

HCCC 51/2022
[2024] HKCFI 202

**IN THE HIGH COURT OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION
COURT OF FIRST INSTANCE
CRIMINAL CASE NO 51 OF 2022**

BETWEEN

HKSAR

Respondent

and

LAI CHEE YING 1st Defendant (D1)

APPLE DAILY LIMITED 2nd Defendant (D2)

APPLE DAILY PRINTING LIMITED 3rd Defendant (D3)

AD INTERNET LIMITED 4th Defendant (D4)

Before: Hon Toh , Hon D’Almada Remedios and Hon Alex Lee JJ in Court

Date of Hearing: 16 January 2024

Date of Ruling: 16 January 2024

**RULING ON ADMISSIBILITY
OF EXPERT EVIDENCE**

1. Objection is taken by D1, with the support of D2-D4, to the admissibility of the evidence of Professor Wang Guiguo (“**Prof Wang**”) intended to be called by the prosecution. This is on the ground that Prof Wang’s evidence is irrelevant for the purpose of proving the elements of Count 2 and Count 3 of the Indictment. It is noted that there is no dispute between the prosecution and the defence as to his qualification as an expert of American Law. The prosecution confirm that they are not going to rely on those parts of Prof Wang’s reports in relation to other countries.

2. At this stage, the prosecution has read into the record the Admitted Facts and the s65B statements, but live witnesses (including the alleged accomplice witnesses) have yet to be called. The prosecution seek to adduce the evidence of Prof Wang, in the form of two reports prepared by him dated 17 November 2022 and 15 November 2023 (to be redacted), in order to:

- (1) identify the sanctions, blockade or hostile activities (“**SBHA**”) imposed or being considered by the United States against certain senior officials of the Central Government and the Government of the HKSAR as well as Hong Kong as a Special Administrative Region; and
- (2) explain their legal effects such as impact, consequence and time limit.

3. Evidence is relevant if it is logically probative or disprobative of some matter which requires proof: *R v Kilbourne* [1973] AC 729. “Relevance” is a matter of degree and is context specific: *Vernon v Bosley* [1994] PIQR P 337; applied in *Re Estate of Nina Kung (No 2)* [2009] 4

HKLRD 157. Having considered the written submissions of the parties and their oral submissions, it is our ruling that Prof Wang’s evidence on the measures imposed or proposed is relevant and admissible as far as the United States of America is concerned. Our reasons are as follows.

4. First, as contended by the defence, the offences in Count 2 and Count 3 are respectively a conspiracy to make request for SBHA under NSL 29. As such, the prosecution is not required to prove any actual SBHA imposed by foreign countries. That said, if SBHA has in fact been imposed or proposed by a foreign country, then depending on the other evidence, that may provide (and we put it no higher than that for the present purpose) some circumstantial support to the prosecution’s case about the existence and scope of the conspiracies charged.

5. In this regard, we have no quarrel with the proposition that “comity” is observed by the recognition of the mutuality of the obligations that states undertake towards each other and it is in the interest of comity that courts of one state would refrain from sitting in judgement upon the internal affairs of another: *A Ltd v B Bank & Bank of X* [1997] FSR 165. However, the defence argument based on “comity” that it is beyond the judicial functions of this court to investigate into the reasons behind the imposition and engagement of the alleged SBHA by other foreign countries is, with respect not applicable and incorrect in the situation of the present case:

- (1) a foreign country has no right to interfere with the way in which Hong Kong strives to preserve its core values of rule of law and law and order;

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- (2) if sanctions are imposed or proposed by a foreign country with a view to influencing the internal affairs of Hong Kong, then mutual respect which is the very foundation of “comity” is not there, not because of any “investigation” or determination of this court, but by the act of the foreign country; and
- (3) in principle, it is the law of Hong Kong that determines whether or not the sanctions or proposed sanctions would be lawful. In this regard, by NSL 36 an offence shall be deemed to have been committed in the HKSAR if an act constituting an NSL offence or the consequence of the offence occurs in the Region.

6. Secondly, as pointed out by the prosecution, where a foreign law is relied upon, it is regarded as a question of fact to be proved by expert evidence. The function of expert witnesses on a foreign law includes:

“to inform the court of the relevant contents of the foreign law identifying statutes or other legislation and explaining when necessary the foreign courts approach to their construction”.

See *Phipson on Evidence*, 20th ed, at para. 33-92 and 33-96. We consider that the evidence of Prof Wang would be useful in assisting this court to properly understand the measures that the US has imposed or proposed against the Central Government and/or the HKSAR and in helping us to come to a fully informed decision as to whether those measures are capable of constituting SBHA for the purpose of NSL 29(4): *Barings Plc v Coopers & Lybrand* [2001] PNLR 22.

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7. Lastly, at this stage we are only concerned with the admissibility rather than weight of Prof Wang’s evidence. Whether or not we would accept his evidence is a matter to be decided at the end of the day. If his evidence was subsequently found to be unhelpful in our determination of the charges, we could simply put it aside and we as professional judges would not be influenced in any way by it in our deliberation of the verdict.

8. Based on all of the above, the defence objection to the admissibility of Prof Wang’s evidence is overruled. Prof Wang’s two reports are therefore admissible as regards the US.

(Esther Toh)	(S. D’ Almada Remedios)	(Alex Lee)
Judge of the	Judge of the	Judge of the
Court of First Instance	Court of First Instance	Court of First Instance
High Court	High Court	High Court

Mr Anthony Chau, DDPP, Mr Ivan Cheung, ADPP (Ag), Ms Karen Ng, SPP, & Ms Crystal Chan, SPP of the Department of Justice, for the respondent

Mr Robert Pang, SC leading Mr Marc Corlett, Mr Steven Kwan, Mr Albert N.B. Wong, Mr Colman Li, & Mr Ernie Tung, instructed by Robertsons, for the 1st defendant

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Mr Jon Wong, Ms Natalie Yeung & Ms Joanna Wong, instructed by Sit
Fung Kwong & Shum, for 2nd to 4th defendants

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