

**IN MAGISTRATE COURT OF KUALA LUMPUR
(CRIMINAL JURISDICTION)
IN FEDERAL TERRITORY MALAYSIA
(CASE NO:WA-WA-83-5340-08/2018)**

BETWEEN

PUBLIC PROSECUTOR

VS

VASANTA A/L AMARASEKERA

GROUND OF JUDGEMENT

A. INTRODUCTION

[1] The accused is charged under Section 467 Penal Code for forgery of a Will. The charged preferred against accused as below:

“ Bahawa kamu pada 13.6.2005, di antara jam 9.00 pagi sehingga 6.00 petang, beralamat di Tetuan Amara & Co, D3-15, Pangsapuri Impian Kota, Jalan Kg Atap, Kuala Lumpur, dalam daerah Dang Wangi, di dalam Wilayah Persekutuan Kuala Lumpur, kamu telah melakukan pemalsuan tandatangan wasiat Last Will and Testament mendiang Adamberage Ananda Rex Alwis, (No KP: 480327-10-5695) bertarikh 13.06.2005 dan kamu adalah dengan ini telah melakukan kesalahan di bawah seksyen 467 Kanun Keseksaan”



[2] The trial commenced and prosecution had called 10 witnesses to give their evidence in Court. The witnesses are:

- PW1 - Nur Ikadewi bt Sarimin (Handwriting expert from Royal Police Malaysia)
- PW2 -Tengku Noraihan bt Raja Mamat (Handwriting expert from Chemist Department Malaysia)
- PW3 -Nyo Nyo Aye (complainant)
- PW4 -Subramanian a/l Sundram (witness to the Will)
- PW5 -Dato Seri N Krishna Moorthy A/L S. A Navaratnam (Lawyer)
- PW6 - Kevin Sathiaseelan A/L Ramakrishnan (Lawyer)
- PW7 -Inspector Mohd Ridzuan bin Mamat (First Investigation Officer)
- PW8 -Sarjan Ahmad Farhan bin Jamil (Second Investigation Officer)
- PW9 - DSP Tan Kim Chuan (Third Investigation Officer)
- PW10 -ASP Johari bin Mohamad Ali (Forth Investigation Officer)

[3] The Court finds that the prosecution has proven the ingredients of the charge and there is prima facie case established. Thus, the accused is called to enter his defence.

[4] The defence witnesses that had given their evidence in the Court namely, the accused (DW1), Mr Siow Kwen Sia (DW2) the handwriting expert and Mr Maurice De Alwis (DW3), the brother of the late Rex.

[5] At the end of case, the Court finds accused and convicted. Accused was sentenced one-year imprisonment from date of decision. The



prosecution and accused had filed appeal on the decision on sentence and conviction respectively.

B. BACKGROUND FACTS

[6] The complainant, Nyo Aye Aye (PW3) is from Myanmar and married to Adamberage Anand Rex Alwis (Rex) since 11.11.1995. Rex passed away on 1.3.2006. The family members started to look for any Will and Testament (Will) of the late Rex in order to claim the estate of Rex.

[7] PW3 stated there is no Will made by the late Rex. PW3 went to Public Bank to look at the safe box belong to the late Rex. Upon opening the safe box, PW3 could not find any Will. PW6 was appointed by PW3 to initiate proceeding for letter administration.

[8] Subsequently, the family members of the late Rex had advertised Notice in newspaper to inform any parties that possessed or seen the Will of the late Rex could refer the matter to Messrs Fauzi, Ngah & Neasa Advocates & Solicitors.

[9] The news of Rex and Notice came to the knowledge of the accused and the accused had forwarded the Will to Messrs Fauzi, Ngah & Neasa, the lawyers acting for the family of Rex. After PW5 had obtained the Will, upon the instruction, PW5 applied to the Kuala Lumpur for grant of probate.

[10] The accused and Subra (PW4) had affirmed affidavits in the probate proceedings. Both stated that they had witnessed Rex had



signed the Will (P4). DW3 had obtained the Grant of Probate and is the executor of the Will. PW3 challenged the Will and denied that Rex had signed any Will. PW3 filed suit to challenge the Will and the suit was dismissed without full trial.

C. LAW

[11] At the end of the prosecution case, the Court has to decide whether the prosecution has established a prima facie case against the Appellant which is provided in section 173(h)(iii) of the Criminal Procedure Code. It provides as follows:

“173. Procedure in summary trials.

