BETWEEN

Public Prosecutor **Appellant**

AND

Ryanneyzan Bin Hj Mohammad **First Respondent**
Sharum Bin Sinen **Second Respondent**

(High Court of Brunei Darussalam)
(Criminal Appeal No. 10 of 2014)

No new point of law, evidence or procedure – not reportable.

Before Commissioner James Findlay in Court.
Dates of Hearing: 10th and 24th August, 2015.
Date of Judgment: 1st September, 2015.

DPP Hjh Anifa Rafiza Bte Hj Abd Ghani for the Appellant.
The Respondents appeared In Person.

JUDGMENT

Findlay, J.C.:

The respondents, who are police officers, were charged with various counts of corruptly obtaining gratifications from bus drivers. There is no need to deal with these charges individually or in detail. They all stand or fall together.

After a lengthy trial and much evidence, the Chief Magistrate acquitted the respondents of all charges. The appellant now appeals against this verdict.

The main issue in the trial was whether or not the respondents had been correctly identified as the police officers who obtained the gratifications.
Police Officer Hussain gave evidence and said that, according to the bus drivers, they could identify the police officers concerned, but they did not mention the force numbers of these officers. They did however mention the registration number of the vehicle in which the identified police officers were travelling. I shall say more about this last point later.
There were three bus drivers who gave evidence.

The first bus driver, Mr Sukri, said that he identified the respondents on 28 June 2006. He was asked if he was told the names of the policeman and he said he was not informed of the names but he knew the face of the person. He identified the respondents in court. There was some confusion in his evidence about whether or not an incident took place on 10 June 2006. He said that at the time of the second incident there were two other policemen with the first respondent but he could not identify them. He agreed he was not good at remembering faces. He said that he saw the face of the driver, who was the first respondent, and his number "if not mistaken" was 3721. The fact that he gave that number is suspicious having regard to what I say later.

The second bus driver who gave evidence was Mr Mursidi. He was asked if he managed to identify the first respondent and two other policemen who were with him on 10 June 2006. He said he could not identify the face but remember the number PC 3721. He was then asked if he could see PC 3721 in court and he said he could not remember. Under cross-examination, he said he was at the Anti-Corruption Bureau office when an Anti-Corruption Bureau officer told him that the first respondent's number was 3721. He said he saw the police number looking through the window into the room. Then he was asked if he had a clear view of the face and number of the first respondent and he replied "Not quite clear".

The next bus driver was Mr Magsayo. He said at the Anti-Corruption Bureau office on 28 May 2006 he identified the two policemen who stopped him and that the police numbers were 3721 and 4554. Under cross-examination, he was asked if at the Anti-Corruption office there was a female officer who told him that the first respondent's number was 3721 and he answered that this was so. He was asked if he saw the number on 28 May and he said he saw the number but had forgotten it.

It is obvious from the evidence of the drivers Mursidi and Magasayo that the investigation so far as it applies to the identification of the police officers concerned was flawed. This is quite apart from the fact that no fair identification parade was held. Clearly, one of the investigators believed that the bus drivers needed assistance in identifying the police officers and so obligingly provided at least two of them with force numbers. This affects gravely the integrity of the investigation and, as a consequence, the integrity of the prosecution.

If I am unable to trust that the investigation was carried out honestly and properly, how can I trust any of the other evidence adduced by the investigators, including the identification of the police vehicle concerned and the dates on which the incidents happened? If the investigators were prepared to corrupt the identification by providing the witnesses with force numbers, why not also provide the vehicle registration number?

There was no proper identification parade held for the purpose of identifying the police officers concerned. I have heard no explanation for this. What was done apparently was that the bus drivers were asked to look through windows into offices and identify the police officers concerned. The explanation for the failure to conduct a proper and fair identification parade is probably because the investigators did not trust the bus drivers to arrive at what they thought was the right identification without their assistance.

After considering the evidence of identification, the Chief Magistrate said that he was satisfied that the method of identification adopted was not prudent, fair and highly prejudicial to the respondents. The Chief Magistrate cannot be faulted for coming to this conclusion.

The Chief Magistrate then went on to consider whether there was any other evidence to link the respondents to the offences.

