

Public Prosecutor

AND

Firmansyah Zamrulian (D1)

Zacky Umar (D2)

(Intermediate Court of Brunei Darussalam)

(Criminal Trial No. 5 of 2025)

Pg Hjh Norismayanti binti Pg Hj Ismail, Judge

Date of Sentence: 29 August 2026

Headnote: Criminal Law – Counterfeit currency — Use of forged note as genuine —s.489B of the Penal Code, read with s.34 — Mental element: actual knowledge, wilful blindness, or reason to believe — Held: Prosecution failed to exclude reasonable doubt; forgery undetectable to laypersons; Investigating Officer's concessions and Thian Li Heng supported innocent explanation — Defendants acquitted.

DPP Nurul Fitri Kpirawi for Public Prosecutor.

Mr Brandon Chin (Messrs Yusof Halim & Partners) for both D1 and D2.

Cases cited:

Adili Chibuike Ejike v Public Prosecutor [2019] 2 SLR 254

Public Prosecutor v Koo Pui Fong [1996] SGHC 62

Gobi a/l Avedian v Public Prosecutor [2020] SGCA 102

Public Prosecutor v Thian Li Heng (Criminal Appeal No. 5 of 2016)

Mahbub Shah v Emperor AIR 1945 PC 118

Public Prosecutor v Haji Othman Bin Judin (Criminal Appeal No.48 of 2016)

Muriaty binti Abdul Haji v Public Prosecutor [2001] BLR 361

Kong Hoo (Pte) Ltd and another [2017] 4 SLR 421

Zamri bin Hj Jaludin & Anor v Public Prosecutor (Criminal Motion No. 29 of 2022)

Muhammad bin Kadar and another v Public Prosecutor [2011] SGCA 32

J U D G M E N T

Pg Hjh Norismayanti, Judge:

Introduction

1. D1 and D2 are jointly charged that, on the 10th day of October 2024, in furtherance of a common intention, they used as genuine one counterfeit BND10,000 note ("P5") at Zamada Money Changer, Brunei International Airport, knowing or having reason to

believe it was counterfeit. This is an offence under section 489B of the Penal Code (Cap. 22) read with section 34.

2. Both parties agree that section 489B requires the Prosecution to prove three things: (i) that the Defendants used, sold, bought, received, or trafficked in the note; (ii) that P5 was in fact forged or counterfeit; and (iii) the Defendants knew, or had reason to believe, that it was forged or counterfeit, at the time. Both parties also agree that the first two limbs (i) and (ii) are not in dispute. The only real issue is the third, the mental element, what the Defendants knew or believed, together with whether section 34 makes each Defendant liable for the acts of the other.

Facts not in dispute

3. Exhibit P5 is a counterfeit BND10,000 note.
4. It is not disputed that D2 physically handed P5 at the Zamada counter, with D1 beside him, for the purposes of exchanging it into Malaysian Ringgit.
5. The following is also agreed between parties, drawn from the Statement of Agreed Facts and the Defendants' own statements: D1's receipt of the counterfeit note from Riswan was in purported settlement of a debt, that D1 was sent UV light photographs of the note, the unsuccessful attempts to exchange the note in Indonesian and Malaysia, and Najwa's advance call to Zamada to ask about the exchange and that the Defendants presented the note in Brunei.

The Legal Framework

The two statutory limbs of the mental element

6. Both parties accept that section 489B can be proven in either two ways: (a) actual knowledge (of which wilful blindness is said to be the legal equivalent); or (b) "reason to believe" under section 26 of the Penal Code. This second test is objective, the standard is assessed by reference to what a reasonable person, given the same information the Defendant had, would have concluded.

Adili three-limb tests

7. On the issue of wilful blindness, both parties refer to the case of *Adili Chibuike Ejike v Public Prosecutor* [2019] 2 SLR 254 which sets out the three-limb test as follows:
 - (i) a clear, grounded and targeted suspicion of the relevant fact;
 - (ii) a reasonable means of inquiry that was available and would have revealed the truth; and
 - (iii) a deliberate refusal to pursue that inquiry in order to avoid the negative legal consequences of knowing.