(h) (iii) For the purpose for subparagraphs (i) and (ii), a prima facie case is made out against the accused where the prosecution has adduced credible evidence proving each ingredient of the offence which if unrebutted or unexplained would warrant a conviction.

[12] What constituted a prima facie case is well established. The Court is guided with the settled principle in **Balachandran v Public Prosecutor [2005] 1 AMR 321**, Augustine Paul JCA (later FCJ) explained prima facie case as follows at 338 - 339:

“A prima facie case is therefore one that is sufficient for the accused to be called upon to answer. This in turn means that the evidence adduced must be such that it can only be overthrown by evidence in rebuttal... Since the Court, in ruling that a prima facie case has been made out, must be satisfied that the evidence adduced can be overthrown only by evidence in rebuttal it follows that if it is not rebutted it must prevail. Thus if the accused elects to remain silent he must be convicted. The test at the close of the case for the



prosecution would therefore be: Is the evidence sufficient to convict the accused if he elects to remain silent? If the answer is in the affirmative then a prima facie case has been made out. This must, as of necessity, require a consideration of the existence of any reasonable doubt in the case for the prosecution. If there is any such doubt there can be no prima facie case.”

[13] Also, in the case of **Looi Kow Chai & Anor v PP (2003) 1 CLJ 734** where the Court stated as follows;

“A judge sitting alone must subject the prosecution evidence to the maximum evaluation and ask himself the question “if I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contain in the prosecution case?” If the answer was in the negative, then no prima facie case had been made out and the accused would be entitled to an acquittal...”

[14] In order to establish prima facie case for section 467 of Penal Code, the prosecution need to satisfy two main ingredients which are:

- a) the accused had forged the document
- b) the documents must be the one of the classes specified in the section 467 of Penal Code.

[15] The relevant sections in relation of forgery reproduced as follows:

Forgery

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express



or implied contract, or with intent to commit fraud or that fraud may be omitted, commits forgery.

Making a false document

464. A person is said to make a false document-

(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed;

(b) who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself by any other person, whether such person be living or dead at the time of such alteration; or

(c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

ILLUSTRATIONS

(a) A has a letter of credit upon B for ringgit 1,000 written by Z. A in order to defraud B, adds a cypher to the 1,000, and makes the sum 10,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b) A, without Z's authority, affixes Z's seal to a document, purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase money. A has committed forgery.

(c) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of one thousand ringgit. A commits forgery.



(d) A leaves with B his agent, a cheque on a banker, signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding one thousand ringgit for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of ten thousand. B commits forgery.

(e) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f) Z's Will contains these words: "I direct that all my remaining property be equally divided between A, B and C". A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g) A endorses a promissory note and makes it payable to Z, or his order, by writing on the bill the words "Pay to Z, or his order", and signing the endorsement. B dishonestly erases the words "Pay to Z, or his order", and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h) A sells and conveys an estate to Z. A after wards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i) Z dictates his Will to A. A intentionally writes down a different legatee from the legatee named by Z, and by representing to Z that he has prepared the Will according to his instruction, induces Z to sign the Will. A has committed forgery.

(j) A writes a letter and sign sit with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k) A without B's authority writes a letter and signs it in B's name, certifying to A's character, intending there by to obtain employment under Z. A has



committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an express or implied contract for service.

Explanation 1—A man's signature of his own name may amount to forgery.

ILLUSTRATIONS

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) A writes the word "accepted" on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(d) A purchases an estate sold under execution of a decree against B. B after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note, binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real



person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

ILLUSTRATION

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Forgery of a valuable security or Will

467. Whoever forges a document which purports to be a valuable security or a Will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquittance or receipt, acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

“A forged document”

470. A false document, made wholly or in part by forgery, is designated “a forged document”.

[16] It can be summarized that forgery consists elements as follow:

- (1) Making of a false document or part of it, and
- (2) Such making should be with such intention-
 - (i) To cause damage or injury to (a) the public, or (b) any person, or
 - (ii) To support any claim or title; or
 - (iii) To cause any person to part with property, or
 - (iv) To cause any person to enter into an express or implied contract; or
 - (v) To commit fraud as that fraud may be committed



- [17] The ingredients for section 467 of the Penal Code are -
- (i) The accused must have forged a document; and
 - (ii) The document must be one of the classes specified in the section

D. PROSECUTION CASE

[18] The prosecution needs to satisfy two ingredients under section 467 of Penal Code. As for the first element, the prosecution must prove that the accused forged a document and secondly the forged document is a document specified under section 467 of Penal Code. In this case, the document is a Last Will and Testament (Will) made by Rex.

