

Chieu Vun Thian

AND

Public Prosecutor

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 13 of 2022)**

Haji Abdullah Soefri, JC
26th August 2023

Criminal Law – Section 420 and read with Section 109 of the Penal Code – 2 charges – plead not guilty – convicted – sentenced to 2 years 6 months for each charge – concurrent – appeal – conviction and sentence – will not disturb finding of facts – dismissed both appeal against conviction and sentence

DPP Suriana for the Public Prosecutor
Defendant in person and represented by Mr Balendran from Messrs Fathan & Co.

Cases cited in the Ruling:

Er Joo Nguang and another vs Public Prosecutor (2000) SGHC 60
Sgt 3983 Nora'afhillah bin Ahmad @ Ja'afar and Public Prosecutor (HACM No. 37 of 2020)
Nathan Edmund vs Public Prosecutor (1997) SGHC 225

RULING

Haji Abdullah Soefri, JC:

Introduction

The Appellant was charged and convicted after trial of 2 charges under Section 420 read with Section 109 of the Penal Code, Chapter 22. He was sentenced to a total of 2 years and 6 months imprisonment. The Appellant was sentenced for the 1st charge to 2 years and 6 months imprisonment and for the 2nd charge to an imprisonment sentence of 2 years and 6 months. Magistrate Harnita Zelda Skinner ordered for the sentence on the 1st charge to run concurrently with the 2nd charge.

Charges

1st Charge

That you, sometime in August 2008 in Brunei Darussalam, did engage in a conspiracy with one Mohd Azam Zaki bin Haji Mohd Zain, to do a certain thing, namely to cheat Brunei Shell Petroleum ('BSP') by deceiving BSP into believing that BSP required the purchase of Master Toolset Proto 99663 inclusive of the Roller Cabinet, and following which your conspiracy with Mohd Azam Zaki bin Haji Mohd Zain had caused BSP between 17th September 2008 and 19th September 2008 to award 19 Purchase Orders for the supply of 19 Master Toolset Proto 99663 inclusive of the Roller Cabinet namely:

- 1) Purchase Order No:4510209498;
- 2) Purchase Order No: 4510209500;
- 3) Purchase Order No: 4510209508;
- 4) Purchase Order No: 4510209510;
- 5) Purchase Order No: 4510209511;
- 6) Purchase Order No: 4510209545;
- 7) Purchase Order No:4510209409;
- 8) Purchase Order No:4510209487;
- 9) Purchase Order No:4510209490;
- 10)Purchase Order No: 4510209502;
- 11)Purchase Order No: 4510209507;
- 12)Purchase Order No: 4510209501;
- 13)Purchase Order No: 4510209488;
- 14)Purchase Order No: 4510209505;
- 15)Purchase Order No: 4510209411;
- 16)Purchase Order No: 4510209494;
- 17)Purchase Order No: 4510209345;
- 18)Purchase Order No: 4510209387;
- 19)Purchase Order No: 4510209383;

to Voon Hua Hardware Company Sdn Bhd, a company in which you are a director and manager, when you knew that Voon Hua Hardware Company Sdn Bhd in fact had never intended to fulfill the contract, and by such manner of deception, BSP was dishonestly induced to approve a payment of B\$133, 000 to Voon Hua Hardware Company Sdn Bhd on 2nd July 2009, which act BSP would not have done if it was not so deceived, and which act was committed in consequence of the said conspiracy, and you have thereby committed an offence punishable under Section 420 read with Section 109 of the Penal Code, Chapter 22.

2nd Charge

That you, sometime in August 2008 in Brunei Darussalam, did engage in a conspiracy with one Mohd Azam Zaki bin Haji Mohd Zain, to do a certain thing, namely to cheat Brunei Shell Petroleum ('BSP') by deceiving BSP into believing that BSP required the purchase of Master Toolset Proto 99663 inclusive of the Roller Cabinet, and following which your conspiracy with Mohd Azam Zaki bin Haji Mohd Zain had caused BSP on the 19th September 2008 to

award 3 Purchase Orders for the supply of 3 Master Toolset Proto 99663 inclusive of the Roller Cabinet namely:

- 1) Purchase Order No: 4510209547;
- 2) Purchase Order No: 4510209548;
- 3) Purchase Order No: 4510209551

to Voon Hua Hardware Company Sdn Bhd, a company in which you are a director and manager, when you knew that Voon Hua Hardware Company Sdn Bhd in fact had never intended to fulfill the contract, and by such manner of deception, BSP was dishonestly induced to approve a payment of B\$21, 000 to Voon Hua Hardware Company Sdn Bhd on 16th July 2009, which act BSP would not have done if it was not so deceived, and which act was committed in consequence of the said conspiracy, and you have thereby committed an offence punishable under Section 420 read with Section 109 of the Penal Code, Chapter 22.