8. The Defence also relies on *Public Prosecutor v Koo Pui Fong* [1996] SGHC 62 and on *Gobi a/l Avedian v Public Prosecutor* [2020] SGCA 102 for the proposition that wilful blindness is a distinct inquiry from, and not a means of circumventing, the statutory "reason to believe" limb.

Governing local authority – Thian Li Heng

9. Both parties treat *Public Prosecutor v Thian Li Heng* (Criminal Appeal No. 5 of 2016) as the most directly relevant local authority on point. In that case, the accused was acquitted after checking counterfeit Singapore \$10,000 notes under UV light before trying to use them. The Court of Appeal held that seeking this kind of verification pointed towards a genuine belief that the notes were real, not toward guilty knowledge. The Prosecution tries to distinguish that case on the basis that it involved an actual UV scanner giving an objective, machine-generated result, whereas here the Defendants relied on photographs sent by Riswan, a person who stood to gain from the note being accepted. The Defence submits the present case is if anything stronger than *Thian Li Heng*, given the consistency of the Defendants' account (as PW6 accepted) compared with the initial false account given by the accused in that case.

Common intention (section 34)

10. Both parties accept the case of *Mahbub Shah v Emperor* AIR 1945 PC 118 and *Zamri bin Hj Jaludin & Anor v Public Prosecutor* (Criminal Motion No. 29 of 2022) which provides that common intention requires proof of a prior meeting of minds or pre-arranged plan directed at the criminal act, and is not established merely by parallel conduct, presence, or a shared innocent objective.

Summary of Prosecution's Case

Mohammad Hazim bin Suzaim (PW1)

11. PW1 is a cashier at Zamada Money Changer at the Departure Hall of Brunei International Airport. He gave evidence about the circumstances leading to the discovery of the counterfeit BND\$10,000 note (a fact not in dispute). A day before the incident, PW1 received a call from a woman who said her name was "Najwa,". She asked to exchange BND\$10,000 into Malaysian ringgit and asked for his name; he identified himself as "Hazim." She called again 15 minutes later to ask what documents (passport/I.C.) would be needed. PW1 confirmed Najwa referred to exchanging the sum of \$10,000, not specifically a single \$10,000 note.
12. The incident happened the next day on the 10th October 2024. PW1 said he started work at 7.30 am. Two men came to the counter that morning asking for "Hazim." As PW1 was busy with other customers, his colleague Abd Malek identified himself as "Hazim" and attended to the men instead. PW1 witnessed one of the two men hand a BND\$10,000 note to Abd Malek; and identified this man as D2. He testified that D2 was positioned on his left at the counter, and that D2 was the same person who had earlier asked for "Hazim." PW1 stated he had about 10 minutes to observe the note.

13. PW1 found the note suspicious due to: (i) the darker/more yellow-green colour compared to a genuine (more green) note; (ii) it felt like paper rather than polymer; (iii) it was missing the see-through security window found on genuine currency. He had no genuine note on hand for comparison at the time. On examining exhibit P5 in court, he confirmed the security window looked stuck on rather than built into the note, the material and texture were different from a genuine note, and the colours contrast were too bright — and that P5 was consistent with the note he saw that day.
14. PW1 did not personally handle the said note but he saw Abd Malek keep hold of it and told Norakilah to call the police. He confirmed the transaction and the parties involved via CCTV footage shown in court.
15. PW1 said that neither of the two men behaved suspiciously during the transaction. He repeated that Najwa's call was about exchanging a sum of \$10,000, not specific to a \$10,000 note. He further said he was shocked to learn that the note was fake, since his past experiences was mostly with foreign currencies and had not come across counterfeit Brunei currency before.