[19] The prosecution relied to the expert witnesses, namely PW1 and PW2 who are the handwriting expert from department of Chemistry Malaysia and Royal Police Malaysia. Both experts had given their evidence and reports pertaining the signature in the Will (P4).

[20] The opinion of the expert's evidence is relevant under section 45 of Evidence Act.

Opinions of experts

45. (1) When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.

(2) Such persons are called experts.

ILLUSTRATIONS

(a) The question is whether the death of A was caused by poison.



The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died are relevant.

(b) The question is whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do or of knowing that what they do is either wrong or contrary to law, are relevant.

(c) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A. The opinions of experts on the question whether the two documents were written by the same person or by different persons are relevant

[21] PW3 evidence is corroborated with two handwriting experts. PW1 concluded after examining 10 documents contained 10 specimen signatures from Rex as well as Questioned Signature in the Will. Also, PW2 had examined total of 12 documents contained specimen signatures by Rex and Questioned signature in the Will. Both of experts concluded that questioned signature in the Will comprising the subject matter of the case did not belong to author of the specimen documents.

[22] The prosecution submitted that PW1 and PW2 are competent witness with qualified education background and experience in examine documents and their opinions is relevant under section 45 of the Evidence Act 1950 and should be accepted by the Court.

[23] Besides, PW3's evidence is crucial as she was the one of the witness that able to identify the signature of her husband. Prosecution



submitted that PW3's evidence is relevant under section 47 of Evidence Act 1950.

[24] Section 47 of Evidence Act 1950 stated:

Opinion as to handwriting when relevant

47. When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to have been written or signed, that it was or was not written or signed by that person, is a relevant fact.

Explanation—A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when, in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

ILLUSTRATIONS

The question is whether a given letter is in the handwriting of A, a merchant in London.

B is a merchant in Kuala Lumpur, who has written letters addressed to A and received letters purporting to be written by him. C is B's clerk, whose duty it was to examine and file B's correspondence. D is B's broker, to whom B habitually submitted the letters purporting to be written by A for the purpose of advising him thereon.

The opinions of B, C and D on the question whether the letter is in the handwriting of A are relevant, though neither B, C nor D ever saw A write.

[25] PW3 is the wife to Rex and she is able to identify the signature of the husband. She denied that signature in the Will belong to her late husband.



[26] Besides the opinion, the prosecution submitted that PW4 who was the witness to the Will unable to identify the Will was signed by Rex. PW4 who is friend to accused paid a visit to accused's office for lunch. Accused then seek assistance from PW4 to become the witness for a Will. Initially, PW4 refused as PW4 didn't know the name of the person until accused interjected and informed that the person is Alwis and PW4 remembered Alwis as person that used to play badminton and often seen him in the temple at Brickfields. Hence, PW4 agreed and signed the Will in hurry and left the office because he was very hungry and could no longer wait for the accused for lunch. At the time of signing, PW4 noticed someone sitting near him and couldn't see his face.

[27] There is no eye witness who seen Rex signed the Will. PW4 has no knowledge of the content of the Will. The accused only asked PW4 to sign the Will without further explain content of the Will or witness the person is Rex.

[28] PW5 confirmed that accused surrender the Will and the Will was kept by accused. Thus, only accused possessed the Will and no one else has the access to the Will and no eye witness that had seen Rex had signed the Will.

E. DEFENCE CASE

[29] The accused was an advocate and solicitor and had drafted a Will by hand for the Rex when Rex first visited accused. The late Rex had return and visited the accused at his office with a fair copy of the Will



with all particular filled. Rex signed his Will at the accused's office in the presence of the accused and PW4 on 13.6.2005. The accused gave Rex a copy of Will and another copy was kept in the office.

[30] When accused found out that Rex had passed away, accused had forwarded the original copy to PW5. The accused then affirmed affidavit for the Grant Probate proceeding.

[31] DW3 the brother of Rex testified that PW3 is entitled to a house and a land in Myanmar and RM200,000. DW3 stated PW3 not truthful about the assets in Myanmar. PW3 had given her evidence in Civil Suit stating Rex did not have any assets in Myanmar. DW3 testified that relationship between Rex and PW3 deteriorating and health condition, Rex is advised to prepare a Will.

[32] The defence had prepared another handwriting expert report prepared by DW2, Mr Siow Kwen Sia. The accused's expert witness made finding that there a lot of similarities between the Questioned Signature and the Specimen Signatures and concluded that questioned signature is genuine.

