

**IN THE MAGISTRATES' COURT  
AT BA  
CRIMINAL JURISDICTION**

*Criminal Case No. 90/2022*

**BETWEEN: STATE**

**PROSECUTION**

**AND: ASIF KHAN**

**ACCUSED**

**Counsel:** Sergeant 4971 Veni Vunaki for Police Prosecution  
Accused unrepresented and absent.

**Date of Hearing:** 4,5,6,10 & 12 November 2025  
**Date of Ruling:** 27 January 2026.

**JUDGMENT  
[TRIAL IN ABSENTIA]**

Introduction

1. Mr. Asif Khan ("the Accused") was charged on 10 March 2022 and subsequently bailed on 11 March 2022.
2. On 20 June 2022, Prosecution filed a Consolidated Charge consolidating CF 404/21 with the matter herein. This Court's predecessor ordered for this file to be the principal file. The Consolidated Charge saw the Accused charged with 30 Counts of Obtaining Property by Deception contrary to section 317(1) of the Crimes Act 2009.
3. For convenience, I will not reproduce the 30 Counts within the Judgment but will include them as an annexure to the Judgment.
4. On 15 August 2022, the Accused pleaded Not Guilty to all 30 Counts. Trial was then fixed for 22-26 April 2024.
5. On 7 December 2023, this Court's predecessor uplifted the Stop Departure issued against the Accused to allow the Accused to travel to New Zealand. On 22 April 2024, the date of Trial, the Accused was not present and his counsel sought leave to withdraw as he did not have instructions from the Accused.
6. A Bench Warrant was then issued for the 2 sureties of the Accused who subsequently informed the Court that they had heard that the Accused had traveled to Australia instead of New Zealand.
7. A Bench Warrant was issued for the arrest of the Accused and Prosecution was directed to file the Affidavit of the Investigating Officer with respect to steps taken to execute the Bench Warrant. On 17 May 2024, the Affidavit of DC 5225 Sonal Singh was filed annexing a copy of the Accused's travel history. The travel history showed that the Accused had left Fiji for Melbourne on 18 January 2024 and had not returned to the country.

8. On 23 July 2025, after considering the Affidavit filed and section 14(2)(h) of the Constitution, this Court was satisfied that the Accused had been aware of the requirement of his attendance in the matter as he had been warned to appear in Court for all court dates when he was granted bail on 11 March 2022 and he had undertaken the same when he signed his Bail Undertaking Form. Further, by virtue of his non-appearance, it was found that the Accused deliberately chose not to attend Court. Thus, this Court ordered that the matter proceed in the absence of the Accused.
9. Further, Prosecution intended to rely on the admissions of the Accused in his Caution Interview, a trial within a trial or Voir Dire Hearing was ordered to ensure that no substantial injustice occurred in the absence of the Accused (vide *Rokonabete v State* [2006] FJCA 40; AAJ48.2005S (14 July 2006)).
10. The Voir Dire Hearing and Trial Proper was scheduled to take place from 3 – 14 November 2025. On 3 November 2025, the date for the Voir Dire Hearing, Prosecution informed that they would not be relying on the Accused's Caution Interview. Further, Prosecution made an application pursuant to section 169(2)(b)(ii) of the Criminal Procedure Act to discharge the Accused from Counts 1, 2, 11 and 12. Thus, pursuant to section 169(2)(b)(ii) of the Criminal Procedure Act, the Accused was discharged from Counts 1, 2, 11 and 12.
11. Then on 4 November 2025, Prosecution made a further application pursuant to section 169(2)(b)(ii) of the Criminal Procedure Act to discharge the Accused from Counts 3, 7, 10, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30. Thus, pursuant to section 169(2)(b)(ii) of the Criminal Procedure Act, the Accused was discharged from Counts 3, 7, 10, 20, 21, 22, 23, 24, 26, 27, 28, 29 and 30.
12. It should be noted that on the date of Trial, pursuant to section 171(1) of the Criminal Procedure Act, this Court decided to proceed with the Trial as if the Accused were present given that the Accused had notice of this matter and was aware to always be present and appear for his matter as per his Bail Undertaking Form signed on 11 March 2022. Further, despite being aware of these proceedings and undertaking to appear, the Accused's absence in the matter from 22 April 2024 is deliberate. Subsequently, Trial in absentia proceeded before this Court for Counts 4, 5, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19 and 25. Prosecution called a total of 9 witnesses and thereafter closed its case.
13. It is important to note that the Accused's absence from this Trial has not been taken negatively. It is the Court's overriding duty to ensure that a hearing conducted in the absence of the Accused is conducted as fair as circumstances permit to lead to a just conclusion and the Court should not deviate from the applicable procedures and principles of conducting a fair and just hearing in the absence of an accused (vide *Kumar v State; Criminal Case: HAA 34 of 2015* (15 December 2015)).
14. Having considered the evidence presented by Prosecution, I now pronounce my Judgment.