Abdul Malek bin Hj Duraman (PW2)

16. PW2 is a compliance officer at Zamada Money Changer, employed there for about 13 years (since 2013). His job includes ensuring staff compliance with company procedures, reporting to the Brunei Darussalam Central Bank ("BDCB"), and personally handling currency exchanges valued at BND\$1,500 or above, which he does at least 5 transactions a day. He has received BDCB training on Brunei currency security features, most recently in March 2023, with earlier sessions in 2018/2019 and a further session addressing new banknotes shortly before trial. He confirmed this was his first time testifying in court.
17. PW2 described the company's written procedures covering (i) suspicious or counterfeit notes, and (ii) high-value transactions requiring customer identification. Where a note is suspected counterfeit, staff must call the airport police and delay the transaction process, without returning the note to the customer. Staff are not permitted to ask customers about the origin or how long they have held possession of the note, and are not obliged to inform the customer at the time that the note is suspected counterfeit.
18. On the 10th October 2024, PW2 was stationed at the left counter, with Norakilah ("Akilah") to his left and PW1 behind him. One of the two men asked for "Hazim," and PW2 identified himself as such. That man then handed PW2 a single BND\$10,000 note for exchange. PW2 immediately suspected the note as counterfeit based on: (i) paper rather than polymer material; (ii) a security window that was not see-through; (iii) ink/colour that was brighter than a genuine note (which he described as darker green); and (iv) a texture lacking the grooves of a genuine note. He did not use any inspection device, given it was a single note. PW2 did use an inspection device or

compare it to a genuine BND\$10,000 note as it was rare to encounter the denomination.

19. Based on his suspicion, PW2 instructed Akilah to call the airport police and took the customer's passport for photocopying while delaying the transaction, in order to avoid arousing suspicion. He testified that he only learned of the earlier phone call from "Najwa" (via PW1) after the men asked for "Hazim."
20. PW2 further confirmed recognising P5 by its serial number, which corresponded to a photocopy retained by the company. On examining P5, he described its counterfeit features: absence of a genuine see-through window, an "HB" lettering feature that felt pressed onto rather than integrated into the note, plain paper-like texture, a crest that should be gold and shiny but was not, and absence of the micro-printed repetition of "Negara Brunei Darussalam".
21. PW2 also testified that the two men stood together and talked with each other. He could not confidently distinguish between D1 and D2 by appearance alone due to their similarity, though he confirmed (with reference to CCTV) that he could distinguish them by their positions on the footage. It was not disputed, per paragraph 4 of the Statement of Agreed Facts, that D1 handed D2 the note (P5). The court permitted CCTV footage to be shown but noted this was unnecessary given the matter was already agreed in the SOAF. Further, PW2 testified that he did not observe any suspicious behaviour from either man at the time of the transaction. He then handed over the counterfeit note and the defendants to the police for further investigation.
22. In cross-examination, PW2 agreed that identifying the security features required specialised training that the average member of the public, including the defendants, would not have; the average person would not know the note "felt" wrong, since this depended on comparative experience with genuine notes. PW2 accepted that it was possible the men were exchanging the note on behalf of a third party (consistent with the "Najwa" phone call), and agreed that the company SOP restricted him from asking the customer where the note came from or how long they had possessed it, and thus he had no basis to assess whether the men knew the note was counterfeit.
23. PW2 further agreed it was possible for a person to receive counterfeit currency unknowingly in the ordinary course of legitimate dealings, and that his SOP would result in the same response (calling police) whether or not a customer was an innocent recipient. PW2 confirmed there was nothing suspicious about the defendants' conduct. The defendants did not press him to complete the exchange, did not attempt to leave, remained in view of CCTV throughout, and were calm and cooperative when the police arrived. PW2 agreed that nothing in his evidence indicated either defendant knew the note was counterfeit. In his re-examination, PW2 confirmed that his inspection of P5 was based solely on visual and tactile observation, without technical verification, consistent with his evidence-in-chief.

