

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 569 of 2014

STATE

v

SHIU PRASAD

Counsels : **WCPL Selai** for the Prosecution
 : **Ms Dunn. S** for the Accused

Ruling : **29 March 2018**

RULING

NO CASE TO ANSWER

1. The accused, *Shiu Prasad* was charged for *Theft*, contrary to section 291 of the *Crimès Decree 2009*.
2. The particulars of the offence are;-
"Shiu Prasad sometimes between 4th of June 2014 to 2nd of August 2014, at Nacula, Dreketi, in the Northern Division, stole a billy goat valued \$300.00 the property of Pyara Singh Jaja."
3. The Accused pleaded not guilty to the charge on 29 June 2015. The case proceeded to trial on 30 November 2016.

4. At the trial, the Prosecution called the complainant as her only witness. At the close of the Prosecution case, the Counsel for the Defence seeks time to file no case to answer submission. The submission was filed on 5 December 2016.
5. In the submission, the Defence submit that;-
 - a. *the application is made under section 178 of the Criminal Procedure Decree.*
 - b. *there is no sufficient evidence on which the court can convict the Accused.*
 - c. *the evidence of the Prosecution is so unreliable and no tribunal can convict on it.*
6. Section 291(1) of the Crimes Decree 2009, state;-

"(1) A person commits a summary offence if he or she, dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property"
7. The elements of the offence are;-
 - (a) *the accused,*
 - (b) *dishonestly appropriates the victim's property,*
 - (c) *with the intention,*
 - (d) *to permanently deprive the victim of the property.*
8. The complainant, Pyara Singh Jaja, stated in his evidence that he recalled 4 June to 2 August 2014, where he reported to the police of his brown billy goat valued \$200.00 to \$250.00 that was missing. He searched for his billy goat for several weeks. First he said that he found his billy goat from a gentleman he does not know his name. Later, he said that he got his billy goat back from the Accused. The billy goat was in the Accused fence and when he identified the billy goat, the Accused told him to take the billy goat.
9. In cross-examination, he stated that the Accused did not take the billy goat from his property. The Accused did not stop him from entering the fence as he is the owner of the property and the goat. The Accused did not stop him from taking the billy goat. Later the complainant stated that the Accused did take the billy goat out of the possession from his property.

10. The evidence of the complainant is not consistent and there is lots of contradiction. The complainant stated that the property is his and the Accused did not take the billy goat from his property. Later he stated that the Accused did take the billy goat out of the possession from his property. Also he stated that he got his billy goat from a gentleman he does not know and later he said that it was from the Accused. Such contradiction affects the credibility of the witness and the truth on his complaint and allegation.

11. The test of no case to answer in the Magistrate Court was explained in **Abdul Gani Sahib v The State** [2005] FJHC 95; HAA 022 of 2005; 28 April 2005, as;-

"In the Magistrate's Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the Prosecution evidence, taken at its highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a Court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case".

12. From the evidence of the prosecution, there are no relevant and admissible evidence implicating the Accused on the elements of dishonestly appropriation and intention to permanently deprive. With all the evidence that are before the court, there is no likelihood that the court will convict the Accused on this offence.

13. The consideration on the weight of the evidence, the credibility of the witness, and the requirement to prove the case beyond reasonable doubt are immaterial at this stage.

14. In assessing the evidence, I find that the Prosecution is unable to establish and prove the element of dishonestly appropriation and intention to permanently deprive. There is not sufficient evidence to require the Accused to put his defence. Consequently, the Prosecution case failed.

15. In my ruling, I find that the Defence application has merit and has satisfied the requirement and test required for such application. Accordingly, I find the Accused not guilty as charged and I acquit the Accused accordingly.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", written over a horizontal line.

C. M. Tuberi
RESIDENT MAGISTRATE