

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CRIMINAL JURISDICTION**

**Criminal Appeal No.: HAA 115 of 2017**

**STATE**

**V**

**DAYENDRA PRASAD aka VIRENDRA PRASAD aka VIREN PRASAD**

**Counsel** : Ms. R. Uce for the State.  
: Ms. S. Ravai for the Accused.

**Dates of Hearing** : 17, 18, 26 September, 2018  
**Date of Sentencing** : 09 October, 2018

---

**SENTENCE**

---

1. By judgment dated 30 July, 2018 the accused was found guilty and convicted by this court after a successful appeal by the State against the acquittal of the accused. The accused was charged with one count of obtaining money by false pretence contrary to section 309 (a) of the Penal Code Cap. 17 (now repealed).

2. The brief summary of facts is as follows:

The victim Suresh Chand a member of the Fiji National Provident Fund had the sum of \$93, 286.18 in his FNPF account number 0711416.

3. On 17 December, 2008 the Colonial National Bank, Ba Branch received a Personal Account Application in the name of Suresh Chand which contained the personal details of the victim. The bank account application was supported by a letter of identification by a Referee signed and endorsed by Dr. Jayant Patel (PW1) a Medical Practitioner.
4. Dr. Patel confirmed that the person who had brought the document for signing was the same person whose photograph was attached to the document he had signed.
5. The photograph of the accused was affixed to the letter of identification by a Referee which was submitted with the Personal Account Application. According to the Bank Officers who had processed the application form namely Praneel Naicker (PW3), Ashika Prasad (PW4), and Sanjeev Kumar Sumer (PW5) anyone who wanted to open a bank account must be physically present in the Bank to do so.
6. The accused whose photograph was affixed to the letter of identification witnessed by Dr. Patel was present in the Bank when the Bank officers were attending to the formalities in opening the bank account. Sanjeev Kumar Sumer (PW5) spoke with the accused whose photograph was in the application form.
7. The bank account no. was 6979306, towards the end of December, 2008 the Fiji National Provident Fund received a withdrawal of FNPF application in the name of the victim. The application was processed by the Fiji National

Provident Fund hence all the money held in the victim's FNPF account was approved for withdrawal on grounds of migration.

8. On 2<sup>nd</sup> January, 2009 a lump sum of \$93,286.18 was transferred by the FNPF to the Colonial National Bank Account. Two large withdrawals of \$43,950.00 and \$36,100.00 respectively were made from the Colonial National Bank account, since the withdrawals were large amounts Salim Buksh (PW6) the Colonial National Bank, Ba Branch Manager had sanctioned the withdrawals after he was satisfied that the person withdrawing the money was the bank account holder. Thereafter 22 further withdrawals were made from the ATM until all the money was withdrawn.
9. On 22 January, 2009 the victim went to the District office in Tavua to apply for partial withdrawal from his FNPF account under flood assistance. It was here, he was informed that all his contributions in his FNPF account had been withdrawn on grounds of migration to New Zealand. The matter was reported to the police and an investigation was carried out.
10. Inia Vukialau an employee of the Fiji National Provident Fund investigated the case of theft of membership funds number 0711416 under the name of the victim Suresh Chand. As part of preliminary investigation he checked the IT System of all FNPF employees who had logged into FNPF number 0711416. The matter was then referred to the police with all the documents lodged with the withdrawal application form. During his internal investigation the witness discovered that one of the FNPF staff had accessed the member's account about 55 times without any justification which was done after normal working hours that is after 5pm.
11. This FNPF employee had an external accomplice who had been assisted in the electronic transfer of money from FNPF to the bank account at the Colonial National Bank, Ba. The name of the external party was Dayendra Prasad the accused.

12. The accused was arrested and charged, police investigation revealed that the accused with others had fraudulently withdrawn the FNPF contributions of the victim. The victim in response to a newspaper advertisement had given his passport, birth certificate and marriage certificate to one Shalendra Sen Sinha for overseas employment.
13. These documents were not returned to the complainant but were used by the accused in the opening of the Bank account at Colonial National Bank, Ba Branch and the withdrawal of the victim's FNPF.
14. The maximum penalty for the offence of obtaining money by false pretence is 5 years imprisonment as per section 309 (a) of the Penal Code.
15. The learned counsel for the accused provided the following personal details and mitigation on behalf of the accused:
  - (a) The accused is a first offender;
  - (b) He is 63 years of age;
  - (c) Married with 2 children both of whom are married;
  - (d) Retired welder;
  - (e) He is a heart patient and had suffered stroke recently;
  - (f) Requires daily medication and medical review due to his age;
  - (g) Requires the assistance of family members in maintaining his health and diet;
  - (h) Seeks leniency and mercy in sentencing.
16. Counsel in her mitigation urges this court to consider the fact that the accused is a heart patient who is on daily medication a copy of the patients handbook, review card, pathology requisitions in the name of Virendra Prasad was attached to the written submissions. Counsel seeks a suspended sentence.

