

**PUBLIC PROSECUTOR**

**AND**

**THIAN LI HENG**

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**(Court of Appeal of Brunei Darussalam)  
(Criminal Appeal No. 5 of 2016)**

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Before: Mortimer P, Burrell and Seagroatt JJ A.

**14<sup>th</sup> May 2016**

***Headnote:** Public Prosecutor's appeal against acquittal. Appeal refused. On the evidence he heard it was open to the judge to find that the prosecution had not proved beyond reasonable doubt that the respondent 'knew, or had reason to believe' banknotes to be counterfeit contrary to section 489B of the Penal Code.*

DPP Yvonne Lim Swee Twan for Applicant  
Respondent in person

***Statute:** Section 489B of the Penal Code.  
Section 438D of the Criminal Procedure Code.*

**Mortimer P.**

Having heard submissions on 11 May 2016 we dismissed the Public Prosecutor's appeal against acquittal. We now give our reasons.

In a trial which began on the 24 July 2014 in a judgment given on the 23 March 2016 HH Judge Abdullah in the Intermediate Court acquitted the respondent of three offences relating to 3 Singaporean \$10,000 counterfeit notes. The first two offences alleged that on 24 January 2014 on separate occasions he used as genuine 2 counterfeit notes which he had reason to believe were counterfeit contrary to section 489B of the Penal Code. By the first he purchased two gold bars and using the second note he bought gold jewellery at a jewellers shop in Kiulap. The third charge alleged that on the 28 June 2014 he was in possession of the third counterfeit note having reason to believe it to be counterfeit.

We note that although section 489B defines the offence as 'knew, or had reason to believe' the charges only allege that he had 'reason to believe' the notes to be counterfeit. It is difficult to understand the reasons for not alleging that he 'knew' as well but they are no longer relevant.

DPP Yvonne Lim appears for the Public Prosecutor who now appeals against these acquittals and seeks an order for a retrial.

Section 438D of the Criminal Procedure Code provides the grounds upon which this court may allow an appeal of this nature;

438D. (1). *Except as provided by this Code, the Court of Appeal shall allow an appeal by the Public Prosecutor under section 438A if it thinks –*

- (a) that the acquittal should be set aside on the ground that it is unsafe or unsatisfactory; or*
- (b) that the acquittal should be set aside on the ground of a wrong decision on any question of law; or*
- (c) that there is a material irregularity in the course of the trial, and in any other case shall dismiss the appeal.*

*(2). Notwithstanding subsection (1), the Court of Appeal may dismiss the appeal if it considers that, notwithstanding the point raised in the appeal might be decided in favour of the Public Prosecutor, no miscarriage of justice has actually occurred.*

### ***The facts***

In summary the agreed facts were as follows. The 3 counterfeit notes came into the possession of the respondent on 13 June 2014 from Hidayat Lee at his house in Miri. The next day he asked his co-accused to drive him to Tungku. There he used an ultraviolet light scanner to check the notes. They were scanned as genuine. The respondent and his co-accused went to a goldsmith in Gadong and attempted to buy a necklace but the goldsmith did not have enough change for this high-value note. The respondent then visited a money changer also in Gadong to exchange one of the notes for Malaysian ringgit but the money changer did not have enough ringgit to make the exchange.

Having failed to change the notes into smaller denominations a third person, Steven, was contacted and asked to meet them. He suggested that the notes should be spent to purchase gold from a goldsmith to break down the notes and then sell the gold to another goldsmith in exchange for cash. Following this suggestion the respondent and Steven went into the jewellery shop in Kiulap and purchased the 2 gold bars the subject of the first charge using one of the \$10,000 notes. Respectively the 2 gold bars cost \$6550 and \$3275. They were given \$100 change and 2 appropriate receipts.

They decided to obtain small change for the second note and returned to the same jewellery store where they bought 2 rings for a total of \$408 and one necklace/bracelet for \$6120 – the subject of the 2<sup>nd</sup> charge. The respondent gave the bracelet to his co-accused. At least one of these premises a note was scanned and again it appeared to be genuine.

On 28 June the respondent was found in possession of the third counterfeit note the subject of the 3<sup>rd</sup> charge.

The respondent made statements to the police. In evidence he admitted, particularly in his first statement, that he had lied but contended that he gave accurate evidence in court. He explained his possession of the counterfeit notes saying that he owed his co-accused \$4000 and Steven rent of \$2000. The rent had to be paid on Sunday the 15<sup>th</sup> August. He had no money and needed to borrow to pay his debts. Through others, particularly one whom he called uncle, he came to know about Hidayat Lee in Miri. When approached Hidayat Lee said he had plenty of money and was prepared to lend some to the respondent. Consequently he borrowed \$30,000 (the 3 counterfeit notes)

to be repaid by instalments. This loan was made without security because of Lee's connection with uncle. The person known as uncle gave evidence and clearly failed to come up to proof. He said that the connection with Lee was not direct but through a friend.

The respondent became 'scared' about the notes and for that reason took them to Tungku and scanned them. They passed the scan as genuine. In order to repay his debt on the next day (Sunday) it was necessary to break down the notes into smaller currency. It was a Saturday afternoon and this could not be done in the normal way through a bank. Consequently the unsuccessful visits to one goldsmith and the money changer followed by successful visits to the jeweller in Kiulap were done for this purpose.

The respondent contended that had he known the notes to be counterfeit he would not have used them nor would he have kept the third note which he intended to return to Lee to satisfy part of his debt. With currency of this denomination he knew that money changers, goldsmiths and the like would not accept a \$10,000 note without verifying it. Indeed that is what happened and the note passed as genuine on a second occasion..

### ***Discussion***

The DPP contends that on the whole of this evidence it was not open to the judge to acquit. She points out, giving details, that the whole enterprise was highly suspicious and the respondent was not worthy of belief. In support she points out the admitted lies the respondent told in his statements, the inherent unlikelihood of his account of how he borrowed a substantial sum from a man he did not know previously without security. These powerful arguments were put before the judge and this court.

### ***Conclusion***

The question for this court is whether, having considered all the evidence and having heard and seen all the witnesses, it was open to the judge to hold that the prosecution had not satisfied him beyond reasonable doubt that the respondent 'knew, or had reason to believe' the notes were counterfeit in spite of the suspicious circumstances and the respondent's admitted lies. The central issue was not whether the respondent was worthy of belief but whether the prosecution had nevertheless proved beyond reasonable doubt that he knew the notes were counterfeit.

If there is evidence upon which it is open to a judge to make a finding and he makes that finding having heard and seen the witnesses it requires overwhelming reasons for this court to reverse him on a question relating to the burden of proof. He has the huge advantage of hearing and seeing the witnesses denied to this court. There are no such overwhelming reasons advanced in this appeal.

In spite of the DPP's submissions there are clear reasons why it was open to the judge to reach his finding. Examples are the agreed facts that the respondent took the counterfeit notes to be scanned before using them and they scanned as genuine followed by a test with similar results at a goldsmith. These were reasons for the respondent to believe the notes to be genuine not that he had reason to believe they were counterfeit.

We are unhesitatingly of the view that it was open to the judge to make his finding to acquit the respondent on the grounds that the prosecution had not satisfied him beyond reasonable doubt that at the time he used and was in possession of the counterfeit notes he 'knew or had reason to believe' they were counterfeit. For these reasons this appeal was dismissed.

**Order:** The Public Prosecutor's appeal against the respondent's acquittal is dismissed.

**Mortimer, P.**

**Burrell, J.A**

**Seagroatt, J.A**