

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 088 OF 2010S

STATE

vs

JOHNNY ALBERT STEPHEN

Counsels : Ms. J. Prasad for State
Mr. J. Savou and Ms. L. David for Accused
Hearing : 30 November, 1, 2, 5 and 6 December, 2016
Summing Up : 7 December, 2016
Judgment : 7 December, 2016
Written Reasons for
Judgment & Sentence : 8 December, 2016

WRITTEN REASONS FOR JUDGMENT AND SENTENCE

1. From 30 November to 6 December 2016, the accused went to trial on the following information:

FIRST COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (3) (b) of the Proceeds of Crime Act 1997.

Particulars of Offence

JOHNNY ALBERT STEPHEN between the 6th day of August to the 24th day of September 2009 at Suva, in the Central Division received money

amounting to \$17,420.90 and disposed of the same, that is the proceeds of crime knowing or ought to have reasonably known that the said \$17,420.90 is derived directly or indirectly from some form of unlawful activities.

SECOND COUNT

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (3) (b) of the Proceeds of Crime Act 1997.

Particulars of Offence

JOHNNY ALBERT STEPHEN on the 25th day of September 2009 at Suva in the Central Division received money amounting to \$21,440.56 that is the proceeds of crime knowing or ought to have reasonably known that the said \$21,440.56 is derived directly or indirectly from some form of unlawful activities.

2. Yesterday, the three assessors returned with a unanimous opinion finding the accused guilty as charged on both counts. The court agreed with them. It found the accused guilty as charged on both counts and convicted him accordingly on both counts. The court said, it would give its written reasons today. Below are its reasons.
3. Prior to reaching my decision yesterday, I had reviewed the evidence called at the trial and I had directed myself in accordance with the summing up I gave the assessors yesterday. I accepted the three assessors' unanimous guilty opinion on the following grounds.
4. Firstly, I accept that the accused confessed to the crimes as highlighted in paragraphs 29 to 33 of my summing up. In my view, after assessing the whole evidence, the accused made the confessions and they were true. The defence did not contest the admissibility of the accused's caution interview statements, and as a result, I place great weight and value on the same. In my view, the police treated him well, when he was in their custody, and all his legal rights were observed by police.
5. Secondly, the circumstantial evidence against the accused was overwhelming. He admitted in his caution interview statement that, he opened a Westpac Bank Account on 25 February 2009 (Prosecution Exhibit No. 7). The Account Number was 9802117029. It was an electronic transaction account. His Bank Statement showed that all the moneys mentioned in Count No. 1 and 2, went into his abovementioned account. Mr. Epeli Racule (PW1), a Westpac Bank

Officer of 30 years standing, led an internal Westpac Bank investigation on the above transfers. PW1 said, they traced the money in Counts No. 1 and 2 to Sun Vacation (Fiji) Ltd, Mr. Bruce Moonie and Coconut Rental Ltd (Cook Island). PW1 said, the above Westpac Bank customers did not authorize their funds to be transferred to the accused's above Westpac Bank Account.

6. In his caution interview statement, the accused said, he was dealing with one David Turner from Nigeria. According to him, David Turner was sending him the moneys mentioned in Count No. 1 and 2, and instructing him to send the same to a lady in America. The details of this business relationship between the two were highlighted in paragraphs 16, 17 and 18 of my summing up. In his caution interview statement, the accused denied knowledge that the abovementioned transfer of funds into his account were from some unlawful activities. He denied that he knew or ought to have reasonably known that the funds were proceeds of crime. After considering all the evidence, I reject the accused's above assertions. In my view, he well knew the funds coming into his account were proceeds of crime and were the result of unlawful activities.
7. At the end of the day, after considering the accused's above alleged confessions and the State's circumstantial evidence, there was overwhelming evidence that the accused was guilty as charged on both counts.
8. The facts of the case were disturbing. The accused came from Vanuatu in 2008 as a tourist. He married a woman in this country in November 2009. He opened a Westpac Bank electronic transaction account in February 2009. In collusion with others, he stole money from Westpac Bank customers in Fiji and the Cook Islands through fraudulent electronic means. Sun Vacation (Fiji) Ltd and Mr. Bruce Moonie lost a total of \$17,420.90. Not a single cent had been recovered. \$21,440.56 was recovered and returned to Coconut Rental Ltd in the Cook Island.
9. The public through their representative in Parliament, view the offence of "money laundering" seriously, and had prescribed it a maximum penalty of 20 years imprisonment, or a fine not exceeding \$120,000, or both (see section 69 (2) (a) of the Proceeds of Crime Act 1997). The tariff for "money laundering" is now set at 5 to 12 years imprisonment: see **State v Robin Surya Subha Shyam**, Criminal Case No. HAC 146 of 2010S; **State v Monika Monita Arora**, Criminal Case No. HAC 086 of 2009S – all Suva High Court authorities. Of course, the actual sentence will depend on the mitigating and aggravating factors.

10. The aggravating factors in this case were as follows:
 - (i) Pre-planning and Execution of electronic fraud. This was a devious mean to undermine the banking system in Fiji. The accused deliberately participated in a criminal enterprise to steal customers' fund through electronic fraud. It was well-planned and executed. The accused obviously had no regards to people's property rights.
 - (ii) Sun Vacation (Fiji) Ltd and Mr. Bruce Moonie had lost a total of \$17,420.90. Not a single cent was recovered.
 - (iii) The accused showed no remorse throughout the trial.

11. The mitigating factors were as follows:
 - (i) At the age of 46 years, this is the accused's first offence;
 - (ii) He had been in custody since 12 April 2012, that is, a period of approximately 4 years 8 months.

12. On Count No. 1, I start with a sentence of 6 years imprisonment. I add 4 years for the aggravating factors making a total of 10 years imprisonment. I deduct 4 years 8 months for time already served, leaving a balance of 6 years 4 months. I deduct another 3 years 4 months for being a first offender, leaving a balance of 3 years imprisonment. On Count No. 1, I sentence you to 3 years imprisonment.

13. I repeat the above process and sentence for Count No. 2. The sentence in Count No. 2 is concurrent to the sentence in Count No. 1. Total sentence is 3 years imprisonment.

14. Mr. Johnny Albert Stephen, for committing "money laundering" offences between 6 August and 25 September 2009, at Suva in the Central Division, I sentence you to 3 years imprisonment, with a non-parole period of 2 years, effective forthwith.

15. The above sentence is designed to punish you in a manner which is just, to protect the community, to deter other would-be offenders, to set pre-conditions for any rehabilitation and to signify that the court and the community denounce what you did between 6 August and 25 September 2009.

16. You have 30 days to appeal to the Court of Appeal.



Salesi Temo
JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Suva.
Solicitor for Accused : Legal Aid Commission, Suva.