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prosecution and the ambit of the two rules of evidence that (1) when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him and (2) that the Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case and as to whether there has been a disregard of the forms of legal process and the Appellant has suffered a miscarriage of justice in that she was convicted of an offence on which there was no evidence before the Court. 10

3. The following sections of the Laws of Singapore are relevant to this Appeal :-

The Penal Code (Laws of the Straits Settlements, 1936, cap.20)

Section 415. Whoever, by deceiving any person fraudulently or dishonestly induces the person so deceived to deliver any property or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". 20

Section 417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both. 30

Section 420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. 40

Section 511. Whoever attempts to commit an offence punishable by this Code or by any other written law with penal servitude or imprisonment or fine or with a combination of

such punishments, or attempts to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code or by such other written law, as the case may be, for the punishment of such attempt, be punished with such punishment as is provided for the offence: Provided that any term of penal servitude or imprisonment imposed shall not exceed one-half of the longest term provided for the offence.

The Evidence Ordinance (Laws of the Straits Settlements, 1936 cap.13)

Section 102 (1) Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of facts which he asserts, must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person.

Section 107. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Section 115. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.

30 Criminal Procedure code (Laws of the Straits Settlements, 1936 Cap.21)

Chapter XIX. Summary Trials by Police Courts or District Courts

Section 182. The following procedure shall be observed by Police Courts and District Courts in summary trials :-

(a) When the accused appears or is brought before the Court, a charge containing the particulars of the offence of which he is accused shall be framed and read and explained to him and he shall be asked whether he is guilty of the offence charged or claims to be tried;

(c) if the accused refuses to plead or does not plead or claims to be tried, the Court shall

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proceed to hear the complainant, if any, and to take all such evidence as is produced in support of the prosecution;

(d) when the Court thinks it necessary, it shall obtain from the complainant or otherwise the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution and shall summon to give evidence before itself such of them as it thinks necessary;

(e) the accused shall be allowed to cross-examine all the witnesses for the prosecution; 10

(f) if upon taking all the evidence referred to in paragraph (g) the Court finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Court shall record an order of acquittal;

(h) if when such evidence has been taken the Court is of opinion that there are grounds for presuming that the accused has committed the offence charged or some other offence which such Court is competent to try and which in its opinion it ought to try, it shall consider the charge recorded against the accused and decide whether it is sufficient and, if necessary, shall amend the same. 20

(j) if the accused does not plead guilty to the charge as amended or if no amendment is made, the accused shall then be called upon to enter upon his defence and to produce his evidence and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness present in the Court or its precincts; 30

(k) if the accused puts in any written statement, the Court shall file it with the record.

4. The evidence against the Appellant was to the following effect :-

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(a) Superintendent OWEN OXENDEN GRIFFITHS stated that he searched the Defendant's premises and took possession of certain documents which he found there including a change of address card of Mr. Devereux-Colebourne and three slips of paper with names and addresses thereon, which names included those of two persons other than HOU SAY LIAN who had been charged in the 4th Magistrates Court with offences relating to opium. 40

(b) KWOK SING NGIE stated that he took part in the search of the Appellants premises and took possession of certain documents including a Visitor's permit to the General Hospital to visit Mr. Devereux-Colebourne, a change of address card of Mr. Devereux-Colebourne, and an invitation to a party given by Mr. Devereux-Colebourne.

10 (c) ROLAND PARK, by occupation a Photographer, produced the negative of a photograph which he had taken in about 1953 or 1954 at a Club function of the Royal Singapore Flying Club, of Mr. Devereux-Colebourne and your Appellant, who were both members of the club. In this photograph Mr. Devereux-Colebourne had his arm round the Appellant's waist.

