



**THE INTERMEDIATE COURT OF BRUNE DARUSSALAM
HOLDEN AT BANDAR SERI BEGAWAN
CRIMINAL TRIAL NO. 2 OF 2020**

PUBLIC PROSECUTOR

V

**MOHD SALIHIN BIN ABDULLAH GAMPAR
(M.53 YRS OLD) (NRIC NO. 00-112464 (Y))**

JUDGMENT

Harnita Zelda Skinner, ICJ
7th August 2023

Criminal Law – Section 471 read with section 468 of the Penal Code, Chapter 22- dishonestly use as genuine certain documents- knew or had reason believed to be forged documents- section 420 of the Penal Code, Chapter 22-cheating-deception-dishonestly- Public Works Department - Store Unit-printer toner cartridges

Deputy Public Prosecutor Muhammad Qamarul Affiyan bin Abdul Rahman for the Prosecution
DC Ahmad Basuni Hj Abbas for the defendant

1. Background

The defendant is facing one (1) charge under Section 471 read with section 468 of the Penal Code, Chapter 22 for dishonestly use as genuine certain documents which he knew or had reason believe at the time he used them to be forged documents and one (1) charge under section 420 of the Penal Code, Chapter 22 for cheating Boi Keng Hua of Delima Laut Company into believing the offer was accepted when the defendant knew to be false and dishonestly induced Boi Keng Hua to deliver. He has entered a not guilty plea to both charges and claimed trial. On 14th December 2020, two similar charges were withdrawn against the defendant.

The charges are as follows:

2. Charges

1st Charge:

“That you, on the 10th February 2016 in Brunei Darussalam, did dishonestly use as genuine certain documents, to wit:

- a) One (1) Letter of Acceptance of a Quotation with refence number JKR/STOR/LOA/31/2016;*
- b) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/3/2016;*
- c) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- d) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- e) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- f) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- g) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- h) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- i) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*
- j) One (1) Letter of Acceptance of a Quotation with reference number JKR/STOR/LOA/31/2016;*

which you knew, or had reason to believe, at the time you used it, to be forged documents, and you have thereby committed an offence punishable under section 471 of the Penal Code, read with section 468 of the same”.

The penalty is an imprisonment for a term not exceeding 10 years and fine.

2nd charge:

“That you, on the 10th February 2016 in Brunei Darussalam did cheat one Boi Keng Hua, a person employed at Delima Laut Company, into believing that his offer from the said company to supply printer toner cartridges was accepted by the Public Works Department, a fact which you knew to be false, as the Public Works Department did not issue Letter of Acceptance of Quotation to accept these offers, and by such manner of deception, you have dishonestly

induced the said Boi Keng Hua to deliver you printer toner cartridges (as in Appendix A), which he would not have done so had he not been deceived and you have thereby committed an offence punishable under section 420 of the Penal Code, Chapter 22”.

The penalty is an imprisonment for a term which may extend to 7 years, and shall also be liable to fine.

3. Prosecution case

The prosecution called a total of nine (9) witnesses and tendered 30 documentaries evidence to prove its case. The statement of the prosecution witnesses were prepared pursuant to section 117B of the Criminal Procedure Code, Chapter 7 and admitted in evidence. Their statements were marked as exhibit P3 to P5, P7, P20, P23, P25, P26 and P29. Below are the summaries of their evidence.

PW1- Evidence of Boi Keng Hua

PW1’s 117B statement was marked as exhibit P3. He is the General Manager of Delima Laut Company (DLC). The company supplies printer toners and ink cartridges.

He gave evidence that he met the defendant (Awang Salihin) sometime in January 2016 when he went to the Public Works Department (PWD) to ask for a quotation. During the meeting, he told the defendant that his company was able to supply printer toner cartridges to PWD. It was his evidence that he was called back to PWD and met with the defendant in his office to collect a quotation and to include prices of the printer cartridge toners.

On 10th February 2016, the defendant called him to inform that the Letter of Acceptance of a Quotation (LOA) is ready for collection and requires his signature. On the same day, he met with the defendant at Unit Stor, JKR (PWD) to sign the said documents. The documents were JKR/STOR/LOA/31/2016;JKR/STOR/LOA/32/2016;JKR/STOR/LOA/33/2016;JKR/STOR/LOA/34 /2016;JKR/STOR/LOA/35/2016;JKR/STOR/LOA/36/2016;JKR/STOR/LOA/37/2016; JKR/STOR/LOA/38/2016; JKR/STOR/LOA/39/2016; and JKR/STOR/LOA/40/2016.