WL/Cpl 5714 Christina Angkuang (PW3)

24. PW3 is a Digital Forensic Analyst attached to the Digital Forensics Unit, Criminal Investigation Department, Royal Brunei Police Force, a post she held since 2017. Her evidence-in-chief was given by way of her statement recorded under s.117B of the Criminal Procedure Code, Chapter 7, tendered as P24, the reading of which was also waived by the defence.
25. In P24, she explained that on 15th October 2024, she received from S/Sgt 3730 Yusri bin Haji Abdul Majid of the Commercial Crime Investigation Division a minute requesting analysis and examination of exhibits comprising (i) a Samsung Galaxy A51 (Model SM-A515F/DS, silver) with a SIM card and a 32GB SanDisk memory card, (ii) a Samsung Galaxy A55 (Model SM-A556E/DS, Navy Blue) with a SIM card, and (iii) a Sony 16GB pen drive containing three video recordings. The request sought WhatsApp communications between Firmansyah, Zacky Umar and "Haryanto x Malang," and images relating to BND\$10,000 banknotes and flight tickets for Indonesia, Malaysia and Brunei. The pen drive was separately passed to PW4 for video analysis.
26. PW3 conducted two extractions of the Samsung A51 (D1's phone). On the first, in October 2024, WhatsApp data could not be directly retrieved due to a software limitation, though she recovered screenshots and images by other means, including images relating to banknotes, loan documents and flight tickets, and hundreds of WhatsApp conversations from D1's second phone (the A55). A fuller extraction of the A51 followed in mid-2025, which — following a software update — successfully retrieved the underlying WhatsApp data directly, including D1's conversations with his wife and various group chats.
27. In cross-examination, PW3 confirmed that the WhatsApp messages recovered in the second extraction had "always been there" on the phone, and were simply unreadable by the software on the first attempt. She agreed she could not tell from the data why any particular banknote photograph had been taken, only whether it had been created on the phone or received via WhatsApp. She confirmed she had extracted all group-chat messages within the requested date range at the Investigating Officer's instruction, without assessing their relevance, and that she did not know at the time whether the "Collection CAB Pinjaman" group chat was connected to a debt-collection agency, nor did she understand much of the language used in the chats beyond simple conversation. There was no re-examination.

S/Sgt 3523 Effendy bin Mujah (PW4)

28. PW4 is a digital forensic analyst attached to the IT Forensic Unit, Criminal Investigation Department, Police Headquarters, Gadong, with approximately 16 years' experience in that role and some 29 years of service in the Force. His evidence-in-chief was given by way of his s.117B statement, tendered as P25.

29. PW4's evidence was that he received the CCTV pen drive on 15th October 2024 and, using Video Focus Pro software, reviewed the footage frame by frame, producing ten still images depicting the movements of the man at the Zamada counter. His report was dated 22nd October 2024.

30. As PW4's evidence went only to the making of the CCTV footage, and the footage itself was an agreed fact between the parties, the defence had no questions for him, and he was excused without cross-examination.

Noor Izzah binti Haji Abu Bakar (PW5)

31. PW5, a Senior Manager at the Currency Management Division, BDCB for approximately 15 years, is responsible for assessing suspicious and counterfeit banknotes and holds specialist training and certification in counterfeit identification.

32. In her s.117B statement (P25), PW5 gave evidence that she examined P5, received sealed on 14 October 2024, by visual inspection, touch, and examination under UV light and tilting, using an original specimen note, a UV light and a ruler. Her findings were that: the primary window bore a gold-coloured "HB" rather than the colourless embossed "HB" with purple-to-green OPAL G shift found on a genuine note; there was no secondary complex window with a level 2 feature on the right; print quality was lighter and less sharp than genuine; under UV light, the national crest appeared in the wrong location and the serial number did not fluoresce as expected; the material was paper rather than polymer, with no raised ink detectable; the note measured 95mm in height against a genuine 90mm; and on tilting, no shadow image of His Majesty appeared, the "HB" was only slightly visible, and the expected colour shift was absent. She recorded these findings in a Verification Worksheet, tendered with a cover letter as P27, and clarified that a "10/10/2024" date on the worksheet was a typographical error for the actual receipt date of 14 October 2024. She concluded P5 was counterfeit.