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20 (d) KOK MIN YIN stated that he had met HOU SAY LIAN and taken him to your Appellant's house and there introduced him to her. The Appellant asked HOU SAY LIAN for \$3,500 to get him acquitted and said that she could influence Mr. Devereux-Colebourne to assist. She produced a photograph showing herself and Mr. Colebourne together. In cross examination the witness said that he knew that the Appellant would influence the 4th Magistrate, namely Mr. Devereux-Colebourne, and get the case thrown out. He said that he had given evidence at a previous trial of the Appellant, 3rd District Court case 265/56 in which he was the Complainant, when the Appellant was charged with obtaining \$2,500 from him as a reward for inducing Mr. Devereux-Colebourne to show favour to him in connection with his case or alternatively with cheating him by representing that she was able to induce Mr. Devereux-Colebourne to show favour to him in connection with his case and thereby dishonestly induced him to pay her \$2,500, contrary to Sections 163 and 420 of the Penal Code respectively. He said that he had paid the Appellant \$2,500 and that he was acquitted on the opium charge and that in his opinion the Appellant influenced the Magistrate to get him acquitted. In that earlier prosecution against the Appellant the Appellant was acquitted.

pp.12-15  
28-37

40 (e) HOU SAY LIAN stated that on the 26th July, 1955 he was arrested by the Narcotic Branch of the Criminal Investigation Department and the following day charged in the 4th Magistrates Court with the possession of opium. On the 29th February, 1956 he was convicted on this charge and fined \$3,000 or in default of payment sentenced to six months imprisonment. He paid

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the fine. Before the trial he had met KOK MIN YIN who told him that the 4th Magistrates wife, Mary Ng had sent him to see the Witness and that he KOK MIN YIN had also been arrested in connection with opium and had spent \$3,500 with a guarantee that the case would be thrown out. On the 26th February, 1956 he went to the Appellant's house with KOK MIN YIN and LIANG SAN HAN and there saw the Appellant. She told him that she was the wife of the Magistrate and showed him a photograph with the 4th Magistrate with his arm round her. She told him that she could have his case thrown out and asked him for \$3,500. On the 27th February, 1956 he saw her again and offered her \$500. She said that \$500 was too small a sum as that sum was required by the Magistrate but that \$1,000 would suffice. That same evening in the course of a telephone conversation she rejected an offer of \$1,000. The following morning he saw her again in her flat and she then told him that if he did not pay he would be fined \$3,000 and jailed for six months.

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pp.38-48

(f) LIANG SAN HAN stated that he was with HOU SAY LIAN when they visited the Appellant on the 26th and 28th February, 1956 and substantially corroborated the evidence already given by HOU SAY LIAN of what took place on those occasions. He said that he knew that for a consideration, the Appellant would use her influence with the 4th Magistrate Mr. Devereux-Colebourne and that he thought the Appellant must have influenced the Magistrate to impose the fine of \$3,000 on HOU SAY LIAN.

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pp.48-50

(g) LIM TECK ANN, an usher attached to the 4th Magistrates Court in February and March, 1956, produced the charge book of the 4th Magistrates Court showing that the names of various persons charged in that Court with the possession of opium and smoking utensils included the two names in the slips found at the Appellants house.

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p.26  
LL.41-44

p.27  
LL.1-2

p.27  
LL.3-5

5. The case for the Prosecution was presented on the 15th, 17th and 29th days of September and the 1st, 2nd, 3rd and 4th days of October, 1956. At 2.30 p.m. on the 2nd October, 1956 Mr. Koh, the Appellants Counsel mentioned to Mr. Chua that Mr. Devereux-Colebourne had been subpoenaed by the Defence, but was leaving the Colony on the following day. Mr. Krishnan, who was conducting the prosecution told the Learned Magistrate that the Prosecution did not desire to call Mr. Devereux-Colebourne. Mr. Koh then said that as

things stood at that moment there was no need for the Defence to call Mr. Devereux-Colebourne and he did not oppose his release. Mr. Chua then released Mr. Devereux-Colebourne and he left the Colony the following day.