It was his evidence that he was handed photocopies of these documents and was informed by the defendant that he will be given the original on a later date. He also asked for the purchase order to which the defendant told him it will be given after a delivery is made. The defendant also told him that PWD require for these items to be supplied urgently. He gave evidence that he agreed to supply the items to the defendant after he was assured that award letters were approved by the upper management and that the purchase order will be given upon delivery.

He further gave evidence that on 17th February 20216 he delivered the items at PWD Old Airport and the defendant signed the delivery order. After the delivery, the purchase order was not given to him. The defendant told him that since payment process payment has passed,

he will have to wait for payment in April 2026 after new budget. Sometime in April 2016, the defendant told him that the purchase order has been issued and told him to extend a copy of the invoices as soon as possible. The invoices were:

0000069268,0000069720,0000069274,0000069271,0000069266,0000069267,0000069723,0000069276,0000069263 and 0000069269/Q40/2016.

PW1 gave evidence that after he had not heard from the defendant, he then made his way to the defendant's office but was told he was not in. He went back a month later and was informed that he had not attended work.

It was after he met with the Director, Pg Hj Noordin bin PLP Pg Hj Md Said on 24th May 2016 that he came to know that there was no such purchase order. On 26th May 2016, he met with PW2, who informed him that he has never signed the letter of acceptances.

PW2- Evidence of Md Saufi bin Hj Ibrahim

PW2's 117B statement was marked as exhibit P4. It was his evidence that as an Acting Director of Administration and Finance Unit, Public Works Department, his duties include approving purchase order, responsible for the welfare of administration officers and staff and supervise IT.

He gave evidence that on 26 May 2016, he met with PW1 who told him that he has not received any payment from PWD for supplied printer toners and ink cartridges since February 2016. PW1 has also shown him several Letter of Acceptance of a Quotation of "supply toner cartridge" which was signed by him as Acting Director of Administration and Finance Unit. Furthermore, PW1 also showed him a stamped (PWD) delivery order that showed that the items were delivered on 17th February 2016. The letters dated 10th February 2016 have references numbers JKR/STOR/LOA/31/2016 to JKR/STOR/LOA/40/2016. After looking at the letters he confirmed that its not his signatures nor he has seen such letters.

He gave further evidence that PW1 had told him that her received the LOAs from a person by the name of 'Salihin'. PW2 knew 'Salihin' as the person who works at the Administration and Finance Unit and that his responsibilities includes preparing or getting tenders from companies to supply items such as toners and cartridges. It was his evidence that he never requested for toners and cartridges from Delima Laut Company at the time. Furthermore, he gave evidence that he did not held the position as an Acting Director of Administration and Finance on 10th February 2016 and that he held that post from 24th February 2016 to 8th March 2016. Not long after that, he received another complaint from Muhammad Ridhwan of Syarikat Syukran B Enterprise about several Letter of Acceptance of A Quotation where he signed as an Acting Director of Administration and Finance and that Public Works Department accepted the tender. The said company also showed him a delivery order that several items

were delivered on 20th February 2016. The items were JKR/STOR/LOA/19/2016 to JKR/STOR/LOA/29/2016. After looking at the letters he confirmed that its not his signatures nor has he seen such letters. He gave evidence that he never instructed the defendant or any staffs to make any orders to Syarikat Syarikat Syukran B Enterprise. After receiving both complaints from PW1 and Muhammad Ridhwan, he instructed PW3 to check all the claims and Invoice Tracking System for payments to the companies. After checking the claims, PW3 discovered that there was no minute from the Acting Director of Administration and Finance requesting Delima Laut Company and Syarikat Syukran B Enterprise to supply toners and cartridges. There was no minute or application received from any unit/department from Public Works Department for printer toners. The items as stated in the delivery order were not kept at the Unit Store and staffs are unaware of the items. There were no minutes or Receiving form from any unit or department regarding the items stated in the delivery order. According to him, the supply of toners does not require for it to be tendered because the value is below \$2,000. The process for tender usually requires several appointed members. He explained the standard process to purchase stationaries in P5. According to him, the supply of toners and cartridges from Delima Laut Company and Syarikat Syukran B Enterprise did not follow the proper process. After receiving both complaints, he instructed PW3 to make a police report.

PW3- Evidence of Mastinah binti Yakub

PW3 117B statement was marked as exhibit P5. She is currently the Assistant Director and her responsibilities includes to managing staff leave applications, acting allowances, staff complaints, update staff personal details and monitor the store unit.