#### Burden of Proof

15. It is imperative to highlight that as a matter of law, the onus or burden of proof rests on the prosecution throughout the trial and it never shifts to the accused. There is no burden on an accused to prove his or her innocence as an accused is presumed to be innocent until proven guilty.

16. It is for the prosecution to prove the accused's guilt beyond a reasonable doubt; if there is doubt, so that the court is not sure of the accused's guilt, or if there be any hesitation in the court's mind on any of the ingredients or on the evidence led by prosecution, the accused must be found not guilty of the charges and accordingly acquitted.

### Summary of Evidence

17. Sheik Imtiaz Azam ('Mr. Azam'), Zainal Mohammed ('Mr. Zainal'), John Dinesh Chand ('Mr. John'), Alfred Keitu Sefeti ('Mr. Sefeti'), Navneet Chand ('Mr. Navneet'), Shalvin Vikash Chand ('Mr. Shalvin') and Niraj Nijendra Prasad ('Mr. Niraj') all testified that they had entered into Agreements with Asif Khan for the purchase of land located at Wailailai, Ba. For everyone except Mr. Mohammed there were executed Sales and Purchase Agreements tendered and/or receipts showing a payment of deposit to Asif Khan. However, none of these witnesses ever received their land they had been promised or a refund of the monies they had paid to Asif Khan.
18. Millka Rasake ('Ms. Rasake') testified the processes involved in re-zoning an agricultural land to residential lots and she further testified that no such application was made and that the land in question was registered under the name of Haliman, the Administrator in the Estate of Amin Khan. Ms. Rasake also testified that there was also a Grant for the Estate of Haliman in their records.

### Evaluation of Evidence

19. In evaluating the evidence, the Court must determine the testimonial trustworthiness of the evidence given by the witnesses based on the credibility and reliability of their evidence. In doing that, the Court should consider the promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide *State v Moroci Criminal Case No. HAC 161 of 2023 (26 April 2024)*)
20. For a proper analysis of the evidence, it is imperative for the Court to turn its mind to the elements for Obtaining Property by Deception, the elements for this offence is:
- i. the accused
  - ii. by deception
  - iii. dishonestly obtains property belonging to another
  - iv. with the intention of permanently depriving the other of the property

21. Section 316 of the Crimes Act defines deception as

*"deception" means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes –*

- (a) a deception as to intentions of the person using the deception or any other person; and*
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorized to cause it to do.*

22. Further, section 317(2) of the Crimes Act defines 'obtained property' as

317(2) For the purposes of section (and for the purposes of the application of section 306 to this section), the person is taken to have obtained property if, and only if—

- (a) the person obtains ownership, possession or control of it for himself or herself or for another person; or
- (b) the person enables ownership, possession or control of it to be retained by himself or herself; or
- (c) the person induces a third person to pass ownership, possession or control of it to another person; or
- (d) the person induces a third person to enable another person to retain ownership, possession or control of it; or
- (e) sub-section (7) or (8) applies.

23. Bearing in mind the elements of the offence with the definitions provided, I will evaluate the evidence accordingly. Further, for ease of reference, I will discuss Counts 5, 6, 9, 13, 17 and 19 together before discussing Count 8 and thereafter Counts 4, 14, 15, 16, 18 and 25.
24. Mr. Shalvin to whom Count 5 is relevant, testified that on 19 October 2018 he had made a payment of \$5,000.00 for a block of land being Lot 10 at Wailalal. He testified that he had purchased this from Asif Khan ('Asif').
25. He explained that Asif had advertised on Facebook that he was selling this piece of land and Mr. Shalvin further explained that the payment was made before a Justice of Peace ('J.P') namely, Kamla Prasad, who had also witnessed the Sales and Purchase Agreement that he and Asif had signed.
26. Mr. Shalvin confirmed that he was issued with a receipt being receipt number 00726 issued on 19 October 2018 for \$5,000.00 being payment for Lot 10 situated at Wailalal, Ba. This receipt was tendered as 'PEX5A'. With respect to the Sales and Purchase Agreement, he confirmed that it was entered into on 19 October 2018 and this was tendered as 'PEX5B'.
27. Mr. Azam, whose evidence relates to Count 6, testified that on 5 November 2011 he had gone and made a payment at Asif Khan's ('Asif') office at a building near Bank of Baroda with the name of Asif's business being AK Development. Mr. Azam testified that Asif took them to see a lot which was a quarter acre of land at Wailalal and after sighting the land, he then made the payment.
28. Mr. Azam stated that Asif issued him with a receipt being receipt number 00734 dated 5 November 2018 for the sum of \$7,000.00. This receipt was tendered as 'PEX1A'. He also explained that he entered into a Sales and Purchase Agreement with Asif for the land which he and Asif signed. The Sales and Purchase Agreement which was executed on 6 November 2018 by Mr. Azam and Asif was tendered as 'PEX1B'.
29. Mr. Azam then testified that after a year from making the payment, he called Asif and reminded him of the title which Asif had not given as such, Mr. Azam then demanded his money be returned. Mr. Azam explained that he had only paid \$7,000.00 whilst the remaining \$7,000.00 would be paid upon receiving the title to the land. Mr. Azam then stated that when Asif had not returned his money, he went to the Lands Department and it was then he was informed that the land did not belong to Asif and that Asif had deceived him.

