

IN THE MAGISTRATES' COURT OF FIJI
AT NADI
EXTENDED CRIMINAL JURISDICTION

High Court Criminal Case No. 85 of 2012
Magistrates' Court Criminal Case No. 648 of 2012

STATE

v.

SANJAY REDDY

For the State: *Corporal Bola*

For the Defendant: *Mr. J. Singh, of counsel, of*

JUDGMENT

1. You stood trial for one count of *Aggravated Burglary* contrary to section 313 of the **Crimes Act 2009** and one count of *Theft* contrary to section 291 (1) of the **Crimes Act 2009**.

2. On the day of trial, your counsel indicated that the evidence that the State intended to rely on failed to disclose criminality against you. Rather than put the witnesses and his client through the rigours of trial, he suggested that the State simply tender the Statements in their possession into evidence and that I admit and assess that evidence in like extent as oral evidence to the like effect by that person: *see* s. 134 of the **Criminal Procedure Act 2009**. He also suggested that the State simply tender his client's Record of Interview with the Police and that the Court admit it as to the truth of its contents: *see* s. 135 of the **Criminal Procedure Act 2009** – admission of facts.

3. The prosecutor, after reading through the case file, agreed that was the best course of action to take and so he tendered the following documents for my consideration:

- (i) The Statement of Saiyad Khalid dated 15 June 2012
- (ii) The Statement of Saiyad Kalit dated 5 June 2012 – original and typed versions
- (iii) The Statement of Saiyad Salim Shah dated 15 June 2012
- (iv) The Statement of Saiyad Salim Shah dated 6 June 2012
- (v) The Statement of Gulam Nazi dated 5 June 2012
- (vi) The Statement of Munay Vikash Reddy dated 18 June 2012
- (vii) The Statement of Vinita Reddy dated 18 June 2012
- (viii) The Record of Interview of Sanjay Reddy dated 18 June 2012.

4. I am delighted by the practical stance taken by Mr. Singh, *of counsel* and Corporal Bola, for the State. I thank them for the courtesy they extended each other, the witnesses to the proceedings, the Defendant and the Court.

5. I now proceed to judgment on the papers before me.

Presumption of Innocence

6. I remind myself that Mr. Reddy is presumed innocent until proven guilty.

Burden and Standard of Proof

7. I remind myself that the burden of proving each element of each charge rests with the State and it never shifts. I further remind myself that it is the State that must prove each element of each charge beyond reasonable doubt. Mr. Reddy need prove nothing.

Elements of the Offences Charged

Count 1: Aggravated Burglary

8. In respect of Count 1, the State must prove beyond reasonable doubt that:

- (i) Mr. Reddy
- (ii) In company and in concert with
- (iii) Another or Others
- (iv) Entered into the Nadi Muslim Mosque
- (v) As a trespasser
- (vi) With Intent to Commit Theft Therein.

9. In respect of Count 2, the State must prove beyond reasonable doubt that:

- (i) Mr. Reddy
- (ii) Stole
- (iii) Property
- (iv) Belonging to the Fiji Muslim League
- (v) With Intent to Permanently Deprive the Fiji Muslim League of that property.

The Evidence

10. **Prosecution Witness No. 1: Saiyad Khalid** was Vice-President of the Fiji Muslim League Nadi Branch in June 2012. It is clear that **Saiyad Khalid** and the person the Police said was **Saiyad Kalit** are one and the same. I will set out the total effect of his testimony here.
11. **Mr. Khalid** said that at 9.00am on 5 June 2012, he had been at home when he received word that the Mosque's pressure pump was missing from the tea room and the generator missing from their meeting room. He then went to the Mosque at Namotomoto to investigate and he noticed no signs of forced entry. The meeting room and tea room were situated at the first floor of the Mosque. He had seen these items in the tea room and meeting room respectively after prayers on 1 June 2012 at around 1.30pm. He had a key to the tea room and a person named Hasim had the key to the meeting room. The pressure pump was valued at \$500.00 and the generator, \$2, 000.00. A black Alcatel phone was also stolen from the Mosque premises. It was valued at \$100.00. An Olympus Camera TG 310 valued at \$400.00 had also been stolen from the Mosque Conference Room.
12. **Prosecution Witness 2: Saiyad Salim Shah** said that on 4 June 2012, their Mosque generator had gone missing. He had been handyman at the Nadi Muslim Mosque and College. He had last seen the generator on 3 June 2012 inside the Conference Room. He had gone into their bulk room on 12 June 2012 and had checked for the generator then. It had not been in the bulk room. He then found it inside the bulk room on 15 June 2012. He notified **Prosecution Witness 1** and the Police.