She gave evidence that on 15th November 2016, she was instructed by PW2 to make a police report on the defendant. The First Information Report dated 15th November 2916 was marked as exhibit P6. She was also instructed by PW2 to check all claims made in relation to Syarikat Delima Laut Company and Syarikat Syukran B. Based on her understanding, no claim was made but that the items have been delivered to the Store Unit. She discovered that there was no minute received from the Acting Director Administration and Finance giving instructions to purchase printer toners from Syarikat Delima Laut Company or Syarikat B Enterprise. Furthermore, there was no minute or form received from any department or unit from PWD requesting for printer toners. She gave evidence that it is PWD's policy that processes for purchase made in the Store Unit must not be made by one individual. Furthermore, PWD has fixed a quotation below \$2,000.00 which does not require to be submitted to the Quotation Committee or to issue a Letter of Acceptance.

She gave evidence that the letters dated 9th and 10th February 2016 that were signed by PW2 were not accurate because PW2 was only given an approval to act as Acting Assistant Director Administration and Finance for 14 days from 24th February 2016 to 8th March 2016.

It was her evidence that the printer toners as specified by Delima Laut Company and Syarikat B Enterprise were not in the possession of the Store Unit.

It were discovered that purchase orders 0000069268/Q31/2016, 0000069274/Q33/2016, 0000069271/Q34/2016, 0000069267/Q36/2016, 0000069363/Q39/2016 and 0000069269/Q40/2016 were not found in the TAFIS system. The same for 000006920/Q32/2016, 0000069266/Q35/2016, 0000069723/Q37/2016 and 0000069726/Q38/2016 were not listed with Delima Laut Company and Syarikat B Enterprise.

She further gave evidence that there were no documentations to show that the items went through the correct process in purchasing stationaries. Furthermore, there was no documentation to show that the items in the delivery order from Delima Laut Company and Syarikat B Enterprise were received by any Unit or department.

PW4- Evidence of Zunaidah OKMB Hj Othman

PW4's 117B statement was marked as exhibit P7. She was the Assistant Director at the Department of Scientific Services, Ministry of Health. Part of her scope of work also involves examination of handwriting and signatures. She gave evidence that she was the document examiner in this case.

On 21st March 2017, she received two large sealed government envelope from PW9. The items were one large sealed brown government envelope 'Urusan Kerjaan Kebawah Duli Yang Maha Mulia' (approx. 558 mm x 405mm) containing exhibits and one large sealed brown government envelope 'Urusan Kerjaan Kebawah Duli Yang Maha Mulia' (approx. 229 mm x 162 mm) containing a memorandum that was signed by ACP Pg Mohd Jefri bin Pg Hj Abd Hamid requesting for laboratory examination. Upon receiving it she found it to be consistent in the accompanying exhibit list. She then assigned a laboratory number SLS/PEV/DOC/001/2017 and placed inside a strong room.

It was her evidence that she inspected the following:

- a) Nineteen (E1 to E19) set of Public Works Department letter of acceptance of a quotation each bearing questioned signatures (labelled by laboratory as E1b to E19b) and handwritten dates (labelled by laboratory as E1a to E19b) in blue ink allegedly written by Awg Muhammad Saufi bin Awg Hj Ibrahim.

- b) Two sets of four documents, D1-a to D2a-d specimen signature in blue ink at the Checked/Posted by column and handwritten entries at the date column, said to be written by Awg Salihin bin Abdullah Gampar dated 28th October 2015 and 28th December 2015 respectively.
- c) One grey thick covered government book “Buku Perbelanjaan (Vote Book), Jabatan Perbendaharaan, Kementerian Kewangan with red spine cover with handwritten entries in the printed column (Tarokh, Butir-butir, (1) to (7) in blue inks said to be written by Awg Salihin bin Abdullah Gampar. The pages were tagged with a yellow paper tag and in the last column (Tanda-tanda Pegawai Pegawai) with specimen signatures and handwritten dates said to be written by Awg Muhammad Saufi bin Awg Hj Ibrahim.
- d) One blue thick covered book of brand Sealion with handwritten entries and signatures in blue ink said to be written by Awg Salihin bin Abdullah Gampar.
- e) Twenty pieces of A4 white paper (D9) bearing specimen handwriting and signatures on one side/ page and one simulated signature specimen of the questioned signatures on the other one by one Awg Salihin bin Abdullah Gampar.
- f) Twenty pieces of A4 white paper, each bearing specimen handwriting and signatures on one side/ page and one known specimen of signature on the other, by one Awg Muhammad Saufi bin Awg Hj Ibrahim,

It was her evidence that she started the examination process in order to examine and determine if the questioned signatures and handwritten dates in E1 and E19 were either from Awg Salihin bin Abdullah Gampar (exhibit D1 to D9) or Awg Muhammad Saufi bin Awg Hj Ibrahim (D3 to D6, D10). She carried out the examination together with the help of her assistances by using an instrument known as Video Spectral Comparator 5000 (VSC5000) to examine and capture the images.