Appeal

The Appellant appeals against both the conviction and sentence:

The Grounds of Appeal laid out by the Appellant are as follows:

- a) The Learned Magistrate erred in concluding that PW21 and/or BSP were deceived by the Appellant and there was a failure to take proper consideration of having seen and heard the witnesses wherein the evidence shows there was no deception.
- b) The Learned Magistrate had erred in finding that PW21 and/or BSP was induced by deception of the Appellant through his alleged conspiracy.
- c) The Learned Magistrate failed to establish any wrongful loss caused to BSP and failed to establish any wrongful gain by the Appellant and subsequently erred in concluding that the Appellant was dishonest in supplying the tools pursuant to the PO for Proto 99663.
- d) The Learned Magistrate had wrongfully relied on a discussion between the Appellant and PW19 to order Proto 99663 to establish the alleged conspiracy to commit cheating by deception.
- e) The Learned Magistrate had wrongly relied on the submissions by the Prosecution for sentencing and failed to give adequate weight to the “extenuating circumstances” of the present case.

It is submitted by the Appellant’s counsel that there is no evidence to support the allegation that the Appellant had led Md Azam Zaki bin Hj Md Zain (PW19) to deceive BSP that roller cabinets were required. Instead, the evidence shows that the instructions given by PW19 led to the delivery of Proto 99663 without roller cabinets.

It is further submitted that there was no deception by the Appellant and there were genuine commercial reasons which are:

- (i) The Limitations of the SAP system at the material time
- (ii) The urgency of the situation
- (iii) Risk of delay for the supply of the tools to the end-users

It is further submitted that “*considering the totality of the evidence rather than as an isolated event of the agreement between the Appellant and PW19, the supporting documents from BSP (ID17 – ID60) along with the contradictory evidence of PW21, we respectfully submit that the only irresistible conclusion which could be drawn is that PW21 was aware of the change to the PO for Proto 99663. There is evidence of only one change to the said PO – being the verbal agreement between the Appellant and PW19 that the roller cabinets would not be delivered to facilitate a supply of the complete order of tools requested by the end-users.*”

Appellant submitted that the totality of the evidence points to the fact that the Appellant had conducted himself as a normal supplier to BSP when he supplied the correct tools with no complaints after had consider the surrounding circumstances of the alleged commission of the offence, it can be inferred that there is no evidence of any inducement by the Appellant for the payment of B\$154,000.

It is also submitted that the Appellant believed that he would supply the PO for Proto 99663 without roller cabinets in order to facilitate the requirements of the end-users which was pursuant to the instructions given by PW19.

Appellant submitted that the Learned Magistrate was wrong to rely on a discussion between the Appellant and PW19 to order Proto 99663 to establish conspiracy to commit cheating by deception as the said discussion between the Appellant and PW19 is not sufficient evidence to prove a conspiracy to commit the alleged offence beyond reasonable doubt (*Er. Joo Nguang and another v Public Prosecutor* [2000] SGHC 60).

It is further submitted that it is clear from the conduct of parties and surrounding circumstances that the Appellant and PW19 had conducted themselves in the whole transaction with a view that the end-users would receive the tools requested in an urgent manner. There is no evidence of any conspiracy between the Appellant and PW19.

In conclusion, the Appellant submitted that the Prosecution has failed to prove the elements of the alleged offences, in particular: Failure to prove deception; failure to prove inducement; failure to prove; failure to prove dishonest intention and failure to prove the alleged conspiracy and pray for the conviction to be overturned.

Prosecution (Respondent) Submission

The Prosecution submitted that the Appellant had failed to demonstrate how the Learned Magistrate had erred in concluding that BSP was deceived by the Appellant. It is evident in her judgment that the Learned Magistrate gave lengthy reason as to why she found that there was deception. It was her findings that the Appellant and PW19 had made an earlier arrangement to change the purchase order so as to deceive PW21 particularly BSP that the end-users required the roller cabinet. It was also the evidence of PW19 that PW21 was unaware about the change in the order as discussed earlier with the Appellant and himself.

