

Between:

REGINA

and

BRIJ NAND MAHARAJ s/o RAM SAMUJH
MAHARAJ

Mr. S. Singh for the Prosecution
Accused in Person

JUDGMENT

The accused, Brij Nand Maharaj s/o Ram Samujh Maharaj is charged with twelve counts of fraudulent conversion contrary to section 331(1)(c)(i) of the Penal Code. The particulars of each offence are set out in the Information of the Director of Public Prosecutions.

The three gentlemen assessors have unanimously expressed the opinions that the accused is guilty with respect to Counts 1 to 12 but not guilty with respect to Count 13.

I have directed myself in accordance with my summing-up. However, in the light of the unanimous opinions of the assessors I have found it necessary to review the evidence in this case again as I have now done.

In this case the crucial question was: has the prosecution proved beyond all reasonable doubt that the accused was entrusted with the money stipulated in the various counts to be used for a particular purpose and if so what, or were they as claimed by the accused monies paid outright as his fees

for the work he would do with respect to obtaining working visas to New Zealand for the various complainants.

I have myself reached the clear conclusion after reviewing the whole evidence in the case that the main effect of the evidence given by the various complainants is that the money was paid outright to accused and not by way of entrustment which is a necessary element in the offence of fraudulent conversion and upon which the onus is on prosecution to discharge. I am not satisfied it has done so. In any event there is in my opinion at least much doubt about the question of the entrustment within the meaning of the criminal law.

In these circumstances I think it is unsafe as a matter of law to convict the accused on the various counts with which he has been charged.

The benefit of doubt that exists in this case must be resolved in favour of accused.

In the result it is the judgment of this Court that the accused should be found not guilty as charged and he is acquitted accordingly.

(T.U. Tuivaga)
Chief Justice

Suva,
6th May, 1982.