30. When questioned as to how he had found out about the sale of the land, Mr. Azam stated that a billboard had been put up at the site and that Asif had also had a billboard advertising the same near his office. When questioned as to what the billboard advertised, Mr. Azam stated that the billboard was advertising the sub-division of the land. He also agreed that Asif had informed him that the land belonged to him but that he was never shown the title by Asif.
31. With respect to Count 9, Mr. Niraj testified that he had discovered that Asif Khan ('Asif') was selling lots at Itatoko near the main highway given the billboard which was advertising the same. After contacting Asif and thereafter meeting him to sight the lot being Lot 9, which was vacant, Mr. Niraj stated that he was told it was \$15,000.00 for the quarter acre of land and that he would be required to pay half as the deposit.
32. Mr. Niraj testified that he then went to Asif's office and paid \$7,500.00 in cash as deposit. He then explained that Asif took him to the J.P with the Agreement which they signed in front of the J.P and another person. Mr. Niraj confirmed that a receipt was issued on 13 November 2018 being receipt number 00738 for \$7,500.00 as the deposit of Lot 9. This receipt was tendered as 'PEX6A'. With respect to the Agreement, Mr. Niraj confirmed that he and Asif entered the same on 13 November 2018. The Agreement was tendered as 'PEX6B'.
33. Mr. John gave evidence regarding Count 13. He testified that on 11 January 2019 he heard that there was land for sale and that they were interested in buying it for their church. He testified that a Rajesh Chandra had taken him to the person who was selling the land, namely Asif Khan ('Asif'). Mr. John stated that Asif had informed him that there were several lots but only 2 lots were left as the rest had been sold.
34. He went on to testify that Asif informed that the price of the lot was \$12,000.00 and that it was located next to the half-constructed building. He explained that the lot was just next to the bridge and that they were informed they must pay half as such they paid \$2,000.00 on the same day and then they made 6 payments of \$300.00. He explained that they were issued with the receipt on 9 August 2019 being receipt number 064832 for \$2,000.00. This was tendered as 'PEX2A'.
35. Mr. John then explained that the 6 payments of \$300.00 was done by Shanil Chandra and Rajesh Chandra as they were the Treasurer and Pastor of the church respectively. However, when shown receipts, he confirmed that payments were made by Rajesh Chandra as follows:
- i. Receipt number 06848 dated 11 January 2019 for \$300.00 as payment for Lot 27;
  - ii. Receipt number 064844 dated 30 September 2019 for \$300.00 as payment for Lot 27;
  - iii. Receipt number 064859 dated 2 December 2019 for \$300.00 as payment for Lot 27;
  - iv. Receipt number 108302 dated 2 January 2020 for \$300.00 as payment for Lot 27;
  - v. Receipt number 108303 dated 31 January 2020 for \$300.00 as payment for Lot 27; and
  - vi. Receipt number 108306 dated 23 March 2020 for \$300.00 as payment for Lot 27.
- The above receipts were tendered as 'PEX2B'.
36. Mr. John then explained that following that month, they heard that Asif was overseas and that upon his return then after 1-2 months development would start.