Upon her examination of the questioned signatures she found “slow pen movements and angular strokes specifically in the first looped “J”-like strokes”. It was her professional opinion that E1 to E19 was written from the same writer in Figure 1,2 and 3.

As to the next examination of exhibit D3 to D6, D10 of Awg Muhammad Saufi bin Awg Hj Ibrahim, it has a “slow pen movements with consistency in design which started with a looped “J-like stroke, vertical stroke proportions, top stroke alignment and signature heights. However there was also range of variations in the stroke formation, signature widths due to space allocations (Refer to comparison chart 1 (middle column) and figures 4a-4c”.

Upon her examination of D9 by Awg Salihin bin Abdullah Gampar, she found written irregularities in “design and stroke formations. However the slant of the stems on the signatures were similar to comparison Chart 1 (final column)”.

In comparing the questioned signatures on exhibit E1 to E19 with known specimen signatures of the two known writers, she found that:

- a) For Awg Muhammad Saufi bin Awg Hj Ibrahim – “very significant differences in the stroke formation and quality, slant and size between the two sets of signatures”. It was her professional opinion that E1 to E19 were not written by writer of D3 to D6, D10 Awg Muhammad Saufi bin Awg Hj Ibrahim.
- b) For Awg Salihin bin Abdullah Gampar- “significant difference in design between the two sets of signatures, the differences can be due to different factors including difficulties to follow the non-habitual writing features or disguise”. It was her professional opinion that she “cannot determine whether or not, the writer of the signatures in exhibit D9 wrote the questioned signatures in E1 to E19 or otherwise, inconclusive”.

She further gave evidence that examination on the limited amount of questioned handwritten dates in E1 to E19 showed consistency in the stroke formations and size for 9 to 0, stroke alignments, despite the difference in shape; circular and pear shape of the latter and other characteristic features. It was her professional opinion that its highly probable that E1 and E19 were written by the same writer.

Upon examination of the known specimen handwriting she found that in D3 to D6, D10 by Awg Muhammad Saufi bin Awg Hj Ibrahim, it showed “they were consistency written in wedge styles or angular, small and narrow in size, including the numerals “3” “0”, “1” and “9”. As for D1, D2, D3 to D6, D9 of Awg Salihin bin Abdullah Gampar, is showed “consistently and stylist written in wide and circular shaped strokes. The numerals “3”, “0”, “1” and “9” have its own ranges.

She made further comparison between the questioned handwritten dates to E1 to E19 to specimen handwriting by Awg Muhammad Saufi bin Awg Hj Ibrahim and Awg Salihin bin Abdullah Gampar. Based on her findings for Awg Muhammad Saufi bin Awg Hj Ibrahim it showed significant difference in size, formations and shape of the strokes including “3”, “0”, “1” and “9” and it was her opinion that its highly probable not written by the writer by exhibit D3 to D6 (Awg Muhammad Saufi bin Awg Hj Ibrahim). As for her findings for Awg Salihin bin Abdullah Gampar, it showed very significant similarity in size, formations and shape of the strokes between the two sets of handwriting and it was her opinion that its highly probable written by the writer by exhibit D1,D2, D3 to D6, D9 (Awg Salihin bin Abdullah Gampar)

Based on her further professional opinion, she concluded that:

- a) All nineteen questioned signatures in E1 to E19 were written by the same writer.
- b) Exhibit E1 to E19 were not written by the writer of known specimen signatures in exhibits D3 to D6 and D10.

- c) Not able to determine if the writer of signatures D9 wrote questioned signatures E1 to E19.
- d) Its highly probable that E1 to E19 was not written by specimen handwriting in exhibit D3 to D6 and D10
- e) Its highly probable that E1 to E19 was written by specimen handwriting in exhibit D1,D2 D3 to D6 and D9.

She compiled her findings in a laboratory report with reference number SLS/PEV/DOC/OO1/2017. This was marked as exhibit P8.