33. In cross-examination, PW5 agreed that her assessment required a controlled setting, specialised tools, and direct comparison with a genuine note, and that this level of forensic assessment would not be available to an ordinary member of the public. She was largely unable to say what an untrained layperson would or would not notice, this being outside her expertise. She accepted that some security features were in fact present on P5, a UV crest, albeit misplaced, and a serial number that reacted under UV light, notwithstanding her conclusion that the note was counterfeit for lacking the complete suite of expected features. She also accepted she had conducted no material composition test, her observation that the note was paper rather than polymer being based on visual and tactile comparison rather than scientific testing.

Sarjan Mejor 3730 Yusri bin Haji Abdul Majid (PW6)

34. PW6 is the Investigating Officer, with approximately 29 years' service in the Royal Brunei Police Force. His s.117B statement is tendered as P28. He identified both

Defendants, confirmed P5 as the counterfeit note seized, and confirmed P7 as the photo album referred to in his statement.

35. PW6 took over the investigation on 10th October 2024, after D1 and D2 were detained trying to exchange the note at Zamada. He arranged for BDCB to verify the note (confirmed counterfeit) and for the Defendants' phones to be forensically examined — first a targeted extraction, then a fuller one after a defence request.
36. Based on PW6's statement, his investigation led to the following information: that D1, an Indonesian national and debt collector for a cooperative ("Koperasi Simpan/Pinjam Sejahtera Bersama"), received the note on 2nd October 2024 from a man he saved in his phone as "Hariyanto X Malang" (later identified as "Riswan") as part settlement of a debt, was persuaded of its authenticity by a UV-light comparison photograph, failed to exchange it in Indonesia and then in Kuala Lumpur (joined there by D2, a childhood friend); and travelled with D2 to Brunei on 10th October 2024, where both were detained attempting to exchange it at Zamada. His statement referred to a photo album of 65 images (flight tickets, the handover photograph, UV-light comparison photographs) and CCTV footage of the exchange attempt. PW6 concluded that it unreasonable for the defendants to persist in Brunei having already failed to do so in Indonesia and Malaysia, and that both had failed in Indonesia and Malaysia, and that neither had taken reasonable steps to verify authenticity, relying instead on others' assurances.
37. In cross-examination, PW6 agreed that D1 was a debt collector for a registered Indonesian cooperative, had proof of such employment, and had never previously left Indonesia; D2 was not part of the cooperative but D1's childhood friend, invited along, and had family in Kuala Lumpur; and both were, in his assessment, ordinary blue-collar workers unlikely to normally encounter a BND\$10,000 note. He agreed the first forensic extraction was narrowly targeted to the period around 10th October 2024, and a fuller extraction of the phones (not part of his original plan) went back to 2022, revealed no other reference to any \$10,000 note, no evidence D1 purchased counterfeit currency, and no evidence that either defendant otherwise dealing in counterfeit money.
38. PW6 confirmed seeing a genuine-looking debt-collection record (in P7) for D1 predating the trip, but had not verified it with D1's employer. He confirmed the man who gave D1 the note was "Riswan," but that he never contacted or took a statement from Riswan, despite having his name, ID and phone number. He agreed messages from 2022 suggested Riswan had inherited the debt from a now-deceased original debtor.
39. PW6 was taken through a chronology of WhatsApp exchanges and photographs from the extraction: on a screenshot dated 30th September 2024, the note first appeared on D1's phone as a proposed debt repayment, followed by D1 asking Riswan to have it checked at a bank, and then, the next day, UV-light photographs of the note. PW6

agreed at least two genuine-looking security features were visible in those photographs, which could reasonably have reassured D1, this being his first BND\$10,000 note. He agreed Riswan had approached D1 unsolicited, with no prior mention of Brunei currency in their communications. He was shown further photographs of the handover between D1 and Riswan, an accompanying declaration document, and comparison UV photographs of a BND\$100 note (never recovered), agreeing that P5 in fact reacted more strongly under UV light than the comparison note. He confirmed the photographs were sent together on 5th October 2024, referencing an "authorised money changer," shortly before flights to Malaysia and back to Jakarta were booked following the failed attempts in Indonesia. He agreed no Indonesian or Malaysian institution ever told the Defendants the note was counterfeit, there was no detention or arrest arising from those attempts, and the note was returned to them each time.

