

Public Prosecutor

Appellant

AND

**Hjh Salmayah Binti Hj Mohd Husain
Norjanah Binti Hj Japar**

**1st Respondent
2nd Respondent**

**(High Court of Brunei Darussalam)
(Criminal Appeal No. 22 of 2014)**

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

Before Commissioner James Findlay in Court

Date of Hearing: 16 August, 2016.

Date of Judgment: 18 August, 2016.

DPP Aldilla Bte Hj Mohd Salleh for the Appellant.

Mr Sheikh Noordin of Messrs Sheikh Noordin bin Sheikh Mohammad for the Respondents.

J U D G M E N T

Findlay, J.C.:

The respondents faced charges under section 6(c) of the Prevention of Corruption Act, Chapter 131. Originally, the charges were framed on the basis that the respondents being agents did knowingly use a document with intent to deceive their principals, being Radio Television Brunei; the document being false in that it stated that another person was involved in the production of a program and was entitled to payment for that involvement. Later, the charges were amended to allege that the respondents' principal was the Government of Brunei.

The respondents were acquitted by the Magistrate. The Public Prosecutor now appeals against that acquittal.

The Prosecutor's case was that the documents concerned were false in two respects; that the work mentioned in the documents was not done at all and that, in any event, it was not done by the person claimed to have done it. The Magistrate found as a matter of fact that it had not been proved that the work concerned had not been done and the Public Prosecutor does not challenge this finding.

The Public Prosecutor does however submit that the respondents should have been convicted on the basis that the documents were intended to deceive on the basis that the work was not done by the person alleged in the documents.

In this regard, it was established during cross-examination of the most senior Radio Television Brunei official called by the Prosecutor that there was a long-standing practice allowing staff to perform work and submit claims using the names of others. This witness said it was acceptable for the respondents claim using another's name.

So, the situation was when the respondents submitted the documents which were admittedly false in that the person named in the documents had not done the work, Radio Television Brunei (which is a part of the Government of Brunei) was, through the senior official called by the prosecution, fully aware that the documents were false in this respect. The respondents knew that Radio Television Brunei knew that the documents were false in this respect so there could not have been any intention to deceive Radio Television Brunei. The respondent cannot be found to have an intention to deceive where the person to whom the document is delivered knows of the deception. A lie cannot be made with an intention to deceive when the person lied to know it is a lie and the liar knows that that person knows it is lie.

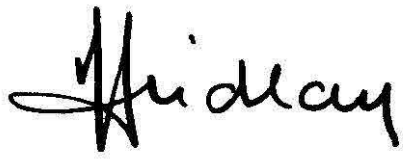
I am aware that the charges alleged that the principal was the Government of Brunei, but the whole thrust of the Prosecutor's case was that the documents were submitted to Radio Television Brunei, which is the State broadcaster and part of the Government of Brunei.

Before me, DPP Aldila, seeing her difficulties, argued that I should look, not to the person in Radio Television Brunei with whom the respondents dealt, but to some unknown and unnamed official in the Treasury who would be the ultimate recipient of the false document and who would not know of the lie and, therefore, would be the person the respondents intended to deceive.

Fairly, the prosecutor conceded that the factual basis for this argument had not been considered or examined at the trial and, therefore, took no part in the Magistrate's thought processes and decision. In my judgment, this argument cannot now be a basis on which I would be justified in convicting the respondents when no-one thought of this or explored the point at the trial.

In the result, I cannot find any basis on which it could be said that the Magistrate was wrong in acquitting the respondents and the appeal is dismissed.

Mr Noordin asks that I award costs against the prosecutor, although he concedes that this would be an unusual order. I do not believe it is justified in this case.

A handwritten signature in black ink, appearing to read "Friday". The signature is written in a cursive, flowing style with a large initial 'F'.

Judicial Commissioner