DPP Rafiza complains that the Chief Magistrate did not mention other evidence that linked the respondents to the offences. In this, she is quite correct. It must be said, however, that the Chief Magistrate was well aware of this evidence. In his judgment, he gave a clear, careful and accurate summary of that evidence.

Firstly, DPP Rafiza says that the dates of the alleged offences which were 28 May, 10 June and 11 June 2006 as reported by the bus drivers tallies with the dates when the respondents were on duty. Quite apart from the fact that I am unsure that one can trust the investigators not to have manipulated the dates, there is the fact that I have not been pointed to any evidence that says that other police officers were not also on duty on these dates.

DPP Rafiza also complains that the Chief Magistrate did not consider the evidence of two other police officers who said they were with the first respondent on 10 June 2006 when they had stopped two buses. There was something strange about the evidence of PC 4674. He said that his statement was prepared by the Anti-Corruption bureau which was based on his old statement that he had discussed with the DPP. I do not know what this was about, but it would seem that his "old" statement was not to the liking of the prosecution. He said that on 10 June 2006, they were wearing reflective vests and these would cover the force numbers. He did not see the driver giving anything to the first respondent. On 28 June 2006, he was told he was a suspect for demanding money from a bus driver.

The other police officer PC 3929 also gave evidence. He did not see any bus drivers give anything to the first respondent. In re-examination he was asked about this answer and he was asked "what do you mean by no.". I would have thought that "no" meant "no", so there was obviously something more significant about the question. He answered that as far as he could remember he meant by "no" that he was not near the first respondent on both instances.

Further, DPP Rafiza complains that the Chief Magistrate failed to consider that the bus drivers had identified a car used by the respondents. The registration number of this vehicle was BG9330. I have to say I have grave doubts that the bus drivers noted and memorised the registration number of this vehicle. They are ordinary people, not trained observers who might be expected to recall such a detail. I suspect on reasonable grounds that this number could have been supplied to them by one of the investigators.

Another complaint is that the Chief Magistrate failed to state his conclusions as to the credibility of the bus drivers as against that of the respondents. This is a legitimate complaint and the Chief Magistrate should have dealt in his findings with this aspect of the matter.

As I have said, the Chief Magistrate was aware of this other evidence. Perhaps, he should have dealt with it specifically, but, in this respect as in all others, I must accept that he saw the witnesses and heard the evidence. He was in a far better position than I am to decide the factual issues.

The Chief Magistrate then considered the statements that the respondents had given and which he had ruled admissible. In his main judgment, he said that, looking at the statements as a whole and the duration taken, the statements were suspect and that he would not give any weight to them.

Although he does not say so expressly, clearly the Chief Magistrate had second thoughts about allowing these statements into evidence. In effect, he changed his mind. There is of course no reason why the Chief Magistrate should not change his mind about this on further reflection. And it has to be said, there is some basis for this conclusion. It is apparent that initially the respondents denied the charges and only after considerable time and, presumably, questioning, they changed their minds and admitted the charges. It is fair to make the assumption that they change their minds because of pressure and influence.

The Chief Magistrate concluded that the prosecution had failed to prove beyond a reasonable doubt that the persons obtaining the gratifications were the respondents.

Although the Chief Magistrate did not articulate his reasons adequately for his conclusion, it is my belief that, as a judicial officer of some experience, to put it colloquially, he smelt a rat and although he could not put a name to the rat, he felt that the conviction would be unsafe and unsatisfactory in the circumstances.

I cannot see any basis, given the factors that I have outlined, that would justify me in overturning the acquittals and substituting convictions. That would involve me making findings of fact without having heard the evidence. I cannot do that. The most that the prosecution could expect here would be a direction for an enquiry into the factors I have mentioned. I have considered this course but have rejected it because I believe that the prosecution has had its bite of the cherry and it would be unfair to expect respondents to undergo further trial, especially having regard to the fact that, as they have told me, they cannot afford to brief counsel.

I have to make it clear that I am by no means convinced that the respondents are innocent of the charges. There are certainly adequate grounds for suspicion, but it is not for them to convince me or the Chief Magistrate that they are innocent. It is for the prosecution to prove their guilt beyond a reasonable doubt. That, I find, mostly due to the inadequacies of the investigation, the prosecution have failed to do.

In the event, for the reasons I have given, I dismiss the appeal.

JAMES FINDLAY
Judicial Commissioner