

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No. 36 of 2013

BETWEEN : **IMANUELI TULI**
Appellant

AND : **THE STATE**
Respondent

BEFORE : **HON. MR. JUSTICE PAUL MADIGAN**

Counsel : Appellant in person
Ms. M. Fong for the State

Dates of hearing : 9 December, 2013

Date of Ruling : 13 December, 2013

JUDGMENT

1. On the 19th March 2012, the appellant (“A”) was found guilty in the Magistrates Court at Suva, of one count of hawking without a permit, contrary to section 122(1) of the Local Government Act and By-laws 3 & 12(b) of the Suva (Hawkers & Street Traders) By laws Act 125 and was sentenced on the 24th July 2012 to a fine of \$100.
2. “A” appeals his conviction, on the grounds that:

- (i) Insufficient evidence to prove the case.
 - (ii) That PW1 contradicted himself.
 - (iii) There was no witness to say they bought goods from him.
 - (iv) He was not properly arrested nor charged.
3. In dealing first with the procedural ground (Ground (iv)), it was the clearly stated evidence of PW1, Corporal Joseva, that he arrested A in Cumming Street after he had seen him offer items for sale to at least 3 different couples. In addition to that A absented himself from Court for a period but was arrested under Bench Warrant issued by the lower Court on 22nd December 2011. Whether he was formally charged or not by the Police, it is clear from the Court Record that the charge was put to him on the 15th September 2010 when he entered a plea of not guilty and waived his right to counsel. This ground has no merit.
 4. The remainder of the grounds appear to be able to be distilled into one, that is that the prosecution evidence was not good enough to found a finding of guilty.
 5. The prosecution called two witnesses, both Police officers. The first attested to having seen A show items to people in Cumming Street. He was apprehended and found to be in possession of a gold chain and a pair of gold earrings. A admitted to the officer that he did not have a permit, and he was then taken to Totogo Police Station, where he was interviewed under caution by DW2, P.C. Vodo. In that interview he again admitted that he had no licence for hawking and gave the excuse that he had bought the jewellery found on him from a nearby store for his wife.
 6. The accused called 2 witnesses in his defence and then gave evidence himself, a procedure that was most irregular and one which should not be allowed in the future.

7. His wife said in her evidence that she had given the jewellery to A to exchange because it was unsuitable.
8. A said to himself that he was changing the jewellery for his wife, contradicting his earlier claim that he had just bought the jewellery for her.

Analysis

9. The evidence of PW1 established a clear prima facie case of A offering goods for sale in Cumming Street. The circumstantial evidence is strong. If he had either bought the jewellery or was changing it, he would not be showing it to different parties on the street. The unsatisfactory evidence in defence did nothing to detract from the strength of the prosecution evidence and the learned Magistrate was quite correct in finding the case proved beyond reasonable doubt.
10. This Court would not interfere with findings of fact made below and there are no errors of law made.
11. The appeal is vexatious and frivolous and it is dismissed.

P.K. Madigan

Judge

At Suva

13 December, 2013