37. Mr. Sefeti's evidence relates to Count 17 herein. He testified that sometime in September 2019, he had lodged a complaint regarding Asif Khan ('Asif') with respect to a property at Wailailai that he had deposited money for. Mr. Sefeti explained that Asif had then started to evade all his calls and meetings with respect to the property that Asif had promised to give Mr. Sefeti. Mr. Sefeti explained that he had purchased the lot of land to allow him to build his home.
38. Mr. Sefeti then explained that he waited for Asif to confirm when the lot would be ready as at the time they had signed the Agreement the lot was still in process. Mr. Sefeti explained that the property was to be handed over to him within 3 months but then Asif started evading him by not answering his calls and then he could not be located. He confirmed that he never received the land that he paid for or the money he paid as deposit.
39. With respect to the monies he deposited, Mr. Sefeti testified that he had deposited \$6,000.00 and was issued a receipt bearing receipt number 27827 issued on 1 February 2019 with this being for the purchase of Lot 14. This receipt was tendered as 'PEX3A'. Mr. Sefeti testified that there also had been a Sales and Purchase Agreement which he entered with Asif. The Agreement was tendered as 'PEX3B'.
40. Mr. Navneet gave evidence with respect to Count 19 and he testified that he had an agreement with Asif Khan ('Asif'), who was the owner of AK Development, for the sale of land. He explained that the land had been advertised on Facebook and on billboard along the Highway near Itatoko. Mr. Navneet stated that he had been seeing the advertisement since 2018 and when he saw it in 2019, he decided to buy 2 lots. He testified that he contacted Asif and 2 days later they arranged for a meeting at Asif's office in Ba Town.
41. Mr. Navneet explained that upon meeting Asif, he was shown the development site as well as the development plans. It was explained to Mr. Navneet that the land was under Asif's late grandmother's name and that he was in the process of having the land transferred to his name. Mr. Navneet stated that they discussed the sell price of the 2 lots of land that Mr. Navneet would purchase. Mr. Navneet testified that he was to buy Lots 7 and 24 at \$13,000.00 each. He explained that this was a discounted price given that he was buying 2 lots. Mr. Navneet stated that he informed Asif that he would not pay the full amount but would make a deposit to secure the contract.
42. Mr. Navneet then explained that he paid \$7,000.00 through a Bank Transfer and the same was deposited into Asif's account. Mr. Navneet then stated that Asif confirmed receiving the money and then told him to come to his office to get his receipt and Sales and Purchase Agreement. Mr. Navneet explained that although his deposit was for \$10,000.00, he only paid \$7,000.00 and that as the development progressed, he would pay the remaining deposit amount of \$3,000.00 and that once the title was ready, he would pay the outstanding consideration upon transfer.
43. Mr. Navneet stated that he was issued a receipt on 20 June 2019 being receipt number 064819 for \$7,000.00 as payment for Lots 6 and 27. The receipt was tendered as 'PEX4A'. With respect to the Sales and Purchase Agreement, Mr. Navneet confirmed that it was entered into on 25 July 2019 and this was tendered as 'PEX4B'.

44. Further, Mr. Navneet also tendered a proposed sub-division plan that had been given to him by Asif. This was tendered as 'PEX4C'. Mr. Navneet stated that as per this plan, he was to receive Lots 7 and 24. He further stated that he had enquired with the Surveyor to ask if the land was registered under Asif but that the Surveyor only confirmed that Asif was his customer and that the land was still being sub-divided.
45. With respect to the ownership of the parcel of land sold to these witnesses, Prosecution led the evidence of Milka Rasake ('Ms. Rasake') who testified that at the time she had given a statement in this matter, she had been employed as an Acting Lands Officer at the Divisional Lands Office, West based in Lautoka but is now a Valuer with Ministry of Lands. She stated, in her evidence, that their office had received a notification from Ba Police Station that complaints had been received regarding the sale of parcels of land in Ba. Given this, it was referred to the Divisional Lands Manager who then instructed Ms. Rasake to facilitate the request.
46. Ms. Rasake explained that the complaint was with respect to the status of the pre-sale of the land where the lease was prepared to Haliman as the Administrator in the Estate of Amin Khan. She testified that as a requirement in such a case of sale of lots of land, the lessee had to lodge an application for consent to re-zone because the land was agricultural land and the land was being sub-divided and turned into residential lots.
47. Ms. Rasake then went on to explain that their procedure required the lessee to lodge for re-zoning and once approved, it would be taken to Director of Town and Country Planning for final approval. After receiving this approval, it would come back to the Lands Office for consent to sub-divide. Ms. Rasake stated that in this matter, these procedures were never followed. Further, Ms. Rasake explained that at the time the land was not under Asif Khan's name but rather still under the name of Haliman as Administrator. When questioned if Asif Khan was a beneficiary to the land, Ms. Rasake stated that she was unaware.
48. From the Sales and Purchase Agreement tendered as 'PEX1B', 'PEX3B', 'PEX4B', 'PEX5B' and 'PEX6B', it is apparent that Asif Khan held himself as the registered proprietor of Crown Lease No. CL 5462 situated at Waitailai in the province of Ba. Further, the proposed sub-division plan that had been tendered as 'PEX4C', shows the proposed lots within the area once the land was sub-divided.
49. With the proposed sub-division plan and the Sales and Purchase Agreements tendered in evidence, it can be inferred that Asif Khan asserted that he was the registered proprietor of the land and because of this, he could enter into the various Sales and Purchase Agreements with Mr. Shalvin, Mr. Azam, Mr. Niraj, Mr. Sefeti and Mr. Navneet to sell various lots of land to them.
50. It is apparent from this inference that Mr. Shalvin, Mr. Azam, Mr. Niraj, Mr. John, Mr. Sefeti and Mr. Navneet believed Asif Khan and paid him the deposits as evident from the receipts tendered into evidence as 'PEX1A', 'PEX2A', 'PEX2B', 'PEX3A', 'PEX4A', 'PEX5A' and 'PEX6A'.
51. Thus, whilst considering the above in conjunction with the definition of deception as per section 316 of the Crimes Act as referred to herein, the Court is also mindful of the case of **Chute v State** Criminal Appeal No. HAA 015 of 2016 (8 December 2016) where His Lordship Justice Perera whilst dealing with an appeal pertaining to the offence of Obtaining Financial Advantage by Deception discussed the meaning of deception. It follows:

33. Section 316 of the Crimes Decree provides a definition for the word 'deception'. However, the said definition does not clearly explain what a "deception" is. In Blackstone's Criminal Practice 2007 at page 402 it is stated thus:

"The best known judicial definition of deception is that of Buckley J in *Re London and Globe Finance Corporation Ltd* [1903] UKLawRpCh 47; [1903] 1 Ch 728 at p.732:

To deceive is ...to induce a man to believe that a thing is true which is false.

This was quoted with approval in *DPP v Ray* [1973] UKHL 3; [1974] AC 370 and is consistent with the normal dictionary meaning of the term, ..."

35. It is necessary for the prosecution to prove that the deception operated in the mind of the person who is alleged to have been deceived. I am of the view that deception under section 318 of the Crimes Decree should be a deception as to existing facts or law and not a deception as to the future. With regard to deception as to the future, Blackstone's Criminal Practice 2007 states thus:

"For a deception to be an offence under the Theft Acts 1968 or 1978, it must be a deception as to existing facts, or as to law. A representation that something will happen in the future will not suffice. It therefore, will not do to argue that, when one person issues a worthless cheque to another, he has deceived the other into thinking that it will be honoured. For similar reasons, if a person falsely promises to perform a service for someone in the future, it cannot be argued that the person to whom the promise was made has been deceived into thinking that the service will be performed. There may indeed have been a criminal deception, but in either case, the deception must be expressed in terms of present fact."

52. Consequently, as per *Chute* [supra], Prosecution is required to prove that the deception was as to the existing facts or law and not a deception as to the future. With respect to this matter, Prosecution is to prove beyond reasonable doubt that at the time of Asif Khan obtaining the various amounts of monies from the above witnesses that he did so dishonestly and by deception with the intention of permanently depriving these witnesses of their property.
53. From the evidence of Ms. Rasake, it is apparent that Prosecution is attempting to highlight that Asif Khan was not the registered proprietor of the land and that the land was still under the name of Hallman as the Administrator in the Estate of Amin Khan.
54. In the case of *FICAC v Rabuka*; Criminal Appeal No. HAA 57 of 2018 (12 November 2018), the Chief Justice, Justice Gates considered whether the oral testimony of the Supervisor of Elections who was the Registrar of Political Parties under the Electoral Legislation with respect to Mr. Rabuka being the registered party leader of the Social Democratic Liberal Party ('SODELPA'), a registered political party was of sufficient quality and whether it addressed the necessary legal elements and facts requiring proof.
55. In *Rabuka* [supra] His Lordship Chief Justice Gates succinctly discussed how courts accepted certificates issued by public officials under common law and how certain statutes carried special evidentiary section stating that the certificate of the Registrar shall be acceptable for proof of matters covered in the certificate. Reference to various statutes were made in this regard by the Chief Justice. Even if there were no such evidentiary section, the Chief Justice stated that there was nothing to deter the Registrar from issuing an authoritative certificate which would have put to rest the contentions before the court.
56. Further, when considering the oral testimony in Court in *Rabuka* [supra] His Lordship found that the written statement by the Registrar which had been tendered by consent containing

information that Mr. Rabuka was the leader for SODELPA was lacking with respect to certain other information to prove the fact mentioned in the document. An analysis of the Registrar's oral testimony was also found to be lacking as the Registrar failed to confirm if SODELPA was registered on the date alleged in the charge. Thus, His Lordship Chief Justice held that the quality of evidence on the element of the charge was low and that it was well within the Magistrates' conclusion to hold that SODELPA had not been proven to be a registered party and Mr. Rabuka an office holder required to make the financial declaration, beyond reasonable doubt.

