

FRANCIS VIBAN BAYONG

AND

PUBLIC PROSECUTOR

**(Court of Appeal of Brunei Darussalam)
(Criminal Appeal No. 6 of 2017)**

Before: Mortimer P, Leonard and Burrell JJA.
22nd November 2017

Headnote: Criminal law –Appeal against two convictions of keeping a brothel and one people smuggling. Appeal dismissed

Appellant in person
DPP Karen Tan Chai Mei/DPP Siti Nurjauinah binti Hj Kula for Public Prosecutor

Leonard, JA.:

This is an appeal against conviction.

On 24 of May, 2017 the appellant was convicted in the High Court after a trial before Hairol J of four offences but the appeal relates only to three. The relevant charges, which were laid against the appellant and his wife jointly, were in summary as follows.

Charge 3

In furtherance of their common intention, between September 2012 and January 2013 knowingly permitting premises in Kampong Salambigar of which he was the occupier, to be used as a brothel, an offence under section 6(b) of the Women and Girls Protection Act, Cap 120, read with section 34 of the Penal Code, Chapter 22 and punishable under section 6(b) of Cap 120.

Charge 4

In furtherance of their common intention, sometime in January 2013, at Kuala Lurah, Brunei engaging in people smuggling, in that they arranged the unlawful entry of Mercy Jane Boiser Cutad, a female aged 33 into Malaysia, of which she was not a citizen or permanent resident, having reason to suspect that her entry was unlawful, in order to obtain a financial benefit, and thereby committed an offence under section 7 of the

Trafficking and Smuggling of Persons Order 2004 read with section 34 of the Penal Code, Chapter 22 and punishable under section 7 of the said Order.

Charge 8

In furtherance of their common intention, sometime between November 2013 and January 2014 at the premises referred to in charge 3, being occupier of the premises, knowingly permitted them to be used as a brothel.

On 1st June 2017 he was sentenced as follows;

- Charge 3** 2 months imprisonment. Consecutive to the sentence on charge 4.
- Charge 4** 5 years imprisonment and a fine of \$5,000, one month's imprisonment in default of payment and one stroke.
- Charge 8** 4 months imprisonment, consecutive to the sentence on Charge 4 and concurrent with the sentence on Charge 3.

The total effective sentence on those charges, to commence from 29 July 2015, was 5 years and 4 months, one stroke and a fine of \$5,000.00.

After hearing the evidence of a total of 15 witnesses for the prosecution on the one hand and of the appellant, his co-defendant wife and 3 defence witnesses on the other the judge found that the case against the appellant was proved and he gave reasons for his decision in a careful judgment. The defence was a general denial. We have considered written and oral submissions tendered by the DPP and the appellant. It was alleged by the appellant that the DPP has committed fraud, in collusion with the investigating officer in order to achieve the convictions. He also submitted arguments by which he sought to show alleged weaknesses in the prosecution case, endeavouring to persuade this court that the verdict was unsafe.

The alleged fraud by the DPP and the investigating officer

As we understand it, the allegation by the appellant is that the DPP and the investigating officer in order to obtain a conviction erased a stamp in the passport of his wife who was D1 at the trial. It is alleged that the stamp showed that she crossed the border on a certain date and that if not erased it would have caused a difficulty for the prosecution. The passport was exhibited at the trial. We find that there was no evidence to support this very serious allegation, which seemingly relates to an offence for which the appellant's wife alone, who so far as we know has not appealed, was charged and convicted.

The attack on the prosecution's case

There is no suggestion that the judge erred in law. This is purely an appeal on the facts. In order to persuade an appellate court to interfere with findings of fact made by a judge, who has had the advantage of hearing and seeing the witnesses, an appellant would need to show that the judge's findings were plainly wrong. After considering the notes of evidence, the judgment and the arguments put forward by the DPP and the appellant in their written

and oral submissions we find that the appellant has failed to show that the judge was plainly wrong or that the verdicts were unsafe or unsatisfactory. We have reached that conclusion after giving careful consideration to the extensive written submissions put before us by the appellant and after listening carefully to his lengthy oral submissions which amounted mainly to a repetition of his written ones. The evidence against the appellant was overwhelming and there is no ground for setting aside the convictions.

The appeal is dismissed.

Mortimer, P.

Leonard, J.A.

Burrell, J.A