17. Upon inquiry by this court as to whether Dayendra Prasad and Virendra Prasad were the same person counsel for the accused stated he was previously known as Virendra Prasad but changed his name to Dayendra Prasad when he was in United States of America in 1978 or thereabouts. Upon receiving this information this court called for further inquiries by the office of the Director of Public Prosecutions. The matter was stood down and subsequently continued for hearing on 18<sup>th</sup> and 26<sup>th</sup> September.
18. The State Counsel made inquiries with the Criminal Record Office taking into account the father's name and the date of birth of the accused. The Criminal Record Office responded that the accused had three names namely Viren Prasad, Virendra Prasad and Dayendra Prasad. Under the name of Viren the accused has 2 expired previous convictions. The accused by his counsel accepted that he was known by the three names.
19. For completeness the records of the court was amended to include the other names of the accused.

#### **TARIFF**

20. The tariff for fraud offences including obtaining money by false pretence under the Penal Code is 18 months to 3 years imprisonment (*Ateca v State* [2002] FJHC 175; HAA 071 & 074 of 2002S (4 October, 2002); *State v Chand* [2004] FJHC 53; HAA 0001J. 2004S (27 February, 2004); *Rukmani v State* [2008] FJHC 134; HAA 056J.O8S (4 July, 2008).

#### **AGGRAVATING FACTORS**

21. The following aggravating factors are obvious:

- (a) Planning

The facts of the case suggest a well-planned and well-orchestrated thought out idea put in action which was basically flawless. The

opening of a bank account with the personal details of the victim, thereafter an application was lodged with the FNPF for the transfer of funds from the victim's FNPF account into the bank account opened and operated by the accused.

(b) Substantial amount of money

The amount of money obtained was \$93,286.18 which is substantial.

(c) Innocent victim

The victim was innocent he did not have any idea that someone had fraudulently withdrawn all his retirement money without any fault of his.

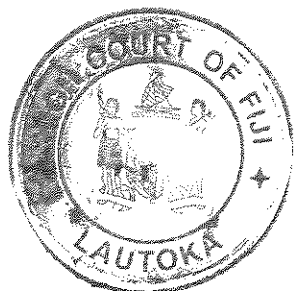
22. Considering the objective seriousness of the offending, I select a starting point of 18 months imprisonment (lower range of the tariff). I add 3 years for the aggravating factors, the interim sentence is 4 ½ years imprisonment for the mitigating factors I reduce the sentence by 8 months. The sentence now is 3 years and 10 months imprisonment. The accused has been in remand for about 8 months and 10 days. In accordance with section 24 of the Sentencing and Penalties Act I further reduce the sentence by 8 months and 10 days. The final sentence is 3 years 1 month and 20 days imprisonment.
23. This court is aware that the above mentioned final sentence is outside the tariff range, however, when looking at the facts of the case, the following exceptional circumstances such as the high level of planning, the sophisticated manner in which the offence was committed and the substantial amount of money involved justifies a sentence over and above the established tariff.
24. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offence committed on the victim compels me to state

that the purpose of this sentence is to punish offenders to an extent and in a manner which is just in all the circumstances of the case and to deter offenders and other persons from committing offences of the same or similar nature.

25. Under section 18 (1) of the Sentencing and Penalties Act, I impose 2 years 7 months as a non-parole period to be served before the accused is eligible for parole. I consider this non-parole period to be appropriate in the rehabilitation of the accused and to meet the community expectation which is just in the circumstances of this case.
26. Mr. Prasad you have committed a serious offence on an unsuspecting innocent victim by dishonestly obtaining his retirement money. You are a selfish, ruthless, greedy person who has no conscience or had no mercy for the victim. You have deprived the victim of all his hard earned retirement benefit imagine the heartache, anxiety and sense of hopelessness you had caused not only to the victim but his family as well.
27. There is no doubt this was a calculated fraud aimed at an innocent victim. You will have to pay for your crime by an immediate long time imprisonment. Your counsel has urged this court to consider a suspended sentence since the final sentence is over 3 years in law such a sentence cannot be suspended.
28. In summary the accused is sentenced to 3 years 1 month and 20 days imprisonment with a non-parole period of 2 years and 7 months imprisonment to be served before the accused is eligible for parole.
29. Furthermore, it is recommended that the Commissioner of Corrections Services and his officers provide all the necessary assistance as may be needed from time to time by the accused who has a medical condition. It is also in the interest of the accused person to brief his facility officer of


his medical and dietary requirements including the need for a follow up of medical reviews.

30. 30 days to appeal to the Court of Appeal.



**At Lautoka**

**09 October, 2018**

  
**Sunil Sharma**  
**Judge**

**Solicitors**

**Office of the Director of Public Prosecutions for the State.**

**Fazilat Shah Lawyers, Lautoka for the Accused.**