

Particulars of Offence

ANIT LAL, on the 18th day of March, 2011 at Labasa in the Northern Division, stole 5 packets of Tang valued \$3.95 and a tin of Corned Mutton valued at \$4.33, all to a total value of \$8.28, the property of Shop and Save Supermarket, Labasa.

2. The case was heard on 15 September 2015 and 12 July 2017. Judgment was delivered on 24 May 2019. The learned Magistrate found the appellant guilty as charged and convicted him accordingly. On 26 July 2019, the learned Magistrate sentence the appellant to 9 months imprisonment, suspended for 2 years.
3. The appellant was not happy with the above decision. He only appealed against conviction. He filed the following grounds:
 - (i) **THE** Learned Magistrate erred in law and in fact in taking into consideration the sworn evidence of the appellant and further erred in holding that the testimony of the appellant was self-serving.
 - (ii) **THE** Learned Magistrate erred in convicting the appellant when the alleged items of theft being a tin of corned mutton and 5 packets of tang after being taken into police custody was never brought to court for identification and exhibit.
 - (iii) **THE** Learned Magistrate did not properly analyse the evidence as to how the law was applicable to the facts in determining the guilt or innocence of the appellant.
 - (iv) **THE** Learned Magistrate erred in convicting the accused on the exhibits that was produced and tendered in Court when the same did not belong to the complainant and were not items of theft.
 - (v) **THAT** the Appellant reserves the right to alter or add further grounds of appeal on availability of the copy record.
4. I will only consider Ground 2 and 4, because they will determine this appeal. The particulars of offence alleged that the appellant stole “5 packets of Tang valued \$3.95 and a tin of corned mutton valued at \$4.33... the properties of Shop and Save Supermarket, Labasa”. Although the charge was read to the appellant on 6 July 2015, wherein he pleaded not guilty, and trial was

done on 15 September 2015 and 12 July 2017, it was essential that proof of the actual items stolen was done at trial time. I have carefully considered the court record and the learned Magistrate's judgment to see whether or not the above pre-requisite was complied with, in terms of evidential law.

5. The actual stolen items was never provided as an exhibit when the defence demanded it. The items tendered were not the one stolen. There was no Agreed Facts between the parties as to the identities of the stolen items. The evidence of Jone Drauna (PW1), as to the identity of the stolen items, were not exact. This is the problem concerning theft charges emanating from supermarkets. The stolen items must not be lost in the prosecution process, especially when it concerned a case allegedly arising on 18 March 2011, charged on 25 May 2015, first appeared in Court on 6 July 2015 and tried on 15 September 2015 and 12 July 2017, a period of 6 years. How can the Police protect the integrity of "5 packets of Tang valued at \$3.95 and a tin of corned mutton valued at \$4.33" for 6 years?
6. I allow the appellant's appeal on ground 2 and 4. I quash the appellant's conviction forthwith. Before I finish, to avoid wastage of time and scarce resources in the prosecution process and judicial time, prosecuting counsels should carefully see that the integrity of exhibits are kept and maintained.




Salesi Temo
JUDGE

Solicitor for Appellant : **Maqbool and Company, Labasa**
Solicitor for Respondent : **Office of Director of Public Prosecution, Labasa**