PW5- Evidence of Cpl 3694 Johfrija bin Yueh

PW5's 117B statement was marked as exhibit P20. He was the Assistance Investigation Officer in this case. He recorded the defendant's two statement on 30th December 2016 and 21st January 2017 at Tutong Police Station. Both statements were marked as exhibit P21 and P22 respectively. It was his evidence that before the statements were recorded he had asked the defendant to read the declaration. He gave evidence that the defendant did understood the declaration and agrees for the statement to be recorded. Before the statement recording concluded, he had asked the defendant to read it again and sign at the end of each answers if he agrees to it.

PW6- Evidence of Sgt 3730 Yusri bin Hj Abdul Majid

PW6's 117B statement was marked as exhibit P23. He was the Assistance Investigation Officer in this case. He recorded the defendant's two further statement on 1st February 2017 (P24) and 3rd March 2017.

It was his evidence that before the statements were recorded he had asked the defendant to read the declarations He gave evidence that the defendant did understood the declaration and agrees for the statement to be recorded. Before the statement recording concluded, he had asked the defendant to read it again and sign at the end of each answers if he agrees to it.

PW7- Evidence of Nasri bin Hj Razali

PW7's 117B statement was marked as exhibit P25. He was the Investigation Officer in this case. He gave evidence that he received a report from PW3 regarding a staff from the Administration and Finance Unit, Public Works Department who was believed to have forged an Acting Director of Administration and Finance signature with the intention to acquire letter of acceptance for items supplied from companies.

On 1st December 2016, PW1 came to give his statement at the Police headquarters. He handed over 11 delivery orders to PW6 as evidence. He gave evidence that the defendant's statement

was recorded on 3rd December 2016. On 6th December 2016, he instructed PW8 to go to the defendant's house at No.4, Kg Ukong, Tutong to confirm if the defendant was unwell.

On 8th December 2016, he together with Sgt 3331 and PC6265 went to the Public Works Department, Old Airport to conduct investigation inside the defendants' office. Present in the said office were representative from PWD, staff in charge of the store unit, the defendant and the defendant's brother. The defendant handed over a key to the staff in charge of the store unit in order for the search to be done. The defendant was present to witness the search. A search was done on the defendant's table but it was found to be locked. The defendant told him that the key has been missing and had remained locked for quite some time. After a discussion with a representative from PWD, it was agreed that the drawer will be forced opened. When the drawer was finally opened by a representative from PWD, PW7 found several suspicious documents relating to Syarikat Delima Laut Company. PW7 then instructed PW8 to seized all the documents and prepare a seizure list. The seized documents were ten (10) delivery orders D/O No.dlc-DO007-170216 to dlc-DO016-170216 dated 17th February 2016, two (2) letter of acceptances reference to Syarikat Syukran B Enterprise tender bil PWD/DAF/STOR/QUO/19/2016 and PWD/DAF/STOR/QUO/29/2016 dated 9th February 2016, ten (10) letter of acceptances to Syarikat Delima Laut Company bil tender PWD/DAF/STOR/QUO/31/2016 to PWD/DAF/STOR/QUO/40/2016.

The defendant's further statement was recorded by PW5 on 21st January 2017.

It was his evidence that PW7 found another company Syarikat B Enterprise that was affected because of two (2) letter of acceptances that were seized. Upon this discovery, he instructed the owner of the company to come to the police station to record his statement. At the police station, the owner handed over PW6 eight (8) Syukran B delivery orders as evidence.

On 21st April 2017, PW2's statement was recorded where he denied signing the Letter of Award of A Quotation from Syarikat Delima Laut Company or Syarikat B Enterprise.

PW8- Evidence of L/Cpl 5377 Noor Asahiken bin Ismail

PW8's 117B statement was marked as exhibit P26. She was the exhibit officer in this case. She gave evidence that on 8th December 2016, she together with PW7, Sgt 3331 and PC 6265 went to the Public Works Department, Old Airport to conduct a police investigation.

It was her evidence that she seized the documents discovered inside the defendant's desk drawer. She explained the seizure form to the defendant to which the defendant understood and signed it. She then placed the seized documents inside a sealed plastic bag.

PW9- Evidence of Sgt 4512 Lai Swee Min

PW9's 117B statement was marked as exhibit P29. He was the Assistant Investigating Officer in this case. He gave evidence that on 21st January 2017 he took samples of Mohammad Salihin

(D1) and PW2 handwriting and signatures. On 21st March 2017, he sent the seized exhibits together with handwriting and signatures samples (P30 and P9) to the Document Examination Laboratory for analyst. On 24th June 2017, he received a laboratory report with reference number SLS/PEV/DOC/001/2017 from PW3. This was marked as exhibit P8.