F. ISSUE

i. Whether the signatures is forged

[33] The defence counsel submitted that the Court ought to rely on the defence's expert witness and not the Prosecution's expert on the ground that the DW2 had numerous method and equipment to reach the finding.



[34] PW7 had provided two photocopied specimens to PW2. PW2 agreed that original document would best to be used rather photocopies. Also, Department of Chemistry Malaysia would only examine original documents. Thus, the opinion by PW2 had considered the two photocopied specimens which might rendered her opinion's questionable and compromised.

[35] The prosecution submitted that DW2 does not have the academic qualification in forensic signature. Despite DW2 have given his opinion in trial but it is limited to civil cases and not criminal cases. Also, some of his opinions were rejected.

[36] In the case of **Junaidi bin Abdullah [1993] 3 MLJ 217**, it was held that the trial judge would be the one to determine the weight be attached to such evidence notwithstanding the qualification or experience of the expert.

[37] DW2 stated there are more similarities compared to differences between the questioned signature and specimen signatures. SD2 disagree that significant distinction between the both signatures is the hiatus line which found in all the specimen signatures except question signature. DW2 come to finding that all signatures are just variation which come in different shape and does not any find true difference.

[38] The Court finds all expert witnesses, PW1, PW2 and DW2 have adequate skills and experience in analyse in handwriting including signatures. However, the Court in the opinion that PW2 would be equipped with better equipment and knowledge in forming her opinion.



In comparison, the methodology used by DW2 is conventional such as hand magnifier, overlay and microscope whereas PW2 uses video spectral comparator. Regardless types of equipment or method used by all the expert, such equipment was used to enlarge or to have better view of the signatures. As such, the Court disagree with the proposition of the defence counsel that equipment used could determine the accuracy of the opinion formed by the witnesses. The opinion was formed based on the interpretation of the shape, similarities and differences. Even though PW1 did not use any equipment to examine, SP1 had clearly look into the both signatures and was able to see the differences and similarities without the aid of any equipment. SP1 is well equipped with latest knowledge as she had attended many training, courses or seminar at international level as well local. As compared to DW22, his curriculum vitae only stated the only courses attended meeting was back in 1984 and since then DW2 had set up private Forensic Science Laboratory. Also, he is not gazetted as expert witness.

[39] The experts stated that original documents would be the best selection to make comparison compared to photocopied documents. However, there are enough specimen signatures to allow PW2 to form her opinion. The Court accepted the opinion by PW1 and PW2 where both of the experts were able to explained the characteristic of the signature. DW2's opinion was more on finding of the style and shape and habit of the person who signed the signature without able to identify what was the characteristic of the signature. The Court believed that every signature will have significant characteristic and not able to be copied by other person. A forged signature could resemble the same shape but not everything especially the special characteristic.



DW2 explained the shape of the signatures were similar but failed to identify what was the important features of all the specimen signatures. As explained by PW1 and PW2, even there is one significant difference between questioned signature and specimen, it is sufficient to conclude that the signatures were not from same person. The difference must be material and significant and not just a variation. Based on the evaluation by both PW1 and PW2, there is one significant feature that absence in the question signature which is the hiatus line. As DW2's opinion, he concluded the combination of the 73 similarities as unique characteristic. However, the Court unable to agree with opinion of DW2 as the uniqueness is the combination of the similarities that found in all the specimen signatures in 12 documents. This clearly show that DW2 failed to identify the uniqueness that appear in every of the specimens. Also, DW2 stated the difference that appear between questioned signature and specimen signatures is a form of unusual variation and should not be classified distinguishing characteristic. The Court find there is consistency of the specimen signatures that show variations of slope, curve, shaft and loop. The consistency of hiatus appeared in almost every specimen shows the habit of the author. In the questioned signatures show unusual variations which show inconsistency of flow and writing. DW2 agreed that there is no pen lift in the questioned signature. The appearance of hiatus show there is break and thus the signatures not continuation of pen movement. Therefore, Court relied the opinion from PW1 and PW2.

- ii. Whether the charge is defective because there is no intention stated in the charge and whether charge proven on circumstantial evidences.**



[40] The defence submitted that the charge does not consist the ingredient of “intention” stated under section 463 of Penal Code. The intention must set out as suggested in the Ratanlal & Dhirajlal’s Law of Crimes 24 th Edition (Volume 2). The omission of the intention or the element of mens rea is highly prejudicial to the accused because the accused Will not able to defend himself since there are 5 types of intention under Section 463 of Penal Code. Every form of intention is distinctive. Such omission of men rea of the charge made the charge is defective, null and void.

