The appellant then went through the standard procedure for a breath test : He took out a form, explained the procedure to Shing, gave him a standard "section 39B" warning, and then conducted the test : It registered zero. The appellant showed Shing the result on the meter. Shing was asked to sign on the breath test form. Senior Inspector Lo subsequently testified in Court that, later, with the help of an engineer, she checked the computer records and ascertained that a test was done at 7.15 that morning : she did this, presumably, after doubts had arisen concerning the test conducted by the appellant.

14. A little later that morning the appellant handed to Shing a notice requiring identification of the driver which Shing completed, identifying himself as the driver. The appellant also gave Shing a form to be handed to the registered owner of the car to complete. He then asked Shing to make a statement concerning the accident, but Shing said he was very tired : The appellant told him he would be contacted later, and an appointment would be made for him to make the statement.

15. The appellant was, in fact, very busy at that time and had 30-odd other files to handle : He knew, even before reaching the scene of the accident, that he would not be the "I.O." (meaning investigation officer) and that the follow up would be assigned to someone else. That turned out in fact to be the case. This part of his evidence was also corroborated by Senior Inspector Lo : She said that although the appellant was the one sent to the scene he was not the one assigned to be the investigation officer. She added that the decision as to who would be the I.O. rested solely with her.

16. In the course of that morning Senior Inspector Lo, with the appellant in attendance, made a verbal report to her superior, a Superintendent Pang : In the course of that report the appellant told Superintendent Pang that Shing had returned to the scene in another car, a seven-seat vehicle.

17. The matters stated in paras.8 to 16 above comprise, as far as the appellant was concerned, the sum total of his involvement with the accident concerning the Ferrari on the morning of 23 March 2002. His file was then handed over to PC33246 Chiu Shun-kei as the I.O.

18. There was nothing inherently improbable in the appellant's story : If it was possibly true, a finding that he was a party to a plot to "deflect or frustrate an anticipated police inquiry ... and possible consequential prosecution" (an expression used by the trial magistrate and the appellate court below) would have been perverse.

### *The sequel*

19. On 29 March 2002 PC Chiu, the I.O. assigned to follow up on the case, phoned Shing and asked him to go to the police station to make a statement. Shing went and PC Chiu began taking the statement at 12.05 pm on that day. This took place in one of the cubicles which had been partitioned off in the interview room. The statement was completed at 12.30 pm. In his statement (Exhibit P4) Shing claimed that he was the driver of the Ferrari on 23 March and had skidded in going up Cotton Tree Drive, resulting in the crash. At the time when PC Chiu was taking the statement from Shing, the appellant was engaged, as he asserted in his testimony, in taking a statement from a taxi-driver surnamed Mak : This was, he said, a

particularly troublesome case for him as the taxi driver had made a complaint against him to CAPO (the Complaints Against the Police Office) : Hence he took particular care to put down the details whilst interviewing the taxi driver : That interview went from about 11.55 am to 12.40 pm when the interview was suspended at the taxi driver's request : This was in fact a longer span of time than the half hour during which PC Chiu was engaged in taking the statement from Shing : This aspect of the appellant's testimony was never challenged by the prosecutor and must therefore be accepted as an established fact. The significance of this will become apparent as the story unfolds.

20. It will be recalled that on 23 March, at the police station, Shing had been handed a form of notice to be completed by the registered owner of the Ferrari. The name and address of the registered owner, Tse Brothers Hong Kong, had already been typed on the form. Shing said in evidence that on 5 April, after he had driven Tse home from the airport, he raised this matter with Tse. Tse had just then returned from Taiwan with his personal assistant Chow Chu-fai. At Tse's home on that day Shing filled in the particulars, putting himself forward as the driver (with his own address, driver's licence number and phone number) : Tse was playing video games at that time. Shing went upstairs to fetch the company chop for Tse Brothers (Hong Kong) Co Ltd and got Chow Chu-fai to sign the form. He had no idea if Chow was authorized to sign for the company or not. The form was sent back to the police.