4. Prima Facie Case

At the end of the prosecution's case, the court ruled that the prosecution had established a prima facie case against the defendant. The defendant elected to give a sworn evidence. He has no other witnesses.

5. Defence case

Evidence of Mohd Salihin bin Abdullah Gampar (D1)

D1 chose to give a sworn evidence.

DW1's 117B statement was marked as exhibit D4. He gave evidence that he previously held the post as Store Supervisor Level II at Administration and Finance Unit, Public Works Department. He has worked for the government since 27 December 1988 before he was suspended since 1st December 2016.

He gave evidence that he headed the unit and supervised the staffs within the store unit. There are about 5 staffs assisting him in the unit. His duties includes preparing and issuing quotation for items requested by departments and units from PWD, to receive items supplied by suppliers and to record it in the inventory book as well as storing the supplied items into the store unit before its handed to the respective units. To send items or arranging items to be send to the respective units at PWD, to record items taken out or handed to the store unit and to assist the head or Director or Assistant Director on any administration matters on items requested or send to the store unit. He further gave evidence that he does not prepare LOA after the committee decides or process purchase orders. He gave evidence that he fell sick on 2nd May 2016. It was his evidence that whenever there were quotations he would carefully check for the lowest quotations and refer it to the Director for instructions. Once the Director approves it, he will prepare a payment voucher for items below \$2,000.00. The supplier will then prepare a delivery order. It was his evidence that he was never involved with any quotations above \$2,000 as it would require for it to be referred to the Director and its committees.

He gave evidence that when he was on medical leave in November 2016, he was not contacted by any officers or his assistant from PWD about any issues at work. He further gave evidence that he has no knowledge about payment issues in relation with Delima Laut Company or Syukran B. He does not know how to operate the computer in order to prepare

document or print any documents. He only knows how to enter information into the TAFIS system once its approved by the senior officer.

Throughout his long unpaid medical leave, he had seek medical treatment for an unknown illness. On 16th May 2016 he had applied for medical leave (D5) directly to the Assistant Director of Administration and Finance from 7th May to 16 June 2016 but there was no reply. Again on 18 June 2016, he applied for medical leave (D6) directly to the Assistant Director of Administration and Finance from 20th June to 25th June 2016 but there was no reply. He applied again on 25th June 201 for medical leave (D7) directly to the Assistant Director of Administration and Finance from 27th June to 6th July 2016 but there was still no reply. On 11th July 2016, he applied again for unpaid medical leave (D8) from 11th July to 31st December 2016. He finally received a reply on 3rd August 2016 for unpaid leave (D1) from 17th May to 5th July 2016 but it was cancelled. He then received another reply dated 27th September 2016 for unpaid medical leave (D2) from 17th May to December 2016.

He remembered that when the police came to his work place to check his table drawer, he was unsure as to why it was locked because the key was always left there. He has never kept or brought the key back with him. When the drawer was opened and a few documents were found inside, he was uncertain as to who had prepared or where it came from. It was his evidence that denied falsify any documents, forged any signatures of his head of unit or Assistant Director of Administration and Finance, PWD. He also gave evidence that he does not know Delima Laut Company or Syarikat B personally and only received quotations from them like any other companies. He was unsure as to why they had the letter of acceptance in the first place.

In cross-examination, he agrees that DCL would not have any knowledge of these internal reference numbers unless he was given the Letter of Acceptance or quotations.

6. Court's considerations and findings

At the close of the case it is the duty of the court to review all the evidence in its totality to see whether the prosecution has proved the elements of the charges against the defendant beyond reasonable doubt and this burden never shift.

In relation to the 1st charge

Section 471 of the Penal Code states:

"Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be forged document shall be punished in the same manner as if he had forged such document".

Section 468 of the Penal Code reads:

“Whoever commits forgery, intending that the document forged shall be used for the purposes of cheating, shall be punished with imprisonment for a term not exceeding 10 years and fine”.

The prosecution must establish that:

- (a) the document is forged;
- (b) the defendant knew it's a forged document;
- (c) the defendant used the document as a genuine dishonestly or fraudulently; and
- (d) the defendant used the forged document for the purpose of cheating

Dishonesty:

24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonesty

It is the prosecution's case that the defendant fraudulently or dishonestly used a genuine document which he knows or has reason to believe to be a forged document. As such, the defendant has deceived Boi Keng Hua that the quotations were accepted by PWD and induced him to supply the printer toner cartridges.

