

IN THE HIGH COURT OF FIJI AT SUVA

CASE NO: HAC. 254 of 2016

[CRIMINAL JURISDICTION]

STATE

V

1. SHAVNEEL PRASAD
2. PRASHNIL KUMAR

Counsel : Ms. S. Navia and Ms. W. Elo for State  
Mr. J. Uludole for 1<sup>st</sup> Accused  
Mr. A. Chand and Mr. I Rakaria for 2<sup>nd</sup> Accused

Hearing on : 25<sup>th</sup> September – 05<sup>th</sup> October 2017

Summing up on : 06<sup>th</sup> October 2017

Judgment on : 09<sup>th</sup> October 2017

JUDGMENT

1. The accused are charged with the following offences;

**FIRST COUNT**

*Statement of Offence*

**BURGLARY:** contrary to section 312(1) and 2(b) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

**SHAVNEEL PRASAD** on the 9<sup>th</sup> day of July 2016 at Suva in the Central Division entered into Shivani Nandani Priyanka Fiji Limited Office as a trespasser with intent to commit theft.

## SECOND COUNT

### *Statement of Offence*

**THEFT:** contrary to section 291(1) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**SHAVNEEL PRASAD** on the 9<sup>th</sup> day of July 2016 at Suva in the Central Division dishonestly appropriated \$19,003.73 cash and 1xBlack H264 Network DVR CCTV Video Decoder valued at \$1,800.00 all to the total value of \$20,803.73, the property of Shivani Nandani Priyanka Fiji Limited with the intention of permanently depriving Shivani Nandani Priyanka Fiji Limited of the above mentioned properties.

## THIRD COUNT

### *Statement of Offence*

**RECEIVING:** contrary to section 306(1) of the Crimes Decree No. 44 of 2009.

### *Particulars of Offence*

**PRASHNIL KUMAR** on the 9<sup>th</sup> day of July 2016 at Makoi in the Central Division dishonestly received \$3,571.90 cash belonging to Shivani Nandani Priyanka Fiji Limited knowing or believing the property to be stolen.

2. The assessors have returned with the unanimous opinion that the 1<sup>st</sup> accused is guilty as charged on the first and the second counts and that the 2<sup>nd</sup> accused is not guilty of the third count.
3. I direct myself in accordance with the summing up delivered to the assessors on 06<sup>th</sup> October 2017 and the evidence adduced during the trial.
4. In my view, all the prosecution witnesses were credible witnesses. Considering the demeanour and deportment of the 1<sup>st</sup> accused when he gave evidence, I did not find him credible. I found the 2<sup>nd</sup> accused to be a credible witness.
5. The prosecution is relying on the admissions in the cautioned interview statement, the charge statement and circumstantial evidence to prove the two charges against the 1<sup>st</sup> accused.

6. After conducting a *voir dire*, this court held that the aforementioned cautioned interview statement and the charge statement are admissible in evidence. The evidence adduced during the trial did not lead me to hold otherwise. The 1<sup>st</sup> accused's interview had commenced on 11/07/16 at 4.04pm. On that day he was explained his rights. On the next day the interview had recommenced at 9.33am and suspended at 10.59am in order to conduct a search at the 1<sup>st</sup> accused's residence. There were no admissions made during the said session. The interview had recommenced that day after the search at 6.50pm and the accused had started making admissions thereon. The evidence led by the prosecution revealed that money was recovered from the 1<sup>st</sup> accused during the aforementioned search conducted at his residence. It is clear that the 1<sup>st</sup> accused had made the admissions after the recovery made during the said search and not because of him being frightened as he claims.
7. In his evidence the 1<sup>st</sup> accused did not say that he was frightened when he was charged. He said that he complained to the charging officer about him being assaulted when he was interviewed under caution. According to the charge statement the 1<sup>st</sup> accused had been remorseful and he had apologized for making it hard for the police to investigate the case. Therefore, I have no doubt that the answers recorded in PE 6A and PE 7A were given by the 1<sup>st</sup> accused and that they were given on his freewill.
8. During trial the 1<sup>st</sup> accused raised three issues that were not raised as *voir dire* grounds initially. That is, he requested for his father to be present during the cautioned interview and that was not allowed; the rights were only read on the first day; and there was no witnessing officer present during the interview. I believe the evidence of the 3<sup>rd</sup> prosecution witness who denied that the accused made a request for his father to be present during the cautioned interview. In my view, the second and third issues above have no relevance to voluntariness.
9. Though the cautioned interview tendered as PE 6A and PE 6B ("PE 6") is held admissible, this court can rely only on the admissions that are true. When he