[41] The defence further submitted that there is no evidence of the accused’s mens rea under section 467 Penal Code. The accused had given evidence that accused has no intention or motive to forge the Will. The accused’s version of events and in particular with regard to the execution of Will by the deceased, Rex is unchallenged. Hence, there is no mens rea and accused must be acquitted.

[42] As stated above, the essential of the offence which need to be established is that accused forged a document and the document is specified in the section. The Court the charge is not defective for failing to state type of intention. The definition of forgery is defined in Section 463 of the Penal Code and definition of making a false document is set out in section 464 of the Code. It is evident that issue of the forgery of the Will may be ascertained by considering whether the accused did dishonest or fraudulently make or sign the subject matter, the Will with the intention of causing it to believed such Will was made by Rex, when he knew that Rex did not at any time sign or make the Will. Based on the charged, it is clear that section 464(a) of the Penal Code is applicable. According to evidence, the purported document is a Will



and the Will was used for grant of probate to support claim for estate of Rex. The right of the accused to have sufficient notice of the charge and be able prepare defence was not prejudiced. Hence, there is no miscarriage of justice in this case. The next question would be how forgery or 'dishonest or fraudulent making out or signing of the Will may be proven. The Court refer to the section 45 of the Evidence Act where the opinion of a handwriting expert is admissible. The Court relied and adopted the opinion of PW1 and PW2 that the signatures on the Will not originated from person who signed the specimen documents. There is no direct evidence in this case. There is no eye witness except accused in this case. PW4 did not witness Rex sign the Will.

[43] Besides the expert evidence, the Court rely on circumstantial evidence to conclude that accused had committed forgery. The Court refer **Dato Mokhtar bin Hasim & Anor v PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; [1983] 2 MLJ 232** where the Court stated:

“ Where circumstantial evidence is basis of the prosecution case the evidence proved must irresistible point to one and only one conclusion , the guilt of the accused.”

[44] The Court refer to the case of Indian Case of **Bank Of India v Yeturi Maredi Shanker Rao [1987] [1987] Cri L J 722** where there is no direct evidence on forgery. The appellate Court stated:

"...the learned High Court acquitted the respondent because it came to the conclusion that there is no evidence to establish as to who forged the signatures of PW1 on the withdrawal form. It is no doubt true that so far as the evidence about the forgery of the signatures of PW1 on the withdrawal form is concerned there is no evidence except the fact that the signatures are forged and the further fact



that this withdrawal form was in the possession of the respondent accused who presented it in the Bank and obtained money therefrom and pocketed the same. From these facts an inference could safely be drawn that it was the respondent-accused who got signatures of PW1 forged on this document as it was he who used it to obtain money from the Bank from the account of PW1 and pocketed the same. It is no doubt true that there is no evidence as to who forged the signatures on the withdrawal form but the circumstances indicated above Will lead to the only inference that it was the accused-respondent who got the signatures of PW1 forged on the withdrawal form. In this view of the matter therefore the acquittal of the respondent for an offence under section 467 read with section 109 also could not be justified.”

[45] In this case, it has to be proven that purported signature to be Rex was made by accused. Therefore, the question whether is the sufficient circumstantial evidence that lead to conclusion without reasonable doubt that accused forged the signature of Rex on the Will.

[46] From the evidence adduced in the course of the trial, only accused has the access to the Will and no one has knowledge of the existence of the Will. Accused knew Rex and DW3 and agreed to help Rex with Will without charging any fee or open any file in the firm for the Will. There is no preparation signing Will in the accused’s office as no witness prepared. PW4 attendance was not planned and Rex did not communicate for such important document. No real witness seen Rex signed the Will except accused. Accused was the one that surrender the Will to the lawyer appointed by the family of Rex. Thus, with the chain of evidences, there is no one could have access to Will and the



Will was kept by the accused. Such events could only conclude that accused forged the signature in the Will and that would be only inference to be drawn in this case.

iii. Credibility of witness

[47] The defence counsel submitted that the alleged event and the evidence by accused is not challenged. DW3 is credible witness compared to PW3. PW3 is an interested witness and challenge the Will and exhausted all mean in Civil Court. Her failure to challenge the Will through civil suit, PW3 had lodged police report.