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p.27 L.6

10 6. At the commencement of her trial before Mr. Chua the Appellant was charged not only with the offence of which she was convicted but also with an alternative offence that between the 26th and 28th February, 1956 at Singapore she attempted to obtain from HOU SAY LIAN for herself a gratification of \$2,500 as a reward for inducing by the exercise of personal influence, a public servant to wit Mr. Devereux-Colebourne, 4th Magistrate in the Colony of Singapore in the exercise of his official functions as 4th Magistrate to show favour to the said HOU SAY LIAN in connection with 4th Magistrate Court case No. 1571/55 and thereby committed an offence punishable under Section 163 of the Penal Code.

p.89

20 7. At the conclusion of the case for the Prosecution Mr. De Souza, Counsel for the Appellant, made submissions to the Court that there was no case to answer on either of the two charges. One submission which he made was that no offence had been disclosed under Sections 420 and 511 of the Penal Code because it was essential for the Prosecution to prove that there had been deceit and this it had failed to do because there was no evidence that the Appellant was unable to induce the Magistrate to show favour to HOU SAY LIAN  
30 Mr. Devereux-Colebourne had not been called by the Prosecution although his evidence was essential. Having heard these submissions the Learned Magistrate acquitted the Petitioner of the charge under Section 163 of the Penal Code but rejected the submissions that there was no case to answer on the other charge.

pp.50-51

p.50 LL.24-33  
p.51 LL.1-3

40 8. The Appellant elected to put in evidence two statements in writing which she had made and to call evidence. In the first of her two statements she stated that she had known Mr. Devereux-Colebourne since about 1953 and that she was on terms of familiarity with him and his wife. KOK MIN YIN had been introduced to her by Mr. Chew Tee Chye as an Insurance Agent and had called on her on a few occasions on the pretext that he had prospective insurance he wished to introduce to her and also on one occasion to borrow \$500, which she had refused. A photograph of herself and Mr. Devereux-Colebourne had disappeared after a visit of KOK MIN

pp.97-98



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- p.99 YIN, HOU SAY LIAN, KOK MIN YIN, and LIANG SAN HAN had come to her flat on one occasion and asked her to contact Mr. Devereux-Colebourne to obtain the acquittal of HOU SAY LIAN. She told them that she was in no position to do so and that it was very wrong of them to have come to see her on a matter of that nature. In her second explanatory statement dated the 9th October, 1956, she stated that she believed that she could induce Mr. Devereux-Colebourne to show favour to HOU SAY LIAN but that there was never any question of her so inducing him. 10
- pp.53-55 9. Five witnesses were called for the Defence. CHEW TEE CHYE stated that in February, 1956, he had introduced the Appellant to KOK MIN YIN and that at the time he introduced them he thought that they were strangers. TAN KAY SENG and PECK BOON LIAN stated that they were in the Appellant's flat in February 1956 when KOK MIN YIN, HOU SAY LIAN and LIANG SAN HAN came to see her. They did not hear the conversation, but they heard the Appellant shout "I cannot do it, don't talk about it". On their return they found the three men had left and that the Appellant was angry. LOH GIAP KEOW, the Appellant's brother, stated that he was in the Appellant's flat at the same time and that he heard the Appellant raising her voice and then came out of his room and saw the three Prosecution witnesses leaving. LIN AH YEW stated that he was a partner in a coffee shop and that HOU SAY LIAN told him that he blamed the Appellant for having caused him to be fined heavily and that he would obtain his revenge. LIANG SAN HAN later spoke to him and asked him to get someone to assault the Appellant, saying that HOU SAY LIAN was going to pay the expense of getting the Assailant. On this witness's refusal LIANG SAN HAN said he had a relative who had been charged with an opium offence in the 4th Magistrates Court and told the witness to speak to the Appellant and ask her for help. He, LIANG SAN HAN, would then pay money to the Appellant and at the same time would inform the anti-corruption department so that they could arrest her. 20
- pp.56-61
- pp.61-62
- pp.62-65
- p.66  
LL.11-36
10. At the conclusion of the Appellant's case her Counsel addressed the Court on the facts and again submitted inter alia that the Prosecution had failed to prove its case because it had not proved that the 4th Magistrate could not be induced to show favour to HOU SAY LIAN and further submitted that any presumption that he 30 40 50

could not be so induced must have been rebutted by the statement made by the witnesses for the Prosecution and by the second statement in writing made by the Appellant. The Appellant was, however, convicted and sentenced as aforesaid.