### *The proceedings*

21. On 12 April 2002 Tse was arrested by officers of the Independent Commissioner Against Corruption (the "ICAC"), as were Shing and Chow Chu-fai. On the same day, the appellant was interviewed by ICAC officers.

22. On 24 April Shing pleaded guilty to the charge of conspiracy to pervert the course of public justice and was sentenced to 4 months' imprisonment by the magistrate.

23. The trial against Tse (D1) and the appellant (D2) opened on 19

September 2002 before Mr A.J. Wyeth at the Magistrates' Court at Western. Chow Chu-fai had been granted an immunity from prosecution and testified as a prosecution witness, but his evidence did not directly implicate the appellant. The prosecution case against the appellant was based therefore entirely upon the testimony of Shing (PW1). His evidence was to this effect :

(1) When he arrived by car at the scene of the accident there were already several police officers present. He alighted from his car and approached one of the officers. He asked him directly whether it was all right to have someone to stand in. That officer replied by saying it was none of his business and pointed to the appellant, an officer from the accident investigation unit. Shing asked the appellant whether it was all right to get someone to stand in, whereupon the appellant replied : "Do you have an audio recorder on you?". Shing did not answer.

(2) The appellant then walked away to investigate the scene of the accident. Later, he returned and said to Shing : "You won't hand him over, right?"

(3) The appellant asked Shing to follow him to the police station.

(4) At the police station the appellant said : "It's all right to let someone stand in." Shing then said to the appellant : "But I need my licence for my livelihood" and the appellant replied : "Probably it won't happen. There may be some warning only."

(5) Shing told the appellant that he had consumed some alcohol at 10 pm the previous night : So the appellant did not ask him to do the breathalyser test : He merely showed Shing the meter : It read zero. The appellant said the test had been completed. He signed the form relating to the test.

(6) At one point Shing phoned Tse to tell him the police had agreed to let him stand in, but he was thinking that someone else called Bo Chai might be allowed to stand in instead. Tse said "All right". He added that this



conversation was not in the hearing of any police officers.

(7) He was then handed another form, which he filled in, stating that he was the driver.

(8) He then asked the appellant how he was to explain the presence of two vehicles at the scene : The appellant provided the answer. He said that at the time of the crash he (Shing) had no mobile phone to report to the police, so he took a taxi to Tse's home to collect the seven-seat vehicle in which the phone had been left and on returning to the scene the police were already there, so there was no need to report.

(9) On 29 March he received a phone call from a police officer surnamed Chiu asking him to return to the police station to make a statement. He went. At the police station the appellant taught PC Chiu what to write : He (Shing) did not say anything. That was the statement (Ex P4) in which he said he was driving the Ferrari which skidded in Cotton Tree Drive, crashing against the railing.

(10) He went back to Tse's home with a copy of the statement and read it over to Tse, telling him (Tse) to drive more carefully in future. Tse said : "Police are helpful. I know that. All right."

(11) On 5 April he fetched Tse and his assistant Chow Chu-fai from the airport : At Tse's home the form requiring the registered owner Tse Brothers Hong Kong Co Ltd to disclose the particulars of the driver were filled in by him; the company chop was fetched from upstairs and applied on the form; Chow Chu-fai signed it. Tse was playing video games downstairs.

(12) On 12 April he was arrested by the ICAC.

### *Outstanding features of the prosecution case*

24. Leaving aside for the moment the defence case, a number of curious points concerning the prosecution case spring immediately to mind :

(1) The magistrate said that the evidence led irresistibly to the inference that Tse was in agreement with Shing, at least, that Shing would

"present as the driver in place of the true driver ... in order to deflect or frustrate an anticipated police inquiry". The appellate judge Beeson J referred to this as the "initial agreement". This was, on the facts, a proper – and perhaps inevitable – finding : Once the tacit agreement had been reached, resulting from the first three phone conversations between Tse and Shing, that Tse should flee the scene and Shing should present himself as the driver, the common intention to deflect or frustrate the police inquiry would have been formed. It was bizarre then for one of the conspirators to draw the police into the criminal net when the object of the conspiracy was aimed at the police itself.