[48] As stated at the outset the primary issue for consideration in this case is the forged signature in the Will. The Court shall consider whether the contradictions by PW3 as warranted a rejection of her testimony as a whole or lower weight. PW3 gave evidence that the signature does not belong to her husband, Rex. However, her evidence was collaborated with PW1 and PW2. The Court had re-evaluated the evidence by PW3 after hearing DW3. DW3 claimed that PW3 not a truthful witness as she had stated she did not have any property in Myanmar in her affidavit in civil suit. PW3 did said that she has property in Myanmar but that property was disposed of as she need those money to support herself. The Court find that PW3 is credible witness as compared DW3. The defence counsel submitted that PW3 is interested witness because she would entitle the whole estate if the Will is successfully challenged. However, DW3 would be interested witness as well as the estate of Rex divided among the siblings and DW3 was appointed as the Executor of the Will. PW3 stated that she did not received the money of RM200,000 that she is entitled under the



Will. DW3 stated that he made the payment to the lawyer. There is no documents brought to Court to support DW3's claim that he had paid to the lawyer and also the property in Myanmar belong to DW3 and Rex. Also, PW3's evidence is corroborated by PW6 where PW6 confirmed that the sum RM200,000 was used to contra with all the debt due and owing. PW3 stated she was required to pay rent to stay in the house which previously stayed by Rex and her. Failure to pay the rent, action was taken against her and she was declared bankrupt. Her evidence is corroborated with PW6 where the sum of RM200,000 that ought to received is not sufficient to cover the costs and sum owed to Rex's family. After maximum evaluation, the Court find that despite there is some conflicting evidence between PW3 and DW3, the Court find that such evidence does not affect the whole evidence given by the PW3 and the ingredients of the offence.

G. DECISION

[49] The Court find that prosecution witness is consistent, credible and corroborated. At the end of case, the Court find that accused to raise reasonable doubt after prima facie was established.

[50] In mitigation, the learned counsel for the accused submitted as follows:

- (a) The accused is 70 years old;
- (b) He is first offender with no previous record of conviction
- (c) He is cancer survival 7 years ago
- (d) He has health problem such as heart disease and underwent operation last year.



[51] The prosecution seeks for heavy punishment as the Will involve properties worth RM2,000,000. The complainant had suffered financial losses and did not received any benefit from the estate of Rex. She was left empty handed since 2006 and that would almost 16 years. The complaint was removed from the house. Also, accused as advocate and solicitor should not had committed such offence.

[52] The defence counsel stated there is no motive on the part of accused or received any benefit from the offence. The defence counsel prays for lenient punishment considering accused's medical condition.

[53] In deciding on the sentence, the Court considered the public interest by considering the nature and gravity of the offence, where accused had dishonoured the profession of law and caused grave loss to the complainant.

[54] Under Section 467 of Penal Code provides punishment of imprisonment for a term which extend to twenty years, and shall also be liable to fine. The Court had taken into consideration the age and health factors of the accused and in the opinion that imprisonment of one year would be sufficient.

[55] The appellate Court would not interfere the sentence imposed by lower Court unless it is as stated in the case of **PP v. Loo Choon Fatt [1976] 2 MLJ 256** as follows:

The principles to be applied in imposing sentence however are the same in every case. The High Court sitting in exercise of its revisionary powers Will not normally alter the sentence unless it is satisfied that the sentence of the lower Court is



either manifestly inadequate or grossly excessive or illegal or otherwise not a proper sentence having regard to all the facts disclosed on the record or to all the facts which the Court ought to take judicial notice of, that is to say, that the lower Court clearly has erred in applying the correct principles in the assessment of the sentence. It is a firmly established practice that the Court Will not alter a sentence merely because it might have passed a different sentence.

[56] The defence counsel seeks stay of execution pending appeal due to accused's health condition and there is no flight risk. Accused need constant medical check-up. The prosecution objected to the application on the ground that accused could obtain medical attention in the prison. The Court had considered due to pandemic of covid-19 and deteriorating health condition which cause high risk to accused to seek proper treatment in prison while pending appeal to be heard. The Court allowed stay of execution with security of RM10,000 with one surety.

Prepared by,



Wong Chai Sia
Magistrate
Kuala Lumpur

Prosecution : Wan Ahmad Hakimi

Defence : Amrit Pat Singh, Alex De Silva, Quek Ying Hui, Ng Jun Wei



S/N g63wDEvCcEyVCKvAJV7jA

**Note : Serial number will be used to verify the originality of this document via eFILING portal