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10 11. On the Appellant's Appeal to the High Court the District Judge Mr. Chua set out in writing the grounds upon which he had decided the case. In these grounds he dealt with the submissions made by the Defence both at the close of the Prosecution and after Defence. He held that it was not necessary for the Prosecution to call Mr. Devereux-Colebourne as a witness to say that he could not be influenced by the Appellant before the Court could be satisfied that there was deceit because whether the accused could or could not induce Mr. Devereux-Colebourne to show favour to HOU SAY LIAN was a fact which was especially within the knowledge of the Accused and accordingly under Section 107 of the Evidence Ordinance the onus was on the Accused to prove that she could induce Mr. Devereux-Colebourne to show favour to HOU SAY LIAN.

pp.69-75

p.72 LL.34-50

p.73 LL.1-3

12. The Petition of Appeal dated the 19th day of February, 1957 made complaint of a number of matters but only the first ground of appeal is now relevant. This complained that :-

p.78

30 "(i) (a). The learned District Judge was wrong in law in holding (page 44 of the Grounds of Decision paragraph 6) that "the onus was on the accused to prove that she could induce Mr. Devereux-Colebourne to show favour to HOU SAY LIAN"

(b) The learned District Judge was wrong in law when he stated in his Grounds of Decision (page 44 of the Record paragraph 6) :-

40 "Whether the accused could or could not induce Mr. Devereux-Colebourne to show favour to Hou Say Lian was a fact which was especially within the knowledge of the accused and I was of the opinion that under Section 107 of the Evidence Ordinance (cap.4) it was not necessary for the Prosecution to prove deceit by calling Mr. Devereux-Colebourne to say that the accused could not influence him"

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(c) The omission of the Prosecution to call Mr. Devereux-Colebourne (who was available) resulted in the Prosecution failing to prove its case since it had not proved "deception" an essential ingredient of the charge of cheating. Furthermore the learned District Judge should also have held that as Mr. Devereux-Colebourne was not called by the Prosecution it must be assumed that the evidence which could have been given would have been favourable to your Appellant.

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pp.82-84

13. In the Judgment of the Honourable Mr. Justice Knight given on the 17th day of June, 1957, the Learned Judge accepted that an essential ingredient of the offence of cheating was that the representation was false and by implication he accepted the fact that the Prosecution did not prove that the representation was false. He chose to rely in upholding the conviction not upon the ground set out in the Magistrates grounds of decision but upon the provisions of Section

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p.83 LL.24-50

115 of the Evidence Ordinance. He held that under that Section a presumption arose that Judicial and Official acts have been regularly performed and that it is a ridiculous proposition that all those holding judicial office, including those holding the highest offices, should be required by law to deny in the witness box any fraudulent allegation that they were subject to influence in the exercise of their official duties. He said that it was perfectly obvious that had the Magistrate been called he would have denied the allegation and that if the Appellant wished to establish the fact that he could be influenced, he was available in Court had she wished to call him. He relied moreover on the fact that when the Appellant put in evidence as part of her Defence her first statement in writing she then said that she was in no position to assist HOU SAY LIAN. Accordingly, he held that although it might have been advisable to call Mr. Devereux-Colebourne as part of the case for the Prosecution in the Court below, the fact that he was not called was not fatal to the conviction.