The documents in question were the 10 Letter of Acceptance Of A Quotations JKR/STOR/LOA/31/2016 to JKR/STOR/LOA/40/2016 dated 10th February 2016 which were marked as exhibits P27.1 to P27.10. It is not disputed that it's the same documents that were seized from the defendant's locked desk drawer.

The prosecution submitted that PW2 never signed the LOAs as an Acting Director of Administration and Finance as he only held the post for 14 days from 24th February 2016 to 8th March 2016. This was further corroborated by PW3 evidence that the LOAs were in fact dated 9th and 10th February 2016 before PW2 was given an approval to act as Acting Director Administration and Finance. Apart from the fact that PW27.1 to PW27.10 were not signed by PW2, PW3 also gave evidence there was no record of LOAs issued to DLC for the supply of various printer toner cartridges. It was her evidence that PW27.1 to PW27.10 did not went through proper internal processes fixed by PWD. Further checks were made, where it revealed that there were no records of instructions or requests for the purchase of printer toners cartridges from DLC. It was PW3's evidence that its PWD policy that any supply of goods should not be dealt by one individual. From these evidences, I accept that P27.1 to P27.10 were indeed forged documents.

I am satisfied that the defendant knew or had reason to know these documents were indeed forged. The prosecution further submitted that PW1 only dealt with the defendant from the first meeting sometime in January 2016. On 10th February 2016, the defendant told PW1 to fill the printer toner cartridges in the quotation forms. On the same day the defendant contacted PW1 to inform the quotation were accepted. It was because of this assurance which led PW1 to return back to PWD where the defendant produced him 10 Letter of Acceptance of a Quotation (P27.1 to P27.10) for signatures. PW1 proceeded to sign each document and appended DLC stamp to confirm that he accepted the offer to supply printer toner cartridges to PWD. The defendant only handed PW1 a copy of the LOAs at the time.

The defence asserted that the signatures in the LOAs were questionable. The dates written on the LOAs and quotations were different in that LOA was dated by a slash where else the quotation was dated with a full stops in between. I have considered PW4's analyst report (P8) and accepted it. It was PW4's examination that the questioned signatures in E1 to E19 "were written from the same writer". Her other findings on specimen handwriting for D1, D2, D3 to D6, D9 of Awg Salihin bin Abdullah Gampar, showed "consistently and stylist written in wide and circular shaped strokes. The numerals "3", "0", "1" and "9" have its own ranges. She also made further comparison between the questioned handwritten dates to E1 to E19 to specimen handwriting by PW2 and the defendant and her findings reveals that Awg Salihin bin Abdullah Gampar (the defendant) showed very significant similarity in size, formations and shape of the strokes between the two sets of handwriting and it was her opinion that its highly probable written by the writer by exhibit D1, D2, D3 to D6, D9 (Awg Salihin bin Abdullah Gampar).

The defendant made further assertion that no record books were seized to confirm if the printer toner cartridges were in fact delivered by BLC. However, its understood that no record books were ever seized as there were no evidence of any internal records to show that the items were ever requested from BLC or logged into the inventory. It was PW3's evidence that there must be a handling over form in order for items to be handed from the store unit to another unit

The defendant did not dispute that he issued the quotations for supply toner cartridges to BLC to fill up the prices for printer toner cartridges. He informed the police that PW2 gave him instructions to do so which PW2 denied. He also did not dispute that he received and signed the delivery order from BLC. Upon accepting the items, it were kept inside the store unit for it to be distributed to the units at PWD. However, he denied that he has produced, typed, printed or signed the Letter of Acceptance of a Quotation (PW27.1 to PW27.10) as Acting Director of Administration and Finance.

I find that the defendant's allegations that he has no knowledge about the LOAs or the fact that he did issue quotations or signed delivery orders are unacceptable. From the moment the LOAs, quotations and delivery orders were issued, no one in the upper management, other departments, units and store unit knew about the existence of such LOAs, quotations or delivery orders as it never went through the PWD proper process. There appear to be no record for the supply of such printer toner cartridges. He did alleged in the police statement (P22) that PW2 did gave him instructions to make the orders to BLC but there was no evidence to show that he did received any instructions to issue LOAs or quotations from PW2. Furthermore, he failed to give an explanation on how the originals LOAs ended up in his locked desk drawer. His admission to the police that he issued purchase orders to BLC appears to be non-existence as the reference numbers was not found in the TAFIS system.