(2) The notion that Shing went up to the first police officer he met at the scene and asked him whether it was "all right to have someone stand in" was inherently improbable : It was tantamount to saying : "Is it all right for me to commit a crime?" In fact, that officer was, with the aid of a press photo taken that morning, identified at the trial as PC50063. This must have been known to the prosecution at the outset. It is an odd feature of the case that the prosecution did not call him as a witness : It would have been bizarre if that officer had corroborated Shing's story.

(3) The notion that PC50063 would have deflected Shing's request to the appellant by saying it was none of his business is equally improbable : It was tantamount to saying : "I can't tell you if it is all right for you to commit a crime, but that officer might ..."

(4) Shing's evidence was to the effect that, shortly before leaving the scene, the appellant had said to him : "You won't hand him over, right?" There was no other exchange between them when, back at the police station, the appellant then said "It's all right to let someone stand in". This is, on its face, bizarre. Why a police officer of 10 years' standing would casually allow a serious crime of that nature to be committed by a total stranger, and join in it himself, was never satisfactorily explained at the trial. In fact this allegation – that the appellant had said "It's all right to let someone stand in" – had appeared in none of the statements made by Shing to the ICAC, and was later retracted by him at the trial : A point which featured prominently in

the appellant's appeal before Beeson J. This matter will be examined in greater depth later on in this judgment.

### *Overall view of the case*

25. The magistrate described Shing as "being somewhat uncomfortable as a witness" : No wonder. In his misguided attempt to "protect Tse's reputation" and shield him from the consequences of his traffic accident on 23 March he had landed Tse in far greater trouble : Arrest and prosecution by the ICAC. If he was to continue to shield Tse, he had every reason to minimize Tse's role in the affair and inflate that of others.

26. To an extent it can be said that Shing had succeeded. At the trial, Tse was represented by an experienced senior counsel. The main point advanced by counsel on Tse's behalf was that Tse was an "inactive on-looker" and that his underlings were working to avoid his being involved in possible prosecution – without any active participation on his part. The magistrate rejected those submissions, but nonetheless concluded that Tse played a less active role than the other conspirators; having regard to his age and other attributes, the magistrate sentenced him to 240 hours of community service. The appellant was sentenced to six months' imprisonment.

### *The magistrate's reasons for verdict*

27. The sole basis for the conviction was that the magistrate accepted Shing's testimony. As to the appellant he said :

"I did not believe the evidence of D2 (the appellant). Features of his evidence were illogical and inherently improbable. Even on his own account, his actions included odd irregularities and unlikelihoods. I simply did not believe him."

The only "irregularity" in the appellant's story apparent from the magistrate's findings is what the magistrate said in his statement of findings, made pursuant to s.114(b) of the Magistrates Ordinance, Cap. 227, after the appeal had been lodged. It referred to the way the appellant handled the notice to be completed by the registered owner of the Ferrari, Tse Brothers (Hong Kong) Co Ltd : The form was not sent by post; it was handed to Shing who was not an office holder of the company : This would not have constituted "service" of the notice on the registered owner.

28. Assuming this was an irregularity in procedure – it was never put to Senior Inspector Lo in court and no-one testified in court to this effect – it was hardly sufficient to discredit the whole of the appellant's evidence.

29. At the hearing before us, counsel for the respondent was invited to point out to us the features of the appellant's evidence which were "illogical and inherently improbable" and was given an adjournment for that purpose. When the hearing resumed, counsel informed us that he had no submissions to make.

### *Shing's retraction of evidence*

30. As mentioned in para.24(4) above, Shing retracted in court his assertion that, at the police station, the appellant had said to him "Is it all right to let someone stand in". This retraction was important : If in truth the appellant never said that, then his participation in the conspiracy, on the basis of Shing's evidence, could only be inferred by conduct. The magistrate in his reasons for verdict said that this "seeming" retraction, coming after robust cross-examination, was "due to a temporary petulance born of natural discomfort and frustration". He gave it little account. This was plainly untenable : In re-examination, Shing had confirmed that he was no longer maintaining that aspect of his evidence. The retraction was unequivocal.