57. When considering the issue before the Court herein in line with *Rabuka* [supra], the Court notes that Prosecution failed to adduce any documentary evidence with respect to whether the Accused was in fact the registered proprietor for the piece of land he had sold various parcels of lands to the witnesses herein. If Prosecution was alluding that the lots of land being sold belonged to the Estate of Amin Khan whose Administrator was Haliman, then Prosecution ought to have provided such evidence to the Court. Prosecution cannot expect the Court to infer such evidence.
58. Moreover, no evidence was adduced by Prosecution to highlight that Asif Khan had at the material time dishonestly obtained the various amounts of monies from the witnesses herein and that he had done this by deception with the intention to permanently deprive them of their property.
59. Thus, Prosecution's failure to adduce the above evidence or even adduce any supporting documentary evidence in this regard leads the Court to find that Prosecution has failed to prove beyond a reasonable doubt that the Accused dishonestly obtained the various amounts of monies from the witnesses herein and that he had done this by deception and with the intention to permanently deprive them of their property.
60. Further, it is apparent from the above evidence of the witnesses that the observation is one of identification and not recognition. As the observation is one of identification, the guidelines from *R v Turnbull* [1977] QB 224, most commonly known as the Turnbull Guidelines, are relevant in this instance. The following questions would have better assisted the Court when dealing with identification in such a manner as in this case:
  - i. The length of time the accused was observed by the witness;
  - ii. The distance the witness was from the accused;
  - iii. The state of the light at the time of the observation;
  - iv. Was the observation impeded in any way?
  - v. Had the witness seen the accused before? If so, how often? If only occasionally, had the witness any special reason for remembering the accused?
  - vi. The length of time that elapsed between the original observation and the subsequent identification to the police;
  - vii. Was there any material discrepancy between the description given by the witness and the actual appearance of the accused?
61. Each of the witnesses herein provided various descriptions of the Asif Khan whom they had dealings with regarding the parcels of land they bought. Mr. Shalvin described Asif Khan as being a bit fat and tall, he wasn't light skinned or dark skinned but was mid-tone but fairer than Mr. Shalvin, with no beard at the time. Mr. Azam described Asif as being fit like him and a bit taller than him whilst being a bit darker than Mr. Azam. He stated that at the time Asif did not

have a beard but a moustache and that he had white patches on his neck and above his eyebrows.

62. Mr. Niraj testified that before 13 November 2018, he had met Asif 2-3 prior and that he was not fair but had a brownish complexion and was a fit person. He further stated that Asif did not have a beard and was taller than he was. Mr. John described Asif as being of medium built and as being taller than him and not clean shaved at the time.
63. Mr. Sefeti described Asif as being of huge built with a beard as well as dark. He also stated that Asif was taller than him. Mr. Navneet described Asif as being built with a moustache, short hair and a round face.
64. Prosecution led the evidence of DC Himanshu who testified that he was currently the Investigating Officer ('I.O') of this matter as the previous I.O was currently away on mission in South Sudan. He explained that he was appointed as I.O by the Crime Officer sometime in July 2025 to then serve the summons on witnesses. He testified that he read through the file and then served the summons. DC Himanshu then testified that there was an Accused Identification Form in the file for Asif Khan and the form included details relating to his name as per his Birth Certificate, date of birth, place of work, residence, phone contact and his signature. The Accused Identification Form with a photograph of Asif Khan was tendered as 'PEX7'.
65. When questioned by the Court on how he could confirm that the photograph in 'PEX7' was a photograph of Asif Khan, the Accused in this matter, DC Himanshu explained that when the previous I.O was present in Ba, he had helped the I.O in executing the bench warrant against Asif Khan and the I.O had shared the same photograph of Asif Khan with his details in their 'whatsapp' forum.
66. The Court is mindful that when 'PEX7' was shown to Mr. Shalvin, Mr. Azam, Mr. Niraj, Mr. John, Mr. Sefeti and Mr. Navneet, they all confirmed that the photograph was of Asif Khan, the person whom they had been dealing with and to whom they had paid money to for the parcels of land they purchased.
67. There was no relevant evidence before the Court regarding the length of time each of these witnesses had observed the person whom they are saying is the Accused in this matter. Further, DC Himanshu's evidence alludes to the fact that he had never had the opportunity to personally see or observe the Accused but rather his observation was based on his observation on the photograph contained with the Accused Identification Form and because the previous I.O had supposedly shared a photograph of the Accused on their 'whatsapp forum'.
68. In assessing this evidence, little weight is given by the Court regarding the identification of the Accused given that Prosecution failed to elicit the necessary and required evidence to allow the Court to consider the same beyond a reasonable doubt.
69. Regarding Count 13, Mr. Zainal testified that on 11 November 2018, they were to pay \$4,500.00 to Asif Khan ('Asif') as a deposit. He explained that his wife made the payment and that they were issued a receipt. He testified that they were then informed that after 6 months they would receive all documents for the land at Wailailai but this never eventuated. He explained that the land was next to the main highway and there was an advertisement on a billboard which stated