40. PW6 agreed it was possible D2's niece, Najwa, had called Zamada in advance to ask about exchanging the note, consistent with staff evidence of such a call, conduct he agreed would be unusual for someone knowingly passing a fake note. He agreed that across two phone extractions, nothing contradicted the Defendants' account, and that, aside from the note being counterfeit, there was no evidence either Defendant knew this at the time. PW6 agreed that, with the fuller picture now available, he would consider the Defendants themselves victims of the circumstances.
41. A notarised statement (ID6) said to be from Riswan was put to PW6, who confirmed it played no part in his investigation and he could not verify it. He agreed its account, including a previously unmentioned "Pak Uyut," said to have paid Riswan in Brunei currency and assured him it was genuine, had never surfaced in his investigation, and no such notes were ever recovered. He confirmed he had no independent evidence supporting this account.
42. PW6 explained that he had reported the overseas dimension of the case to his superiors but was not instructed to investigate abroad, so Riswan was never traced. He confirmed that the offence under investigation only required proof of possession and (ii) an attempt to exchange a counterfeit note, not identification of its source. PW6 maintained his view that the Defendants' persistence in Brunei was unreasonable, clarifying that his concession they might be "victims" was conditional on that being true, and agreed repeated rejection by multiple institutions would ordinarily raise suspicion.
43. Following PW6's evidence, the prosecution closed its case.

The Defendants' Election to Remain Silent

44. Having ruled that a prima facie case had been made out against both Defendants on 18th April 2026, the Court, pursuant to section 179 of the Criminal Procedure Code (Chapter 7), called upon each Defendant to enter on his defence. Each was informed of their rights: (i) to give evidence on oath from the witness box, in which case he

would be liable to cross-examination; or (ii) to remain silent and call no evidence at all. Both D1 and D2 elected to remain silent and called no witnesses. It is to be noted that the election is not treated as an admission of guilt, nor may it, by itself, be relied upon to supply any missing element of the offence.

45. An accused's silence is not without consequence. Once the Prosecution has established a case which, if left unanswered, would justify a conviction, the Defendants must offer some explanation, otherwise the case against them may be taken to stand as it is. The burden of proving guilt, however, remains on the Prosecution throughout. Where the evidence involves matters only the accused would ordinarily know, and no explanation is given where one might reasonably be expected, the Court may, in its discretion, draw an adverse inference against him. That discretion is not exercised as a matter of course; it must be weighed against the whole of the evidence, including any concessions already made by the Prosecution's own witnesses. Where such concessions have themselves supported or undermined an element of the offence, the Court must ask whether the case against the Defendants, at the end of the Prosecution's case, was strong enough on its own to sustain a conviction beyond reasonable doubt, regardless of their silence. Silence in itself cannot make good a gap in the evidence that the Prosecution's own case has failed to close. The Court returns to this question, and to the Prosecution's invitation under section 221(5) of the Criminal Procedure Code to draw such an inference here, at paragraph 55 below.

The Court's Considerations and Findings

Case against D1 — Wilful Blindness

46. The Prosecution's primary case against D1 is that he was wilfully blind to P5's counterfeit character, applying the three-limb test in *Adili Chibuike Ejike v Public Prosecutor*. The Court is not satisfied that any of the three limbs is made out. As to the first limb (a clear, grounded and targeted suspicion) the only evidence relied upon is D1's initial instruction to Riswan to have the note checked at a bank. The Court accepts the Defence's submission that this conduct is at least as consistent with ordinary commercial caution toward an unfamiliar high-denomination note as it is with suspicion of forgery, and is materially indistinguishable from the verification-seeking that the Court of Appeal in *Public Prosecutor v Thian Li Heng* treated as consistent with a belief in genuineness rather than with guilty knowledge. In regard to the second and third limbs, the evidence establishes that D1 did not simply decline further inquiry: he obtained UV-light photographs from Riswan and, when those did not resolve matters to institutional satisfaction, made several further attempts to exchange the note at money changers across two countries. This conduct is difficult to reconcile with a deliberate refusal to inquire "in order to avoid the negative legal consequences of knowing." Wilful blindness requires more than merely failing to pursue an available line of enquiry to its fullest extent; it requires a deliberate shutting of one's eyes to a truth that one already suspects. Here, the pattern is that D1

repeatedly sought, but failed to obtain, confirmation of a fact he nonetheless continued to believe.

