L/Cpl 3541 Mohammad Hannafi Bin Awang Abas

AND

Public Prosecutor

(High Court of Brunei Darussalam)
(Criminal Appeal No. 23 of 2016)

Steven Chong, J.
17 January 2017

Corruption – When a person accepts or obtains a gratification as an inducement or reward, the offence is committed whether the act in exchange for the gratification is to be done or forbone, or has been done or forbone.

Sentence – Delay taken into account.

Kamal Bin Shaari (M/S Yusof Halim & Partners) for the Appellant.
DPP Sharon Yeo for the Public Prosecutor/Respondent.

Cases cited:

Re Venkatasubbiah [AIR L35) 1948 Madras 63.
Haji Mazlan Bin Haji Shahbuddin v Public Prosecutor [Criminal Appeal No. 50 of 2015].

Steven Chong, J.:

On 22 June 2016 in the Magistrate's Court L/Cpl Mohammad Hannafi Bin Awang Abas *("the appellant")* was convicted after a trial of the charge of corruptly obtaining a gratification of $40 from Muhammad Saiful Bin Abdullah Lim *("Saiful")* as a reward for forbearing to take action against him for a traffic offence contrary to section 6(a) of the Prevention of Corruption Act.

The Magistrate imposed a sentence of 12 months' imprisonment.

This is an appeal against conviction and sentence.

Prosecution case

The undisputed facts were that on the evening of 5 August 2007 Saiful was driving his car on the Sultan Hassanal Bolkiah Highway when he was stopped by two traffic police officers because he was not wearing a safety belt and he was using a mobile phone at the time.

One of the traffic police officers was the appellant and the other was PC 4572 Mazlan Bin Hj Mohammad *("PC Mazlan")*. Saiful surrendered his identity card and driving licence to the appellant. PC Mazlan issued a traffic summons to Saiful. After that Saiful was told to follow the appellant and PC Mazlan to Gadong Police HQ.

The appellant handed over Saiful's identity card and driving licence to Cpl 2620 Jefry Bin Hj Jais *("Cpl Jefry")* in the investigation room at Gadong Police HQ and told him about the traffic offences.

Saiful's evidence

In summary it was the evidence of Saiful that upon entering the investigation room at Gadong Police HQ he was told by Cpl Jefry that he might have to pay a court fine of between $300 to $500 in respect of the traffic offences. When Saiful pleaded to be given a *"chance"* Cpl Jefry gave him the appellant's mobile phone number and told him to discuss the *"matter"* with the appellant and PC Mazlan.

Saiful went outside and called the appellant's mobile phone to ask him *"for a chance"*. There was a demand for payment of $50 to *"each person"*. Saiful told the appellant he could afford to pay only $20. The appellant told Saiful to *"discuss"* it with the *"person in the office"*. Saiful returned to the investigation room.

Cpl Jefry told Saiful that *"they"* did not agree with the amount he had proposed to pay. Cpl Jefry recorded Saiful's personal particulars in a *"form"* and told him to come back the next day to give a statement. Saiful's driving licence and the traffic summons were handed back to him but not his identity card.

On the following day at about 2.00 pm Saiful received a phone call from the appellant asking him if the *"matter"* had been *"settled"*. Saiful told the appellant the *"matter"* was *"not settled"* and he was going to give his statement to Cpl Jefry in the evening. The appellant assured Saiful that he would *"help"* him. They agreed to meet at 5.00 pm.

Saiful drove to Simpang 74 at Kampong Mata-Mata to meet the appellant. Saiful got into the appellant's car which was parked near to a supermarket. The appellant told

Saiful he would *"help"* and asked him: *"Do you have?"* Saiful took out an envelope from his pocket containing $40. The appellant told Saiful to place the envelope next to the handbrake. The appellant said his *"friend"* was being *"very difficult"* in demanding $50. The appellant said $40 was *"enough for coffee"* and Saiful need not give a statement.

Subsequently, on 9 August 2007, Saiful met the appellant at the same place. The appellant returned Saiful's identity card to him.

Defence case

The appellant elected to remain silent at the close of the case for the prosecution.

No witness was called.