13. Prior to that, on 4 June 2012 at about 12.45pm whilst getting ready for prayers, he noticed that the meeting room was open and he could clearly see the generator right beside the door. On Saturday 2 June 2012, while cleaning the tea room he had seen the pressure pump in there. On 5 June 2012, **Prosecution Witness 3: Gulam Nazi** asked him if he had seen the pressure pump and generator. They looked for these items but they were missing. They then rang the President and informed him of the theft.
14. **Prosecution Witness 3: Gulam Nazi** was caretaker of the Nadi Muslim Mosque and Primary School in 2012. On 5 June 2017, he started work at around 7.35am. While putting the vacuum cleaner away in the tea room, he noticed that the pressure pump was missing. He looked for it and while searching in the meeting room, he discovered that the generator, usually kept by the door, was also missing. He called the Molana and reported the missing items. He had last noticed the generator by the door on 31 May 2012.
15. **Prosecution Witness 4: Munay Vikash Reddy** was a locomotive driver for the Fiji Sugar Corporation in 2012. He also worked a second job as a bus driver for Dominion. On 18 June 2012, at around 11.00am, he had been at the Dominion garage when he received a telephone call informing him that **Sanjay** wanted to see him. He then went across the road and met **Sanjay**. **Sanjay** asked him if he could drop off a brush cutter to **Shiraz's** house at Navakai. His sister then brought over a brush cutter and handed it to him. He then went by taxi to Navakai. He off-loaded the brush cutter at the first accused's home. He said that he had no knowledge that the brush cutter was stolen.
16. I accept that the **Sanjay** he referred to was you. Pursuant to your Record of Interview, you were Operation Manager for Professionals Security Services at the time. Professional Security Services provided security services for the Nadi Muslim Mosque at the material time. You learnt of the break-in at the Mosque but, at first, did not know who had committed the crime. You confronted the security officers who were on duty but they initially denied stealing anything. Then on 11 June 2012, you confronted the first accused again and he admitted to stealing the generator but denied taking the water pump. You made him promise to return the generator he had stolen. To make sure that that promise was kept, you then picked up the generator from the first Accused and you dropped it off at the Mosque.
17. You had received some clothes, food and a brush-cutter from the first accused. When the first accused had dropped these items to you, the first accused had told you that

these were rations for the flood and the brush cutter a gift to provide spare parts for your own brush cutter. You had had the brush cutter for 4 weeks when you realised it was stolen. You realised it had been stolen when the Police asked you about it. You did not tell the Police about the brush cutter, but you did return it immediately to Shiraz.

18. **Prosecution Witness 5: Vinita Reddy** is your wife. Pursuant to section 126 of the **Criminal Procedure Act 2009** she is a competent witness *but* she is not compellable to give evidence of any communication made to her by you during the course of your marriage. I filter her evidence through that lens in fairness to you and her, and I simply take into account events she spoke of, but I disregard any evidence of what you said to her during the period in question.

19. After the flood, you had come home with 10 kg rice, 2 tin fish, 2 bottles of Vanaspati Ghee, 2 jackets and t-shirt. In early June 2012, at around 12.00am the first Accused had come over to your home and called for you. You went out to see him and returned with a brush-cutter. On 18 June 2012, she then rang her brother, **Prosecution Witness 4** and asked him to take the brush-cutter back to the first Accused.

Analysis

Count 1:

20. The evidence does not prove that you had entered the premises of **Nadi Muslim Mosque** at all; whether as a trespasser or alone; or in company and in concert with others.

21. The need to examine intent is moot in the circumstances.

22. The State's evidence not proving any of the elements of this crime, I find you not guilty and acquit you of **Aggravated Burglary** forthwith.

Count 2:

23. The evidence does not prove that you had, in concert or acting alone, dishonestly appropriated anything from the **Nadi Muslim Mosque**. It is true that you received a brush-cutter and some clothes and some groceries from the first Accused but there is no evidence before me to prove that that brush cutter, those clothes and those groceries had been stolen from the **Nadi Muslim Mosque**.

24. Even had there been evidence to that effect, I find that you and your wife were innocent recipients of these items. It is clear that you did not know that the items, and in particular, the brush cutter had been stolen at the time you received it from the first Accused.
25. The evidence clearly points to your having been caught up in the wave of otherwise efficient investigations that netted three other defendants, all of whom have since pleaded guilty to these crimes. It was then for the prosecuting authority to then filter the evidence prior to laying charges in Court.
26. I find you not guilty and I acquit you of *Theft* forthwith.

Concluding Remarks

27. By way of background, this matter was initially handled by the Office of the Director of Public Prosecution. In what has become common practice that Office sent the criminal charge and the evidence file to the Police Prosecutions Office to prosecute.
28. Police Prosecutors are the back-bone of the State's prosecution service. I have heard the learned Director of Public Prosecutions describe them in glowing as "being at the coal-face" of the prosecution service. I agree. Corporal Bola and Mr. Singh, *of counsel*, himself a former prosecutor and currently, a very able defence attorney, are to be commended for their mastery of the facts, criminal procedure and the law. Applied here and now, as I said before, they saved the Defendant, the witnesses and the Court the rigours of a full trial. But it is, in effect, too little and too late.
29. If only the Office of the Director of Public Prosecutions had been as diligent in the time it had the charges and the evidence file in its possession. The **Prosecution Code 2003** mandates that the prosecutor ensure that the right person is charged with the right offence and that there is sufficient evidence to sustain a reasonable prospect of success at trial against each accused and for each charge.
30. I am aware that there is a strict hierarchy, a clear chain of command when it comes to criminal prosecutions between the Office of the Director of Public Prosecutions and Police Prosecutors. This is as it should be: *see* ss. 53 and 54 of the **Criminal Procedure Act 2009**, but it does mean that the buck stops with that Office.

31. Whatever time we saved over 27 and 28 February 2020 cannot, and does not, make up for the 8 years this man has spent defending himself against these charges. Time and rigours and costs that would have, and should have, been avoided, had a proper analysis of the evidence had been conducted at the outset as was required by State policy.
32. I order that the Office of the Director of Public Prosecutions appear in respect of this matter and show cause why it should not be made to pay costs to this Defendant pursuant to section 150 (2) and (3) of the **Criminal Procedure Act 2009**.
33. I remind the Director of Public Prosecutions and all prosecutors in this country that we do not vet your Charges for reasonable and probable cause pursuant to section 56 (2) of the **Criminal Procedure Act 2009** because we trust that you are doing your jobs as ministers of justice. When you fall short of that, except to be called to account.



Seini K Puamau
RESIDENT MAGISTRATE

Dated at NADI this 28th day of February 2020.