AK Development, plots for sale with the drawings of the plot, Mr. Zainal then testified that they went to the Police and lodged a complaint against Asif.

70. Mr. Zainal further testified that he had met Asif on the day he went to see the land, He described Asif as being a sweet talker, bit chubby with Asif reaching up to his shoulder as Mr. Zinal was 6 feet 9 inches tall. Mr. Zinal stated that Asif did not have a beard and that he could not recall his facial features but when shown a photograph, he confirmed that the photograph was of Asif.
71. With respect to the evidence from Mr. Zainal, the Court reiterates its discussion in paragraphs 51-59, 60 and 67-68. The Court should also mention that Prosecution failed to produce any documentary evidence such as receipts to show that Mr. Zainal had paid monies to Asif Khan. This leads the Court to find that Prosecution has failed to prove beyond a reasonable doubt that the Accused dishonestly obtained \$4,500.00 from Mr. Zinal and that he had done this by deception and with the intention to permanently deprive them of their property.
72. With respect to Counts 4, 14, 15,16, 18 and 25, Prosecution failed to elicit any evidence beyond a reasonable doubt that the Accused by deception dishonestly obtained \$2,000.00 from Sabiya Saneez Hussain, \$5,000.00 from Divya Chand, \$5,000.00 from Avishek Prasad, \$5,000.00 from Aman Prem Prakash, \$7,500.00 from Sunil Kumar and \$1,500.00 from Bhavna Bhavika Devi with the intention to permanently deprive each of these persons of their property.

#### **Determination**

73. In totality, Prosecution has failed to prove beyond reasonable doubt that the Accused misrepresented a false fact that he had the legal capacity to sell the property and that at the time he misrepresented this fact that deception operated in the mind of the Accused to make the respective complainants believe that he had the capacity to sell and that the Accused's misrepresentation was false in law and in fact.
74. I find that Prosecution has failed to discharge its burden in proving all the element for Obtaining Property by Deception for Counts 4, 5, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19 and 25 beyond reasonable doubt.
75. I, therefore, find the Accused, Asif Khan, not guilty as charged for Counts 4, 5, 6, 8, 9, 13, 14, 15, 16, 17, 18, 19 and 25 and hereby acquit him forthwith.
76. Any party aggrieved with this decision has 28 days to appeal to the High Court.



  
N. Mishra  
Resident Magistrate

**"ANNEXURE"**

**CONSOLIDATED CHARGE**

**Count 1**  
**Statement of Offence**

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

**Particulars of Offence**

**Asif Khan** between the 12<sup>th</sup> day of January and 21<sup>st</sup> day of December, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$6000.00 belonging to **Sonal** with the intention of permanently depriving **Sonal** of the \$6000.00.

**Count 2**  
**Statement of Offence**

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

**Particulars of Offence**

**Asif Khan** between the 21<sup>st</sup> day of September, 2018 and 1<sup>st</sup> day of October, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$11500.00 belonging to **Vikrant Krishna Nair** with the intention of permanently depriving **Vikrant Krishna Nair** of his property.

**Count 3**  
**Statement of Offence**

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

**Particulars of Offence**

**Asif Khan** between the 25<sup>th</sup> day of September, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$4500.00 belonging to **Krishnil Kumar** with the intention of permanently depriving **Krishnil Kumar** of his property.

**Count 4**  
**Statement of Offence**

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

**Particulars of Offence**

**Asif Khan** between the 25<sup>th</sup> day of September, 2018 at Ba Town, Ba in the Western Division by deception dishonestly obtained \$2000.00 belonging to **Sabiya Saneez Hussain** with the intention of permanently depriving **Sabiya Saneez Hussain** of her property.

