

TIMOCI MATAIKUKU

v.

REGINAM

[SUPREME COURT, 1965 (Hammett P.J.), 4th June, 13th July]

Appellate Jurisdiction

Criminal law—forgery—intent to defraud—intention to cause economic loss not an essential ingredient—Penal Code (Cap. 8) s.370.

The appellant was charged with forging a document, namely a Fiji Police Wireless Message Form, with intent to defraud. The case for the Crown was that he made the false document with intent to defraud the Emperor Gold Mining Co. Ltd. of the sum of £35 as a payment for the benefit of one Vasla from that company's Death and Sickness Benefit Fund. The appellant's case was that he made the false document with the intention of helping Vasla to get six days' leave which would not otherwise be granted to him.

Held: 1. An intention to defraud in a forgery case may exist in law without any intention of causing an economic loss.

2. On his own version of the facts the appellant was guilty of forging the document with intent to defraud and was rightly convicted of the offence.

Cases referred to: *R. v. Toshack* (1849) 4 Cox 38; 169 E.R. 341; *Welham v. Director of Public Prosecutions* [1961] A.C. 103; [1960] 1 All E.R. 805; *R. v. Sharman* (1854) Dears 285; 169 E.R. 729; *R. v. Moah* (1958) *Dears and Bell* 550; 169 E.R. 1116.

Appeal against conviction and sentence.

M. J. C. Saunders for the appellant.

B. A. Palmer for the Crown.

The facts sufficiently appear from the judgment.

HAMMETT P.J. : [13th July, 1965]—

The appellant, a Police Constable, was convicted of the offence of Forging a Document, to wit a Fiji Police Wireless Message Form with intent to defraud, contrary to section 370 of the Penal Code and sentenced to seven months' imprisonment. He appeals against both conviction and sentence.

The case for the prosecution was that one Vasla Netzler, an employee of the Emperor Gold Mining Company Limited at Vatu-koula was, on 27th November 1964, given seven days' notice of dismissal. As a member of the Company's Death and Medical Benefits Fund he was entitled to a cash benefit of £35 if any member of his

A family died whilst he, Vasla, was in the employment of the Company. He told the appellant, who was a Police Constable stationed at Vatu-koula, that he had been dismissed. The appellant then told him that for £10 he would write a letter which would enable Vasla to obtain payment from the Death Benefit Fund and Vasla agreed to this.

B The appellant then wrote out an entirely false message on a Fiji Police Wireless Message Form purporting to have been sent by the Station Officer at Ba Police Station to the Station Officer at Vatu-koula Police Station to the effect that Vasla Netzler should be informed that his father had died and would be buried on 1st December, 1964. He handed this message to Vasla who took it to the Secretary of the Death and Sickness Benefit Fund, who instructed the Accountant to pay Vasla the sum of £35 from the Fund. Vasla admitted he received this money and said he later handed the appellant the £10 he had agreed to pay him.

C The appellant, in his defence, said he received this message for Vasla Netzler over the telephone from a relative of Vasla's. He, the appellant, said he then wrote out this message, at the request of Vasla, making it falsely to appear that it was an official message from the Police at Ba, with the intention of helping Vasla to get six days' leave which, Vasla told him, would not otherwise be granted to him. The appellant admitted that when he forged this message he intended to deceive the Company, but denied he had any intent to defraud the Company of any money.

D The case for the Crown depended largely on the evidence of Vasla who was clearly an accomplice whom the learned trial Magistrate said he was completely satisfied was a truthful witness.

E The appeal against conviction was argued almost entirely on the grounds that the learned trial Magistrate did not expressly warn himself of the danger of convicting on the uncorroborated evidence of an accomplice, and further, that he misdirected himself that there was sufficient corroboration of the evidence of Vasla of the receipt of the money in question.

F The Crown conceded that in fact the learned trial Magistrate did not record a note in his Judgment of a sufficient direction on the danger of convicting on the uncorroborated evidence of an accomplice. It is, however, submitted that, as it is clear from the tenor of the Judgment that the learned trial Magistrate was aware of such a danger and there was in fact corroboration of Vasla's evidence, this is a proper case in which the proviso could be applied.

G The fifth ground of appeal reads as follows :—

“The trial Magistrate misdirected himself when he held that there was sufficient corroboration of the receipt of money.”

H I have considered all that has been urged before me on this and the other grounds of appeal, and it seems to me that this appeal is founded on the assumption that in forgery cases, the Crown must establish an intent to defraud amounting to an intent to cause an actual economic loss, i.e. in this case, an intention on the part of the appellant that Vasla should improperly receive this £35 from the

Company. This is not so. An intention to defraud in forgery cases may exist in law without any intention of causing an economic loss. See *R. v. Toshack* (1849) 4 Cox 38 which was approved by the House of Lords in *Welham v. D.P.P.* [1960] 1 All. E.R. 805.

As was said by Lord Denning at page 814 in that case :—

“Take the case where a man forges a reference as to character intending to get employment by means of it. It is clear forgery see *R. v. Sharman* (1854) Dears 285; *R. v. Moah* (1858) Dears and Bell 550. But there may well be no economic loss intended. The man may intend, if he gets the job, to render full service in return for his wages. But he has the intent to defraud all the same.”

Turning to the facts in this present case on appeal, if the learned trial Magistrate was wrong in basing his decision on the evidence of Vasla, in the absence of an express and adequate warning of the danger of accepting the evidence of an accomplice without corroboration, (if, as it is urged, it was not properly corroborated) what was he left with? The evidence of the appellant and his admitted statement to the Police.

It seems to me that the case for the appellant in the Court below was this: “I did not forge this message with intent to defraud, or of aiding Vasla to defraud the Company of any money. I forged it with the object of deceiving the Company by making it believe that this was an official message from the Station Officer at Ba, instead of being a message from one of Vasla’s relatives, with the intention that Vasla could produce this official message to his employers and thereby get six days’ leave of absence which he would not otherwise have been permitted to take”.

For the appellant to forge this Police Message with this intent does not appear to me to differ materially, if at all, in the matter of intent, from the case of a man who forges a reference with the intention that another man will obtain employment he would not otherwise obtain.

In my view, therefore, the defence of the appellant in this case amounted to this. He says he forged this Police Message with a different intent to defraud from that which Vasla said was the appellant’s intent. But whichever was the truth of the matter he did in law forge this document with intent to defraud and he was not therefore entitled to an acquittal. He ought to have been convicted on this charge, in the form in which it was laid, whether his own or Vasla’s evidence of what his intentions were, had been believed, by the learned trial Magistrate.

In these circumstances there has clearly been no miscarriage of justice and there are, in my view, no merits in the appeal against conviction.

The sentence is neither wrong in principle nor excessive.

The appeal against both conviction and sentence is dismissed.

Appeals dismissed.