was interviewed between 9.33am and 10.39am on 12/07/16, the first accused had given exculpatory answers. From 6.50pm on the same day he had made admissions but in essence what he had said is that the burglary was planned with another person and that other person took the cash from the HR office and he was given *'the light blue cosmetic bag containing coins and one plastic money bag containing cash and the CCTV camera decoder'* by that other person [Q & A 57 in PE 6]. He had admitted that he removed the wires from the decoder [Q & A 53 in PE 6]. According to the 3<sup>rd</sup> prosecution witness who was the interviewing officer, this other person the 1<sup>st</sup> accused had implicated in the cautioned interview had been cleared after the investigation. He also admitted that the 1<sup>st</sup> accused was untruthful in his cautioned interview. The charge statement of the 1<sup>st</sup> accused does not contain clear admissions. As stated before, what the charge statement indicates is that the 1<sup>st</sup> accused was remorseful.

10. The aforementioned statement of the 3<sup>rd</sup> prosecution witness during cross examination on behalf of the 2<sup>nd</sup> accused to the effect that the 1<sup>st</sup> accused was untruthful was not clarified during re-examination. Therefore though the prosecution is heavily relying on the cautioned interview of the 1<sup>st</sup> accused in this case, the interviewing officer himself had testified that the 1<sup>st</sup> accused was untruthful during the cautioned interview. For this reason, I am of the view that it is not safe to rely on the admissions in the cautioned interview tendered as PE 6 that are not supported by other reliable evidence.
11. I find that the following facts that are relevant to the 1<sup>st</sup> count were proven beyond reasonable doubt;
  - a) the 1<sup>st</sup> accused was employed as a driver at Shivani Nandani Priyanka Fiji Limited ("SNP Fiji Limited");
  - b) the 2<sup>nd</sup> accused dropped the 1<sup>st</sup> accused near Pacific Buses Limited in Walu Bay on 09/07/16 around 10.00pm;
  - c) the 1<sup>st</sup> accused came back to the 2<sup>nd</sup> accused's vehicle with a carton and a bunch of keys after 10 - 15 minutes;

- d) the bunch of keys the 1<sup>st</sup> accused had in his hands were the same bunch of keys the 1<sup>st</sup> prosecution witness identified as PE 03 before the alleged incident;
- e) PE 03 was kept inside the 1<sup>st</sup> prosecution witness' vehicle which was driven by either the said 1<sup>st</sup> prosecution witness or the 1<sup>st</sup> accused;
- f) the 1<sup>st</sup> accused was lost for words when the 1<sup>st</sup> prosecution witness questioned the 1<sup>st</sup> accused after he returned from the 1<sup>st</sup> accused's house on 11/07/16;
- g) the 3<sup>rd</sup> prosecution witness who was part of the police search team recovered \$5375 from the 1<sup>st</sup> accused and it was hidden inside the 1<sup>st</sup> accused's pants.

12. Considering the above facts, I find that the 1<sup>st</sup> accused's admission in his cautioned interview to the effect that he entered the SNP Fiji Limited office in the night on 09/07/16 [Q & A 48 and 51 in PE 6] and his admission that the \$5375 recovered from him was stolen from the said office [Q & A 37 in PE 6] are true.
13. Considering the above evidence among other evidence, I am satisfied beyond reasonable doubt that the 1<sup>st</sup> accused entered the SNP Fiji Limited office as a trespasser with the intention of committing theft on 09/07/16 and therefore, I find him guilty of the first count.
14. The second count is a charge of theft where it is alleged that the 1<sup>st</sup> accused stole \$19003.73 and a video recorder valued at \$1800. It is clear that the prosecution case in relation to the second count is not supported by the admissions made by the 1<sup>st</sup> accused in his cautioned interview. According to the cautioned interview PE 6, the theft was carried out jointly with another and the money was taken from the HR Office by that other person. The fact that the police decided that the other person implicated by the 1<sup>st</sup> accused in his cautioned interview is innocent does not establish beyond reasonable doubt that the 1<sup>st</sup> accused stole everything by himself as alleged by the prosecution.