31. This was conceded by counsel for the respondent at the hearing of the appeal before Beeson J, who nonetheless dismissed the appeal because she thought that, "even without that item of evidence there was sufficient evidence from which the agreement could be inferred". With that piece of evidence gone, how the rest of Shing's testimony fell into place was never explained by the judge.

### *The appeal before Beeson J*

32. Much of the appeal before Beeson J was focused on the case for Tse who was the first appellant in that court, appealing against his conviction. When it came to dealing with the evidence against the appellant (the second

appellant in that court) the judge referred to the principle that the magistrate was in the best position to assess credibility; an appellate court would only interfere if there were exceptional circumstances. She then added :

"All the undesirable features complained of by the Appellants were made known and were obvious to the Magistrate. The significance of the retractions of evidence were known to him and dealt with by him. The fact that the Appellants were unhappy with the conclusions he reached is not any justification for interfering with his findings of fact."

On this basis, the appellant's appeal was dismissed.

*Features pointing to appellant's innocence*

33. It is not clear what the judge meant when she adverted to "undesirable features complained of by the appellants". Quite apart from the inherent probabilities referred to earlier, which strongly favoured the appellant, there were, in fact, solid pieces of evidence pointing to the appellant's innocence, which were hardly touched upon by the magistrate. They are :

(1) *The appellant's involvement at the outset in the investigation* : He knew that he was not going to be the investigating officer for the case : He knew that, after his involvement on the morning of 23 March, the file would be passed to another colleague. This was also the evidence of Senior Inspector Lo, a prosecution witness.

(2) *The whole body of evidence concerning the breathalyser test* : Ex D5A, the transcript of the taped radio call, proved conclusively that the appellant had sought help for the test. It would have been extraordinary if he had, at that time, conceived the idea of faking a test. The senior inspector's evidence tended to show a test was indeed conducted. On the basis of this evidence, Shing's assertion of a faked test was false.

(3) *The reporting procedure* : The appellant had related to his superiors – Senior Inspector Lo and Superintendent Pang – the unusual circumstances of the case : That the driver had returned to the scene, in a separate vehicle.

(4) *The statement taken from Shing on 29 March* : The appellant

could not have been "coaching" PC33246 Chiu on that statement as Shing alleged because he was interviewing a very awkward taxi driver at the time : In fact, Shing partially retracted his allegation on this as well : What counsel for the respondent, at the hearing before the judge, described as "dilution of the evidence".

(5) *The defence witness PC34537 Li Tit-kwan* : He testified to this effect : (i) On the morning of 23 March 2002, when the appellant returned to the Team 7 room, he said that the man he (the appellant) had just brought back to the station was "fishy"; the appellant then went to report to the Inspector; PC34537 subsequently learnt from the newspapers that the man was Shing. (ii) He saw the appellant conducting the breath test on Shing, and heard the sound of the tube being blown.

(6) *The defence witness PC33246 Chiu Shun-kei* : He took the statement from Shing on 29 March 2002. He received no help from anyone.

34. As to (5) and (6) above, the magistrate said that their evidence "included inherent improbabilities" and "strained credulity to breaking point". He questioned how they could have recalled details of "events that took place on a hectically busy morning shift months ago". The appeal judge did not deal with this evidence at all : Possibly, both courts overlooked the fact that in the week following 23 March the popular press had several articles on the accident, speculating as to who the driver of the expensive Ferrari was : a sports car bearing the "prestigious" number plate 450. And then barely 3 weeks later, on 12 April, the appellant was taken for interrogation by the ICAC : There was every reason for the two police constables, members of Team 7, to recall the event.