I accept that the defendant did dishonestly used the forged LOAs as genuine to induced PW1 to deliver the various printer toner cartridges to PWD. As mentioned earlier, PW1 only dealt with the defendant at the time. Even without the original LOAs, PW1 proceeded to issue the delivery orders (P27.11 to P27.20) which includes the quantity, types of cartridges and the same references numbers that originated from the copied LOAs.

The prosecution further submitted that the defendant applied for immediate sick leave to avoid being confronted about what had happened. So far no witnesses have been called to give evidence on this for the court to draw adversely against the defendant.

Upon consideration of the evidence adduced by police witnesses, PW1, PW2, PW3 and PW4, the court finds their evidence as credible and accept them in its entirety. Based on their evidence and in particularly the evidence of PW1, PW2 and PW3, I find that the prosecution has established that the defendant fraudulently or dishonestly used as genuine document which he knows or has reason to believe to be forged document for the purpose of cheating PW1.

In relation to the 2nd charge

Section 420 of the Penal Code reads:

"Whoever cheats and thereby dishonesty induces the person deceived to

- a) deliver any property to any person; or*
- b) make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being*

shall be punishable with imprisonment for a term not exceeding 7 years and fine."

As to the definition of 'cheat', section 415 of the same act states:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or likely to cause damage or harm to that person in body, mind reputation or property, is said to 'cheat'.

The prosecution must prove 3 elements of the offence under section 420 of the Penal Code. The elements of an offence were set out by Yong Pung How CJ ("Yong CJ") in *Gunasegaran s/o Pavadaisamy v PP* [1997] 2 SLR(R) 946 ("*Gunasegaran*"). The elements are:

- (a) the victim had to be deceived;
- (b) there had to have been an inducement such that the victim delivered any property to any person; and
- (c) there had to have been a dishonest or fraudulent intention on the part of the deceiving person to induce the victim to deliver the property.

It is also the prosecution's case that the defendant did cheated PW1 to supply printer toner cartridges and dishonestly induced PW1 to deliver it.

In support of these allegations, the defendant asserted that there was no evidence to show that the LOAs were produced in order to induced PW1 into believing that quotations were accepted by PWD. The defendant further alleged there was no evidence to show that he gained any benefits from it as he only knew PW1.

There is no doubt in my mind that I find PW1 to be a credible witness. I accepted that he was deceived by the defendant in believing that his offer to supply printer toner cartridges were accepted by PWD. PW1 believed that he was dealing with the right person at PWD in enquiring about quotations. PW1 did gave evidence that he agreed to supply the items to the defendant after he was assured that award letters were approved by the upper management and that the purchase order will be given upon delivery It is clear from the evidence, to me, that the defendant had acted in a manner, with respect to the LOAS, had made PW1 believe that the PWD had ordered it.

The defence argues that with PW1's long experiences with sales and supplies and previous dealings with government procurement he would know the processes involves but I believe that PW1 was convinced and assured by the defendant that the process were in order seeing that the defendant was head of unit with experiences with PWD supplies.

The defendant was the head of the unit and surely he must be the person to meet if a company is requesting for quotations on printer cartridges or stationaries. I accept that the defendant was the person from the store unit who contacted PW1 to collect the LOAs for signatures. PW1 subsequently filled in the prices for the printer toner cartridges and handed it back to the defendant. PW1 never received the original LOAs but copies instead. Believing that the copied LOAs were in fact genuine, PW1 was induced to issue the delivery orders (P27.11 to P27.20) and within a week delivered various printer toner cartridges to PWD on 17th February 2016 where the defendant did signed the delivery orders. PW1's gave evidence that the defendant did informed him that PWD required the printer toner cartridges urgently.

Having examined the entire matter, it is clear that the defendant is unreliable and untruthful. I can only come to one reasonable conclusion; and that is the defendant's actions were to deceive and cheat PW1. His explanation of his actions, cannot be accepted. As head of a store unit in charge of PWD store unit for all 4 districts, I find it hard to believe that he was unaware about any prior dealing with PW1 ever took place. Undoubtfully, the defendant has led PW1 to proceed with the orders so as to deceive him that PWD requires it. As such, the court finds that the prosecution has established the element to the 2nd charge.

Findings

After evaluating all the prosecution witnesses evidences, statements and all documentaries evidence, I am satisfied that the prosecution has proved beyond all the necessary elements of the offence beyond reasonable doubt. I therefore find the defendant guilty of the two charges preferred against him and convicted him accordingly.



HARNITA ZELDA SKINNER
Intermediate Court Judge