Count 5  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 19<sup>th</sup> day of October, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Salvin Vikash Chand** with the intention of permanently depriving **Salvin Vikash Chand** of his property.

Count 6  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 5<sup>th</sup> day of November, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$7000.00 belonging to **Sheik Imtiaz Azam** with the intention of permanently depriving **Sheik Imtiaz Azam** of his property.

Count 7  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 9<sup>th</sup> day of November, 2018 and 3<sup>rd</sup> day of May, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$4300.00 belonging to **Davendra Naidu** with the intention of permanently depriving **Davendra Naidu** of his property.

Count 8  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 11<sup>th</sup> day of November, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$4500.00 belonging to **Zainal Mohammed** with the intention of permanently depriving **Zainal Mohammed** of his property.

Count 9  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 13<sup>th</sup> day of November, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$7500.00 belonging to **Niraj Nijendra Prasad** with the intention of permanently depriving **Niraj Nijendra Prasad** of his property.

Count 10  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 27<sup>th</sup> day of November, 2018 and 27<sup>th</sup> day of April, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$2500.00 belonging to **Sohil Armaan Khan** with the intention of permanently depriving **Sohil Armaan Khan** of his property.

Count 11  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 3<sup>rd</sup> day of December, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$7000.00 belonging to **Nivan Mishok Chand** with the intention of permanently depriving **Nivan Mishok Chand** of his property.

Count 12  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 12<sup>th</sup> day of December, 2018 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Shalini Saleshni Devi** with the intention of permanently depriving **Shalini Saleshni Devi** of her property.

Count 13  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 11<sup>th</sup> day of January, 2019 and 4<sup>th</sup> of September, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$3800.00 belonging to **John Dinesh Chand and Rajesh Chandra** with the intention of permanently depriving **John Dinesh Chand and Rajesh Chandra** of his property.

Count 14  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 17<sup>th</sup> day of January, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Divya Chand** with the intention of permanently depriving **Divya Chand** of her property.

Count 15  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 17<sup>th</sup> day of January, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Avishek Prasad** with the intention of permanently depriving **Avishek Prasad** of his property.

Count 16  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 25<sup>th</sup> day of January, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Aman Prem Prakash** with the intention of permanently depriving **Aman Prem Prakash** of the \$5000.00.

Count 17  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 1<sup>st</sup> day of February, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$6000.00 belonging to **Alfred Keitu Sefeti** with the intention of permanently depriving **Alfred Keitu Sefeti** of his property.

Count 18  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 5<sup>th</sup> day of February, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$7500.00 belonging to **Sunil Kumar** with the intention of permanently depriving **Sunil Kumar** of his property.

Count 19  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 20<sup>th</sup> day of June, 2019 4<sup>th</sup> of September, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$7000.00 belonging to **Navneet Chand** with the intention of permanently depriving **Navneet Chand** of his property.

Count 20  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 22<sup>nd</sup> day of February, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$2000.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 21  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 27<sup>th</sup> day of February, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Vandhana Datt** with the intention of permanently depriving **Vandhana Datt** of her property.

Count 22  
Statement of Offence

**Obtaining Property By Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 13<sup>th</sup> day of May, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$500.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 23  
Statement of Offence

**Obtaining Property By Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 31<sup>st</sup> day of May, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$100.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 24  
Statement of Offence

**Obtaining Property By Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 4<sup>th</sup> day of June, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$400.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 25  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 24<sup>th</sup> day of June, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$1500.00 belonging to **Bhavna Bhavika Devi** with the intention of permanently depriving **Bhavna Bhavika Devi** of his property.

Count 26  
Statement Of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 1<sup>st</sup> day of July, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$460.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 27  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 7<sup>th</sup> day of August, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$200.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.

Count 28  
Statement of Offence

**Obtaining Property by Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 8<sup>th</sup> day of August, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Shynil Sanjit Kaur** with the intention of permanently depriving **Shynil Sanjit Kaur** of her property.

Count 29  
Statement of Offence

**Obtaining Property By Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 12<sup>th</sup> day of August, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$5000.00 belonging to **Shynil Sanjit Kaur** with the intention of permanently depriving **Shynil Sanjit Kaur** of her property.

Count 30  
Statement of Offence

**Obtaining Property By Deception** – Contrary to Section 317(1) of the Crimes Act No. 44 of 2009.

Particulars of Offence

**Asif Khan** between the 18<sup>th</sup> day of September, 2019 at Ba Town, Ba in the Western Division by a deception dishonestly obtained \$300.00 belonging to **Ravlin Sen** with the intention of permanently depriving **Ravlin Sen** of his property.