*The magistrate's conclusion : upheld by the judge*

35. The magistrate, in his reasons for verdict, gave himself a pro forma reminder concerning Shing's status as an accomplice, but never mentioned the width of the accusations Shing seemed prepared to make in order to shield Tse : Not only did he impeach the appellant's conduct : PC50063, the first officer he met at the scene, was implicated as well; as was PC 33246, the officer who took the statement from him on 29 March.

36. The magistrate concluded his reasons for verdict in this way :

"The potential benefit from this conspiracy of D1 (Tse) is obvious enough. The potential benefit to D2 (the appellant) is less clear. It may have been a simple matter of taking a shortcut in his duties in processing the purported driver rather than commence a proper enquiry into the identity and whereabouts of the real driver, a potentially bigger task. The evidence does not make D2's motive clear."

37. It is not clear what the magistrate meant by the appellant commencing "a proper enquiry into the identity and whereabouts of the real driver". The appellant had a very specific task, as ordered by his superior officer, that morning : To investigate at the scene, to start the file, to report, then hand the file over to PC33246. On his story, he did just that. He had not been given a wider task. If he harboured suspicions concerning Shing being the real driver, that would have been based upon the fact (i) that the driver had fled the scene and (ii) Shing had returned in a separate vehicle. Those two facts were known to his superiors, and to PC33246 who took over the file from him. If a wider investigation was to be commenced, that would have been ordered by his superiors : It was hardly for the appellant, one of the three police constables in Team 7, to "commence" such an investigation.

38. The material before us is silent as to how the ICAC investigation had started, or why. As mentioned earlier, soon after the accident, the popular press was full of speculation as to who was the real driver of the Ferrari : It is not surprising that, soon after the form for disclosure of the driver had been lodged by the registered owner, continuing the deception, the arrests were made. A "proper enquiry into the identity and whereabouts of the real driver" had clearly been started soon after the events of 23 March : The pity was that the "enquiry" had swept a hapless police constable into its net.

### *Conclusion*

39. Plainly, on what is said above, a substantial and grave injustice has occurred.

40. It hardly needs repetition that, in a criminal trial, the burden of proof rests at all times with the prosecution and that, unless the case is proved beyond reasonable doubt, upon the whole of the evidence, the accused is

entitled to be acquitted. The defence carries no burden of proof.

41. This case never turned on the demeanour of witnesses : And if it did, the prosecution would have begun with a handicap because it's star witness Shing was found to be "somewhat uncomfortable" in the witness box. The inherent probabilities were strongly against the prosecution; the chief prosecution witness had retracted an important assertion and had "diluted" another. The appellant's version of events was inherently credible; the defence was able to demonstrate by solid pieces of evidence that Shing's testimony was false in vital parts. What else, then, was left of the case?

42. There has been a grievous failure of process in the trial court, not corrected on appeal. This Court does not function as a court of criminal appeal in the ordinary way (see the discussion of the "substantial and grave injustice ground" in *So Yiu Fung v. HKSAR* (1999) 2 HKCFAR 539 at pp 541-543 and more recently in *Chong Ching Yuen v. HKSAR* [2004] 2 HKLRD 681 at 689). The present case however demands our intervention because the verdict is demonstrably perverse. A hard working police officer of spotless character, in the discharge of his normal duties, found himself caught up in a web of sycophancy and deceit, not of his own making. The nightmare began for him in April 2002; he has in the meanwhile served his 6 months' sentence and has expended large sums in legal fees. The order we made on 7 October has at last cleared his name, but would regrettably have only partially recompensed him for all that he has suffered in the meanwhile.

43. Morale in the police force must have received a severe blow as a result of this case. We have by our judgment done our best to redress the injustice. It is now up to other bodies to do the rest.

(Kemal Bokhary)  
Permanent Judge

(Patrick Chan)  
Permanent Judge

(R A V Ribeiro)  
Permanent Judge



(Henry Litton)  
Non-Permanent Judge

(Sir Anthony Mason)  
Non-Permanent Judge

Mr Allen Lam (instructed by Messrs C.L. Chow & Mackision Chan) for the  
appellant

Mr B.M. Ryan and Mr Gary Lam (of the Department of Justice) for the  
respondent

