

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Appeal Case No.: HAA 037 of 2013

BETWEEN : TARUSILA LEWADAU MAFI

Appellant

AND : THE STATE

Respondent

Counsel : Mr J Savou for the Appellant

Ms S Kant for Respondent

Date of Hearing : 29/05/2014

Date of Judgment : 18/07/2014

JUDGMENT

[01] Tarusila Lewadau Mafi (hereinafter “the appellant”) was charged for five counts of Larceny by Servant contrary to Section 274(a) of the Penal Code Cap 17. The Charges were filed at the Suva Magistrates Court on 14th day of May, 2010.

[02] After a prolonged trial the Learned Magistrate convicted the Appellant for all five counts on 5th September 2013 and sentenced to three years imprisonment with two year non-parole period on 25th September 2013.

[03] The Appellant filed an appeal against the conviction on 18th October 2013. The counsel for the Appellant with leave of the court filed an amended petition of appeal against the conviction on 6th February 2014 on the following grounds:

1. The Learned Magistrate erred in law and fact when he adjudged that the State had proved the offence beyond reasonable doubt when the evidence of most if not all the State witnesses were doubtful.
2. The Learned trial Magistrate failed to direct himself that before he convicted on circumstantial evidence, he had to be satisfied not only that the circumstances are consistent with the Appellant's having committed the offence but also that the facts proved are such as to be inconsistent with any other conclusion.

[04] The powers of the High Court after hearing of an appeal is clearly set out in Section 256(2) of the Criminal Procedure Decree 2009 which states:

- (2) The High Court may-
 - (a) confirm, reverse or vary the decision of the Magistrates Court ; or
 - (b) remit the matter with the opinion of the High Court to the Magistrates Court or;
 - (c) order a new trial; or
 - (d) order trial by a court of competent jurisdiction; or
 - (e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or
 - (f) the High Court may, notwithstanding that it is opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has occurred.

Appeal Ground 1

[05] The Learned Magistrate erred in law and fact when he adjudged that the State had proved the offence beyond reasonable doubt when the evidence of most if not all the State witnesses were doubtful.

[06] The State submitted through witnesses that the Appellant was the sole person responsible for reconciling all daily incomes from cashiers either in cash or cheque form, keeping the same in the safe and processing the banking deposits from the complainant company.

[07] The Appellant submits that she was not only the person responsible for handling daily income of the company but a person called Saras Pillay also held the same responsibility. Although Saras Pillay was named as an accused in the charge sheet, during mid of the trial the complaint against her had been withdrew by the company.

[08] The Appellant in her evidence admitted that she was the only person can open and draw money from the safe which was in her room. In her caution interview statement she maintained the same. Further defence witness Saras Pillay also supported the prosecution version that the Appellant was the only person held the key and combination during the period pertains to this case.

[09] The Learned Magistrate at paragraph 68 stated:

“From the evidence laid by prosecution the accused was the only person responsible for the safes. The court finds that it was the accused responsibility to bank all monies on the next day. The court has noted all the documentation as well as the report as evidence for the showing the total amount not banked”.

[10] The Appellant took up the position that she had given out loans and was reconciling the amounts given out with the cash monies she received during the afore-mentioned dates. Further submitted this point was not robustly discussed by the Learned Magistrate as he limited his mind at paragraph 65 of his judgment by accepting obiter remarks from the judgment in **State v Mohammed Khan** [2012] Criminal Case No: 680 of 2010.

[11] In the case of **Peter Jackson Pry Ltd v Consolidation Insurance (Aust) Ltd** [1975 VR 480 the court stated:

“where the servant has custody of property, larceny of servant is only committed where there is some movement of the property by the servant involving the departure of the employer’s instructions”.

[12] The Learned Magistrate at paragraph 67 stated:

“One important area that must be noted that, according to the evidence laid the loans that were said to be taken from the accused was done without authorisation. Furthermore, none of them occurred during the month of November”.

[13] Evidence presented by the prosecution clearly shows that at all relevant time to this case the Appellant was the person responsible for cash collection of the company. Further the Appellant admitted in her evidence that she was the only person who had the key to the safe. This ground of appeal fails as the evidence presented by the prosecution was not doubtful.

Appeal Ground 2

[14] The Learned trial Magistrate failed to direct himself that before he convicted on circumstantial evidence, he had to be satisfied not only that the circumstances are consistent with the Appellant’s having committed the offence but also that the facts proved are such as to be inconsistency with any other conclusion.

[15] The Learned Magistrate correctly analysed the evidence presented by the prosecution and the defence. He correctly applied the test discussed in **Vulaca v The State** [2011 Crim. App. AAU 0038 of 2008, 29 August 2011. The court stated:

“...with circumstances evidence you must look at all the evidence together and ask yourselves whether the only reasonable inference you can draw from the evidence is the guilt of the accused. You must ask yourselves whether there can be any other explanation for the evidence which is also consistent with the accused innocence. That is the law on circumstantial evidence”.

[16] The Learned Magistrate in his judgment at paragraph 72 stated:

“In this case no direct evidence. The entire case is circumstantial. The court must ask itself, “is there any other inference that can be drawn from this facts and evidence? Is there a possibility that there is someone else who is responsible?” If there is an alternative then the accused must be acquitted.”

- [17] The Learned Magistrate had looked at all the evidence to arrive at his decision. The Learned Magistrate had analysed the evidence and correctly held that the Appellant is guilty of the charges filed in this case.
- [18] I conclude that the appeal grounds raised in this case have no merits and therefore this appeal is dismissed.
- [19] You have 30 days to appeal.



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P Kumararatnam
JUDGE

At Suva
18/07/2014