47. This assessment is backed up by PW6's own evidence. He agreed in cross-examination that D1's account had remained consistent from the time of his arrest, that it was corroborated by the forensic material recovered from his phone, and that it was "not unreasonable" for D1 to have believed the note genuine after receiving the UV photographs. These are concessions from the Prosecution's own witness going to the very heart of the wilful blindness inquiry, and the Prosecution has not, in the Court's assessment, offered any satisfactory basis on which they should be discounted. The Court finds that the Prosecution has not proved wilful blindness on the part of D1 to the required standard.

Alternative case against D1 — Reason to Believe

48. The Prosecution's alternative case is that, independently of wilful blindness, the objective circumstances known to D1, the note's high and unfamiliar denomination, its repeated rejection by money changers in Indonesia and Malaysia, and the absence of institutional confirmation of genuineness, gave a reasonable person in his position sufficient cause to believe P5 was not genuine. The difficulty with this case, as the Defence rightly points out, is that each of the individual refusals was, on the evidence, attributed to processing or administrative limitations (denomination size, machine capacity, the age of the serial number) and not to any suspicion of forgery. No money changer in either country identified or reported the note as suspected counterfeit, and the Prosecution led no evidence from any of those money changers to suggest otherwise.
49. More importantly, the Court accepts the Defence's submission, supported by PW5's own evidence, that P5 was a sophisticated counterfeit whose defects, its paper rather than polymer composition, the misplaced UV crest, the non-fluorescing serial number, and the 5mm dimensional discrepancy, were identifiable only through specialised equipment, a genuine comparator note, and expert training, and not by ordinary sight or handling. PW5, BDCB's own currency expert, agreed under cross-examination that the forensic-level assessment she conducted would not have been available to an ordinary member of the public. This is significant: it is the Prosecution's own expert evidence that undermines, rather than supports, a finding that an objective reasonable person in D1's position, a debt collector encountering his first BND\$10,000 note, had sufficient cause to believe it was fake. The "reason to believe" standard under section 26 of the Penal Code does not attribute to the reasonable person the specialised knowledge of a trained currency examiner. On the whole of the evidence, the Court is not satisfied beyond reasonable doubt that D1 had reason to believe P5 was counterfeit.

Case against D2 — Reason to Believe

50. The Prosecution does not argue wilful blindness against D2, who was not party to the debt-collection arrangement and did not receive the note from Riswan. Its case is confined to "reason to believe," resting on D2's presence throughout the Malaysian exchange attempts and his arrangement, through his niece Najwa, of an advance telephone inquiry to Zamada. The Court finds this case to be evidently weaker than that advanced against D1. The refusals D2 witnessed in Malaysia carry the same innocent explanation available to D1, for the reasons already given. As to the advance call to Zamada, the Court accepts the Defence's submission that this conduct is difficult to reconcile with guilty knowledge: a person seeking to pass a note he believed counterfeit would ordinarily have no interest in pre-announcing the transaction, in a family member's own name, to the very institution he intended to deceive. If anything, the call is more consistent with an intention to ensure a legitimate, unremarkable exchange than with a scheme to deceive.
51. The Court is mindful of the caution in *Mahbub Shah v Emperor and Zamri bin Hj Jaludin & Anor v Public Prosecutor* against inferring an individual's state of mind merely from association with a co-accused. On the evidence before the Court, the case against D2 rests substantially on his presence alongside D1 and his participation in a joint venture that the Court has found was not, on D1's part, accompanied by the requisite guilty knowledge. There being no independent evidential foundation for D2's own reason to believe, the Court is not satisfied beyond reasonable doubt that this limb is made out against him either.

