

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 033 of 2013

STATE

v.

JOSEFA TUKANA

Counsel:

Ms. M. Khan for State
Ms. L. Raisua for Accused

Date of Ruling:

26th April 2016

RULING

(Previous Convictions)

1. The accused Josefa Tukana is convicted of one count of Rape after trial. Prosecution filed a list of previous convictions of the accused for the court to consider when sentencing the accused.
2. According to the said list the accused has 11 previous convictions between the period 18/07/1982 and 04/10/1995 which are more than 10 years old. The rest of the 4 previous convictions are for the period between 08/05/2014 and 05/06/2014.
3. The accused vehemently denied all the previous convictions in the list which were between 18/07/1982 and 04/10/1995 stating that he never had

such cases and also that there are other persons by the name of Josefa Tukana.

4. He admitted the last four convictions of the list and submitted that they are of domestic disputes. However, the offence in this case was committed on 25th November 2012 and the said last 4 previous convictions had been recorded in 2014 well after the commission of this offence.
5. When the accused denied the said previous convictions, the State on the request of the Officer-in-charge Criminal Records office requested from the court for the fingerprints of the accused in this case to be obtained to compare with the fingerprints already stored in the Criminal Records Division, for which the accused agreed. This shows that the Criminal Records Division has submitted the list of previous convictions not comparing the finger prints but by the name and other details of the accused.
6. There is no laid down procedure to prove the previous convictions when the lists of previous convictions are filed after conviction, and when the assessors were released after recording their opinions. The only procedure laid down is in section 216 of the Criminal Procedure Decree 2009 where the information contained the previous convictions. Section 216 says that if the accused denied the previous convictions the

court and the assessors should then hear the evidence concerning previous convictions.

7. In this case the assessors found the accused not guilty, and the assessors were released upon recording their opinions. Thereafter the court proceeded to find the accused guilty of the offence overturning the opinion of the assessors. Thereafter the list of previous convictions was filed during the sentencing submission stage. Therefore I am of the view that the procedure laid down in section 216 (1) (c) that the evidence on previous convictions should be heard before the assessors cannot be applied in this case.
8. Therefore I gave the opportunity for the prosecution to prove the previous convictions which the accused had denied. The prosecution who asserts that the accused has previous convictions must satisfy court that the listed previous convictions are in fact of the accused person, as the accused has denied the same. It is not for the accused to prove the negative.
9. The prosecution called IP Ana Waqabaca who is the Officer-in-charge of the Criminal Records Office to give evidence.
10. The witness submitted her report as Prosecution Exhibit 3. She holds a certificate of expertise in the science of fingerprints accredited by the Pacific Islands Accreditation Board. She has compared the finger prints

of the accused that was obtained in this court on 18th April 2016 with the finger prints and the name recorded in the criminal records identification system. She said that she compared the characteristics of the said fingerprints and found to be the same. She said that the characteristics are vallies, loops and other little details. She had also taken the spaces between the ridges of the fingerprints into considerations.

11. Her evidence was that the fingerprints recorded in the office had been taken at the Nausori Police Station on 05/10/1995 by one PC Vinesh. She did not have the case number but the criminal records number was F/288930, she said. Fingerprints obtained on 05/10/1995 were produced as Prosecution Exhibit 1 and the fingerprints obtained in this court on 21/04/2016 were exhibited as P2. She said that it belongs to the same person. She said that the ridge details are the same and it was verified by other technicians of her office.
12. On looking at the previous convictions report which was marked as P4, she said that the fingerprints in P1 refer to case no. 675/95 which was a case of rape.
13. In cross examination she said the accused is fingerprinted and photographed when charged. No photographs of the accused were brought to court. Criminal Records Division has the photograph of the accused but she had not brought it, she said. She said that she does not


have any record to show the number of ridges in the fingerprints she picked for comparison. She said that it would have been important for her to bring those records and also the photographs. She said that she had those details with the criminal records office.

14. She admitted that the peculiar marks in the body as recorded in the two fingerprints reports P1 and P2 are different from each other. P1 fingerprint report dated 05/10/1995 says that the accused in that case had a tattoo of a picture of bird on the right shoulder and another tattoo 'Drag me never' on his chest. But the accused in the instant case had only a cross lined pattern on his left wrist according to P2. She said that they record the marks which are permanent tattoos.
15. The documentary evidence which the witness could have brought from her office like photograph and also the documents to show the ridges of the fingerprints she picked, she did not produce in court. The prosecution could have brought the relevant court records or copy records from the relevant Magistrate's Court to prove the previous convictions. The prosecution neither produce those nor gave any reason why they did not.
16. However, if the fingerprints tally, then that is sufficient proof of the previous convictions. For that the prosecution must prove that the fingerprints P1 and P2 are of the same person and that P1 refers to the case or cases in the list P4. There are clear discrepancies in the peculiar

marks on the accused in P1 and P2. Even if the court assumes that the fingerprints P1 were obtained from the person who was the accused in that case, the prosecution has failed to prove to court that the comparison of P1 and P2 was done properly. The witness admitted that she failed to bring the relevant documents to show how she compared the fingerprints. She failed to show court what ridges she compared. Which ridges of the fingerprints she picked to compare. She admitted that she would have brought the documents but did not. An expert witness should be able to testify in court as to how he/she came to the conclusion and on what material he arrived at the same. Such evidence was not produced in court when she admittedly could have.

17. Therefore I find that her evidence on comparing the fingerprints in P1 and P2 was not satisfactory and cannot be accepted.
18. Hence, I find that the prosecution has failed to prove the previous convictions that the accused denied from the list P4.




Priyantha Fernando
Judge

At Suva

26th April 2016

Solicitors

Office of the Director of Public Prosecutions for the State.

Office of the Legal Aid Commission for Accused.