15. On the other hand, in my view, the prosecution failed to prove that \$19,003.73 was stolen from SNP Fiji Limited on 09/07/16. According to the 2<sup>nd</sup> prosecution witness, the total amount that was missing was \$19,111.54. No documentary evidence was tendered to prove this amount though the said witness referred to certain documents that were available.
16. I am mindful that variance between the amount stated in the particulars of offence and the evidence adduced is not material. However in this case as I have stated before, the prosecution failed to prove the total amount of money that was stolen beyond reasonable doubt.
17. In addition to the facts alluded to in paragraph 11 and 12 above, I find that the following facts relevant to the 2<sup>nd</sup> count have been proved beyond reasonable doubt;
  - a) The 1<sup>st</sup> accused gave the 2<sup>nd</sup> accused a cosmetic bag containing notes and coins when the 1<sup>st</sup> accused and the 2<sup>nd</sup> accused were drinking at the 2<sup>nd</sup> accused's brother's house at Koronivia on 09/07/16;
  - b) The said bag was seized by the police and it contained cash to the total value of \$3571.90;
  - c) The 2<sup>nd</sup> accused saw the 1<sup>st</sup> accused throwing something near the Waila Bridge on their way from Walu Bay to Nausori on 09/07/16;
  - d) The CCTV camera decoder tendered as PE 2 was recovered by the police near the Waila Bridge;
  - e) PE 2 was the CCTV camera decoder that went missing from SNP Fiji Limited on 09/07/16.
18. Based on the above facts I am satisfied that the admission made by the 1<sup>st</sup> accused in his cautioned interview that he removed the wires behind CCTV camera decoder [Q & A 53 in PE 6] and he threw that decoder near the Waila bridge [Q & A 63 in PE 6] are true.



19. The aforementioned facts lead to the inescapable inference that the 1<sup>st</sup> accused stole a total amount of \$8946.90 and the CCTV camera decoder tendered as PE 2 from SNP Fiji Limited on 09/07/16.
20. Therefore, I find that the prosecution had proved beyond reasonable doubt that the 1<sup>st</sup> accused had committed the offence of theft and the property stolen were \$8946.90 cash and the CCTV camera decoder tendered as PE 2.
21. The case against the 2<sup>nd</sup> accused is that he dishonestly received \$3571.90 knowing or believing that to be stolen property. Mere receiving is not sufficient to establish this offence. The receiving should be dishonest and the accused should have the knowledge or should believe that the property is stolen property.
22. The 2<sup>nd</sup> accused admitted that he received a cosmetic bag containing money from the 1<sup>st</sup> accused and he buried it behind his brother's house. His evidence was that the 1<sup>st</sup> accused gave the bag for it to be kept at a safe place until the 1<sup>st</sup> accused asks for the bag. According to the 2<sup>nd</sup> accused 1<sup>st</sup> accused told him to bury the said bag because he told the 1<sup>st</sup> accused that it is not safe to keep money in the house. This position taken by the 2<sup>nd</sup> accused in his evidence is consistent with what he had stated in his cautioned interview PE 9A and PE 9B ("PE 9") which the prosecution wants this court to rely on.
23. The search list tendered as PE 10 indicates that \$3571.90 was recovered inside the dwelling house. However, the 5<sup>th</sup> prosecution witness clearly said that the relevant house at Koronivia was locked when they went there with the 1<sup>st</sup> accused. He also said in his evidence that notes were recovered from the house and only the cosmetic bag, coins and the keys were buried. His evidence was not clear as to exactly where and how the notes were recovered. Based on the evidence presented, including what is written in the search list PE 10, I am unable to rely on the evidence of the 5<sup>th</sup> prosecution witness that notes were recovered from a different location.

24. All in all, the evidence adduced by the prosecution does not establish beyond reasonable doubt that that the 2<sup>nd</sup> accused received the relevant property dishonestly and knowing or believing that the property to be stolen property.
25. Therefore, I find that the prosecution has failed to prove the third count.
26. In the light of the above, I agree with the unanimous opinion of the assessors that the 1<sup>st</sup> accused is guilty of both counts as charged except that the property that was proved to be stolen in relation to the second count were \$8946.90 cash and the CCTV camera decoder tendered as PE 2. I agree with the unanimous opinion of the assessors that the 2<sup>nd</sup> accused is not guilty of the third count.
27. I convict the 1<sup>st</sup> accused accordingly on count one and count two. I acquit the 2<sup>nd</sup> accused.



A handwritten signature in blue ink, appearing to read "Vincent S. Perera". The signature is stylized and cursive.

Vinsent S. Perera

JUDGE

Solicitors for the State : Office of the Director of Public Prosecutions, Suva.  
Solicitor for the 1<sup>st</sup> Accused : Colavanua Law, Suva  
Solicitor for the 2<sup>nd</sup> Accused : Legal Aid Commission, Suva.