Common Intention under Section 34

52. Section 34 requires proof that the Defendants agree, beforehand, to do the criminal act together. It is not enough that they acted alongside each other, were both present, or shared a goal that was itself innocent. In the present case, liability under section 34 also depends on something else being proven first: that at least one Defendant knew, or had reason to believe, that the note was counterfeit. Only once this is shown can the other Defendant's actions be treated as part of the same shared plan. As the Court has already found that neither D1 nor D2 knew, or had reason to believe, that P5 was counterfeit, there is no criminal plan for section 34 to attach to. D2's help to D1 — travelling with him, arranging contacts, and being present at the Zamada counter — fits just as well with an innocent joint effort to exchange a note both men believed was genuine. For this reason, the common intention limb of the charge fails.

The Adverse Inference Sought by the Prosecution

53. The Prosecution asks the Court, under section 221(5) of the CPC, to draw a negative inference from the fact that both Defendant chose to stay silent. It points to matters it says were never explained, including alleged inconsistencies in D1's account of why he travelled to Brunei. The Defence, relying on *Public Prosecutor v Haji Othman Bin*

Judin, says no such inference should be drawn here, because those matters said to require explanation were already before the Court, through the Statement of Agreed Facts, the Defendants' own admitted statements, and PW6's evidence.

54. On this contention, the Court accepts the Defence's submission. A negative inference of the kind discussed in *Muriaty binti Abdul Haji v Public Prosecutor and Kong Hoo (Pte) Ltd* is normally reserved for cases where the accused's silence leaves a real gap in the evidence, one that the defendant could fill. It cannot be used to make up the evidence that the Prosecution failed to bring, or patch over the weaknesses in its own case. Here, the Prosecution's own witness, PW6, testified that D1's account had stayed consistent from the start and was backed by forensic material taken from the Defendants' phones. Where the Prosecution's own investigating officer has already, in effect, confirmed the very account the Defendants' would otherwise have needed to give, there is little left for their silence to hide. In light of this, the Court declines to draw an adverse inference against the Defendants.

The Completeness of the Investigation

55. The Court has also considered what PW6 admitted about the scope of the investigation. It did not extend to Indonesia or Malaysia: Riswan, whose telephone number and identification particulars were known to the investigators was never contacted, interviewed, or called as a witness; and that no statement was taken from any of the Malaysian money changers who rejected the note. PW6 further agreed that, on what he knew by the time of the trial, the Defendants might fairly be seen as victims of circumstances. In line with the principle in *Muhammad bin Kadar and another v Public Prosecutor*, a conviction should not rest on the leftover scraps of an incomplete investigation. The Court finds that these were line of inquiry that were available and could easily have been pursued. In particular, Riswan could have been found and asked to give an account that might have confirmed or dispelled the central factual dispute in this case. Because this was not done, the resulting gaps in the evidence must be resolved in the Defendant's favour, not the Prosecution's.

Conclusion

56. Having regard to the overall circumstances and findings, the Court is not satisfied beyond reasonable doubt that either Defendants knew, or had reason to believe, that P5 was counterfeit at the relevant time. The Prosecution's own expert evidence shows that the note was a sophisticated counterfeit that an ordinary person would not reasonably have been able to detect. Its own investigating officers accepted that the Defendants' account had stayed consistent, and that neither of them behaved suspiciously before, during, or after the transaction. And the leading local authority, *Thian Li Heng*, supports D1's account rather than undermines it, his attempts to verify the note point toward innocence, not guilty. Since the mental element has not been proven against either Defendant, the commons intention charge under section 34, which depends on that mental element being established, must also fail.

57. The Prosecution has accordingly failed to prove the charge against D1 and D2 beyond reasonable doubt. Both Defendants are hereby acquitted and discharged.



PG HJH NORISMAYANTI PG HJ ISMAIL
Judge, Intermediate Court