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p.30 LL.6-43

14. As appeared in part from the evidence of the Prosecution witness KOK MIN YIN the Appellant was tried in the colony of Singapore shortly before her trial before Mr. Chua as aforesaid, on two charges similar in nature to the one of which she was convicted. She was tried on these two charges in the 3rd District Court, case

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number 265/56. The first charge was laid under Section 163 of the Penal Code and charged her with obtaining a gratification of \$2,500 from KOK MIN YIN as a reward for inducing by the exercise of personal influence a public servant to wit Mr. J. M. Devereux-Colebourne, 4th Magistrate of the Colony of Singapore, in his official functions as 4th Magistrate to show favour to the said KOK MIN YIN in connection with a charge for possession of utensils and opium which was heard in the 4th Magistrates Court. The 2nd and alternative charge was that she cheated the said KOK MIN YIN by representing to him that she was able to induce the said Mr. Devereux-Colebourne to show favour to him in connection with his said case and thereby induced him to deliver to her \$2,500 contrary to Section 420 of the Penal Code. In the course of her trial on these two charges the Prosecution called the said Mr. Devereux Colebourne to prove that the Appellant was unable to induce him to show favour to the said KOK MIN YIN. Mr. Devereux-Colebourne was subjected to a vigorous cross examination and in the result the appellant was acquitted on both charges.

15. The Appellant respectfully submits that the Prosecution failed to establish that she was unable to influence the Magistrate to show favour to HOU SAY LIAN and accordingly failed in limine. The onus of proving each ingredient of the offence remained throughout the trial on the prosecution and there was no statutory provision enabling the Court to convict unless the Appellant satisfied it that she was able to induce the Magistrate to show favour to HOU SAY LIAN.

16. Section 107 of the Evidence Ordinance was not applicable because the question of fact as to whether the Appellant was able to induce the Magistrate to show favour to HOU SAY LIAN was not especially within her knowledge, since the person who had the best knowledge of this matter was the 4th Magistrate, Mr. Devereux-Colebourne. Again, Section 115 of the Evidence Ordinance was not applicable because this Section in so far as it concerns judicial officers, only refers to the presumption of fact that judicial acts have been properly performed and does not refer to the private and public character of a judicial officer. Further, Section 115 is a Section which far from assisting the Prosecution, aids the Appellant in that there arises a presumption of fact, that where the Prosecution could adduce evidence through Mr. Devereux-Colebourne and did not produce

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it, this evidence would, if produced have been unfavourable to the prosecution:

17. The Appellant alternatively submits that even if the provisions of Section 107 and/or Section 115 of the Evidence Ordinance could apply to the facts of this case the Prosecution was not entitled to rely upon these provisions in a criminal charge of this nature since those provisions cannot be of general application throughout the criminal law in the view of the onus of proof at all times resting on the Prosecution. 10

18. The Appellant further submits that even if the provisions of Section 107 and/or Section 115 of the Evidence Ordinance could and did apply to the facts of her case, yet the evidence of the witnesses for the Prosecution to the effect that she could induce the Magistrate to show favour to HOU SAY LIAN and of herself in her written statements which she put before the Court setting out her close friendship with the Magistrate and her belief that she could influence him to show favour to HOU SAY LIAN in the latter's case, rebutted the presumption of fact which arose under either or both of the said Sections. 20

19. The Appellant submits that the judgment of the Honourable Mr. Justice Knight in the High Court of the Colony of Singapore should be reversed and her conviction quashed for the following among other

REASONS

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1. BECAUSE there was no evidence on which her conviction could be sustained.

2. BECAUSE both the Learned District Judge Mr. Chua and the Learned Judge on Appeal relieved the prosecution of the burden of proving that the Appellant was guilty of the offence.

3. BECAUSE Section 107 of the Evidence Ordinance could not apply to the facts of the case and did not make out a prima facie case against the Appellant which, if unrebutted would warrant her conviction. 40

4. BECAUSE Section 115 of the Evidence Ordinance could not apply to the facts of the case and did not make out a prima facie case against the Appellant which, if unrebutted, would warrant her conviction.

5. BECAUSE even if Section 107 and/or Section 115 of the Evidence Ordinance did apply to the facts of the case and did make out a prima facie case against the Appellant the evidence given by the Prosecution witnesses and by the Appellant in her written statements rebutted the prima facie case and the presumption that the Appellant was unable to influence the 4th Magistrate to show favour to HOU SAY LIAN.

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10 6. BECAUSE the Appellant has suffered a miscarriage of justice. .

J. ELOYD - ELEY