The Learned Magistrate had also addressed the case put forward by the Defence that there was nothing to suggest that the Appellant's actions was to deceive BSP as the end-users had received the tools as required which she rejected.

It was her findings that the 22 work orders were created for Master Tools Proto 99663 had led BSP and the Supply Chain Management to believe that it was required by the end-users and that she was satisfied that the creation of the work order had indeed deceived BSP into believing that it was required.

The Prosecution submitted that the deception that led PW21 and BSP into believing that the Master Toolset Proto 99663 were required by the end-users at Champion 7 led to the release of the payment of B\$133,000 and B\$21,000 to the Appellant's company and further submitted that it was the BSP procedure, through the use of the SAP system, that allowed for the deception to take place and thereafter the release of the payments to the Appellant.

Prosecution submitted that the Learned Magistrate had correctly addressed what constitutes as '*dishonest*'. Prosecution submitted that the Appellant's intention was dishonest within the meaning of Section 24 of the Penal Code as there was an intention on his part to cause to cause wrongful gain to his company Voon Hua Hardware Company or alternatively to cause wrongful loss to BSP.

The Appellant's claim that he had incurred extra costs in supplying the actual goods is misleading as the Appellant had already factored in an 83% profit.

It is submitted that the general plot is to deceive BSP into believing that the Master Toolset Proto 99663 was needed. It is submitted that the Appellant knew of the 'general plot' and that there were indeed a meeting of minds. The Learned Magistrate was correct in finding that the Appellant and PW19 had made an earlier arrangement to change the purchase order so as to deceive PW21 particularly BSP that the end-users require the roller cabinet.

Discussion

It is trite law that an Appellate Court will not disturb findings of fact unless they are plainly wrong or clearly against the weight of the evidence bearing in mind the trial court had the opportunity of

observing witnesses to assess their veracity and reliability (**Sgt 3983 Haji Nora'afhillah bin Ahmad @ Ja'afar And Public Prosecutor [HACM No. 37 of 2020]** Steven Chong CJ)

The Magistrate in her judgment clearly touched on the issues that were raised by the Appellant in their grounds of appeal. It is clearly highlighted and analysed and justified by the Magistrate before she reached her conclusion, where she held;

“I have reason to believe that based on an earlier discussion and agreement that both the Defendant and PW19 had every intention to deceive BSP that Master Toolset Proto 99663 with roller cabinet was to be supplied;

Having examined the entire matter, I find the Defendant to be an unreliable and untruthful. I am satisfied that he knew about the plot and played some role to conspire to commit the offence.”

I do not see any fault in the Magistrate's conclusion, it is neither plainly wrong nor clearly against the weight of the evidence.

For the foregoing conclusion I dismiss the Appellant's appeal against conviction.

Sentence

Appellant submits that the cases relied on for sentencing by the Magistrate is not applicable to the facts of this case.

Appellant submits that all the exceptional facts of the case justify a nominal sentence. Appellant cited the case of **Nathan Edmund v Public Prosecutor (1997) SGHC 225** where a nominal imprisonment of one day would be imposed, where it is found that the accused would not have benefitted from the alleged commission of cheating by deception and the victim was not put at risk.

The Prosecution submits that the sentence imposed on the Appellant cannot be said to be manifestly excessive.

The Magistrate took the view that the offences are serious offences and looked into the authorities submitted by the Prosecution and also looked into Section 5 of the Offenders (Probation and Community Service) Order Cap 220 and found no justification for ordering probation.

The Magistrate took into account of the call for deterrent sentence in the public interest. The Magistrate also took into account of his clean track record and remorseful and also the inordinate delay.

All the factors were taken into account before imposing a sentence of 2 years and 6 months with a starting point of 5 years and the sentences are to be served concurrently.

The Magistrate cannot be faulted in her sentencing as it is neither too short nor too long, as all the factors have correctly been taken into account before reaching the just decision.

I therefore dismiss the appeal against sentence. In conclusion, Appeal against conviction and sentence is dismissed. Defendant is to serve the imprisonment sentence of 2 years and 6 months with effect from today.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner