IN THE FIJI COURT OF APPEAL
Appellate Jurisdiction
Criminal Appeal No. 38 of 1985.

Between :

JANARDHAN RAGHWA NAIDU f/n Appal Sami Naidu
Appellant

- and -

R E G I N A M

Respondent

Mr. M. Patel and Mr. D. S. Naidu for the Appellant
Mr. V. J. Sabharwal for the Respondent.

Date of Hearing : 3rd July, 1985.

Delivery of Judgment: 20th July, 1985.

JUDGMENT OF THE COURT

SPEIGHT, VP

The appellant was convicted in the Supreme Court at Lautoka on the 26th of September, 1984 on two charges each of which alleged that as a betting clerk at Grant's Waterhouse Agency at Lautoka he had fraudulently embezzled the sum of $4,800 received by him on account of his employer. The relevant dates of the offence were the 8th April, 1982 and the 16th April, 1982. Grant's Waterhouse runs a number of betting shops in Fiji and there were some four or five clerks, including the appellant, employed in the Lautoka office and at the relevant time Mr. Narish Chandra was the local Manager. Members of the public - whom we will call

punters - place bets on horse races being conducted in various cities in Australia. These were usually made by cash over-the-counter payments to one or other of the clerks employed in the office. Each of these men had books of betting vouchers which were made out in sets of four and were used to record each bet placed. The dates and the amounts of the race and the horse would be suitably entered by the clerk. The first and second copy went to the head office in Sydney and the local office in Suva respectively. The third voucher was given to the cash punter and the fourth voucher left in the book as a record. At the end of each day's betting, the clerk was obliged to balance his takings against the record in his books and account for the same to the Branch Manager.

There was also a system of credit betting for customers who had the Branch Manager's approval for this purpose. These persons had some sort of written authorization, details of which were not made clear in the record, but for present purposes it is apparent that credit bets should also have been entered in the four part voucher system but in such cases the punter did not receive his copy. It was left in the book so that at the end of the day when they balanced the presence of a voucher with a credit customer's name on it would enable balance to be had - otherwise the cash received would appear to be short.

It is apparent that like many well intentioned systems, this one was not observed as it should have

have been. There was no denying on the part of the Manager that he had allowed the appellant and, so it would seem, other employees, to themselves grant credit - perhaps to their friends or others - without them being regarded as persons authorized for that purpose in the register of credit betters. Of course if an authorized credit punter did not pay in due course it would be a debt owing to the Company, and it would be the Company that would have the responsibility of attempting to collect from him. In those cases where individual clerks were allowed to deviate from the approved system, it became their individual responsibility to pay any shortage from their own pockets.

The Manager, Mr. Narish Chandra, agreed that he had allowed the appellant to do this on previous occasions and had accepted the appellant's own cheque at a later stage in lieu. Indeed he himself had also to his financial disadvantage been obliged to foot the bill from a defaulting unauthorized credit punter.

Although it was part of the system that a balance should be taken after each betting day, it seems that slackness also arose in this area and that sometimes a balance would cover several days work. Hence, on the 8th of April, 1982 the appellant was balancing all his accounts for four days together and he advised the Manager that he was $4,800 short and that he would give a personal cheque

to cover the shortage. He said that he had taken credit bets from some punters and would have to collect from them himself in due course. On this first occasion he told Mr. Chandra that one of the men was named Philip and in that instance he had given Philip the punters copy of the voucher, which of course, even given the irregularities, would be an odd thing to do. He would thereby lose his record of the transaction as a credit bet.

Again on the 14th of April, the balance was a day or so late and was short, and again the appellant gave the Manager another cheque for $4,800 saying that it represented credit bets he had accepted. It is relevant to note that the total amount which appellant should have accounted for on the first occasion was $5280 and on the second occasion $6910, so that the appellant's claim if true represented credit betting allowed by him for the greater proportion of his transactions, and there was evidence that he was a man of no substance financially.

The Manager said that in respect of these matters, he was not shown punters copies of the alleged credit bets. In due course when the two cheques were banked, they were dishonoured, and enquiries showed that the appellant only had one or two dollars in his bank account at the time. The matter was reported to the police and the appellant was interviewed. He repeated the claim that all these shortages, which he attempted to cover with his

own cheque, were credit bets which he had allowed, but that he was quite unable to say how many such transactions there had been, who the punters were, nor did he have any record of any of the transactions.

At the conclusion of the evidence for the prosecution, counsel for the appellant submitted that there was no case to answer. The learned Judge ruled that there was. The appellant then made an unsworn statement and called a witness who gave somewhat similar evidence concerning the practice of these unauthorized credit bets.

At the close of the defence evidence, counsel for the appellant asked that the first witness - the Branch Manager - be recalled for further cross-examination but this was declined.

On appeal a number of grounds were set out in the notice but only three of these were argued. Ground 5 was argued first namely that the learned Judge had been wrong in ruling that there was a prima facie case to answer. This was based primarily on statement made by the learned Judge when he ruled that there was a case. He said:

> "Only the Company copy of the vouchers was retained and according to the evidence this indicated that they were all cash transactions and a little later he (appellant) says that he handed the punters copies of the vouchers over to the credit betters in every case - contrary to the correct procedure."

The lack of record of the alleged credit bets was taken by the learned Judge to be of great significance in making his decision in respect of this application. It is true, as counsel submits, that the record does not show that the appellant in so many words said that he had handed over all the punters' copies. He did say however that he had handed over the punter's copy in respect of the man Philip and he had told the police in his caution statement that he has no record of any of the credit bets he was claiming. Similarly the Manager had said he had not been able to find any such record. Although, therefore, in respect of the matter raised there was perhaps a slip of the tongue by the learned Judge, we do not think that this indicates a material misunderstanding on his part of the issue he was examining on that application. He said, and quite correctly, that the essence of the prosecution case was, that if there were genuine credit bets, it was part of a practice which the employer had permitted, especially as it required the employee to repay, then there would be no offence of embezzlement. That offence, said the Judge, would only be made out if the appellant having received the money fraudulently misused it. It is apparent from the whole of his remarks that he turned his mind to the question as to whether there was evidence upon which it could be concluded that the money had been improperly diverted from cash bets to the appellant's own use and the Judge ruled that there was such evidence, and accordingly a prima facie case to answer. Reading his observations as a whole we are of the view that he was perfectly correct.

GROUND 3 : It was submitted that the learned Judge erred in not treating the Branch Manager Mr. Narish Chandra as an accomplice thus requiring a warning as to corroboration. All we need to say is that there is no trace of any evidence to suggest that this man was involved criminally himself in the way that would make him an accomplice or other person requiring corroboration as discussed in Davies v. DPP (1954) AC 378. Nor indeed was he even within the class of persons who it is sometimes said have a possible interest of their own to serve. Certainly Chandra's behaviour had been sloppy and his observation of the rules of the Company left much to be desired. In his summing-up to the assessors the learned Judge was highly critical of him as a witness and warned the assessors to exercise great care in their consideration of his evidence. In our view, he was not obliged to add more.

GROUND 6 : This was the final matter canvassed, namely that the application at the close of the trial to recall the Branch Manager for further cross-examination was refused. It is complained that this would have given further opportunity to "test his credibility." Nothing was put before us to show fresh matters which had arisen which might require further exploration. We are told from the bar it was desired to question him concerning a red book in which the credit betters were listed. As to this, we accept what Mr. Sabharwal said on behalf of the Crown, that there was no new matter emerging for the existence of such document had been known of during the course of

the trial so that the circumstances which might persuade a Judge to accede to such a request were not present. In any event it is a discretionary matter and nothing has been shown to us which would indicate that the Judge erred in his ruling. There were three other grounds of appeal listed in the papers filed but these have been abandoned.

Accordingly the appeal is dismissed.

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Vice-President

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Judge of Appeal

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Judge of Appeal