Decision of the Magistrate

On the evidence of Saiful who the Magistrate found to be a credible witness he was satisfied the appellant did obtain a gratification of $40 from Saiful as a reward for not taking action against him for the traffic offences.

The appellant was convicted of the charge accordingly.

As to sentence the Magistrate acknowledged that the *"numerous"* adjournments in the trial must have caused *"unnecessary stress"* to the appellant. However, the Magistrate was of the view that the seriousness of the offence warranted a sentence of 12 months' imprisonment.

Grounds of appeal

The grounds of appeal may be summarized as follows. Against conviction, firstly, it is contended by counsel for the appellant that the Magistrate was wrong to accept the uncorroborated and inconsistent evidence of Saiful; he should have considered the possibility that Cpl Jefry and PC Mazlan were the ones who had *"struck a deal"* with Saiful to obtain a bribe from him in exchange for not taking action against him for the traffic offences.

I find no merit in this contention. An appellate court will not disturb findings of fact unless they are plainly wrong or clearly reached against the weight of the evidence. It is not enough to show that the appellate court would have come to a different conclusion on the evidence from the court below bearing in mind the trial court had the benefit of seeing and hearing the witnesses to assess their veracity and reliability.

Saiful's evidence was the cornerstone of the case for the prosecution. The Magistrate had the opportunity to see and hear Saiful testify and was entitled to find he was a credible witness and to accept the truthfulness and accuracy of his evidence on the material issues. On Saiful's evidence the conclusion of the Magistrate that the offence was proved beyond reasonable doubt is unassailable.

Secondly, it is argued that the charge is erroneous and the appellant was prejudiced. The appellant should have been charged with corruptly obtaining a gratification *"as an inducement"* for forbearing to do an act instead of obtaining a gratification *"as a reward"* for forbearing to do an act. The appellant can only be convicted of the charge if it is proved he obtained the gratification *"after"* forbearing to take action against Saiful. Since it was the evidence of Saiful that the *"case against him was not settled"* when he gave the gratification to the appellant the Magistrate was wrong to convict him. Counsel for the appellant finds support for his argument in this passage in the judgment of Yahya Ali, J. in *Re Venkatasubbiah* [AIR L35) 1948 Madras 63:

> *"The term "reward" in the phrase ("motive or reward" in section 161 of the Indian Penal Code of 1860) is manifestly intended to apply to a past service. What is forbidden generally is receiving any gratification as motive to do or a reward for having done any such thing as is described in the definition. Any other construction would lead to an absurdity."*

The authority relied upon by counsel for the appellant does not assist him.

Section 6(a) of the Prevention of Corruption Act provides:

> *"If any agent corruptly accepts or obtains……...any gratification as an inducement or reward for doing or forbearing to do, or for having done or forbone to do, any act………is guilty of an offence…….."*

Reading section 6(a) it is plain that when a person accepts or obtains a gratification as an inducement or reward, the offence is committed whether the act in exchange for the gratification is to be done or forbone, or has been done or forbone.

The argument that the charge is erroneous is misconceived.

Against sentence the contention is that it is excessive in light of the delay.

The appellant was charged in the court below on 30 December 2009 – more than 2 years after the commission of the offence. Trial commenced on 20 May 2013 – more than 3 years from being charged. Trial was completed on 17 March 2016 and judgment was delivered on 22 June 2016 – more than 3 years from commencement.

As can be seen from the history of the proceedings in the court below, there was a long unexplained delay in the prosecution of the appellant. More serious was a post-charge delay of about 6 years caused by adjournment after adjournment in the trial several of which should not have been granted by the Magistrate.

However, the Magistrate took the delay into account in deciding on the sentence of 12 months' imprisonment. I think this sentence is quite proper notwithstanding the appellant's clear record and public service. If not for the delay factor I would consider a sentence of 18 months' imprisonment to be appropriate having regard to the gravity of the offence: *Haji Mazlan Bin Haji Shahbuddin v Public Prosecutor* [Criminal Appeal No. 50 of 2015].

Corrupt policemen must expect severe sentences if they are convicted of receiving bribes. A deterrent sentence must be imposed in the public interest.

Conclusion

For the foregoing reasons I dismiss the appeal against conviction and sentence.

DATO PADUKA STEVEN CHONG
Judge, High Court