

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 032 OF 2013S

BETWEEN

ADWIN PRANIL SHANKAR

APPELLANT

AND

THE STATE

RESPONDENT

Counsels : Mr. M. Raza for Appellant
 : Mr. Y. Prasad for Respondent
Hearing : 29 August, 2013
Judgment : 11 June, 2014

JUDGMENT

1. On 6 August 2012, the appellant (accused) appeared in the Nausori Magistrate Court, on the following charge:

Statement of Offence

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: *Contrary to section 318 of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ADWIN PRANIL SHANKAR, on the 10th day of February, 2010 at Nausori in the Central Division, dishonestly obtained a financial advantage of \$4000.00 by deception from **MOHINI LATA PRAKASH**

2. The appellant waived his right to counsel. He had previously pleaded not guilty to the charge, when it was read and explained to him on 11 January 2012.

3. On 6, 8 and 15 August 2012, the matter proceeded to trial. The prosecution called 4 witnesses, which included the complainant. A prima facie case was found against the accused. He choose to remain silent. He called 3 witnesses. The court delivered a written judgment on 11 April 2013, finding the appellant guilty as charged. On 20 June 2013, the court sentenced the appellant to 2 years imprisonment, with a non-parole period of 1 ½ years imprisonment.
4. The appellant was not happy with the above decision. He appealed against his conviction and sentence on 1 July 2013. His appeal grounds were as follows:

“...1. THAT the Learned trial Magistrate erred in law and in fact in convicting the Appellant by failing to evaluate and/or analyse the evidence adduced by the prosecution and the defence adequately and/or at all.

2 THAT the Learned Magistrate erred in law and in fact in convicting the Appellant when the facts of the case does not constitute any criminal offence or at all.

3 THAT the Learned trial Magistrate erred in law and in fact in failing to consider the Defence case or at all.

4 THAT the Learned trial Magistrate erred in law and in fact in misdirecting herself on the elements of offence of Obtaining financial advantage by deception.

5 THAT the sentence is harsh and excessive in all the circumstances of the case.

6 THAT the Appellant reserves his right to add, alter any further grounds of appeal upon receipt of the Court Record...”

5. We will now discuss the appeal grounds:

(i) Conviction Appeal: Ground No. 1:

6. It is well settled that in the Magistrate Court, the trial Magistrate is the judge of fact and judge of law. He or she listens to the evidence tendered by the litigants in a criminal trial. In this case,

the learned Magistrate listened to the parties' witnesses on 6, 8 and 15 August 2012. Each witness was subjected to an examination-in-chief, cross examination and re-examination. Both litigants – that is, the State and the accused - were trying to persuade the judge of fact to accept their version of events. The trial Magistrate accepted the prosecution's version of events, because she found the state witnesses credible. She was entitled to do so, as the judge of fact. In my view, she did not err, and this ground is dismissed.

(ii) Conviction Appeal: Ground No. 2:

7. The appellant was charged with "Obtaining a financial advantage by deception", contrary to section 318 of the Crimes Decree 2009. The elements of the offence were as follows:
 - (i) the accused
 - (ii) by a deception
 - (iii) dishonestly
 - (iv) obtains
 - (v) a financial advantage
 - (vi) from the complainant.

8. According to the Oxford Advance Learners Dictionary, 6th edition, 2000, Oxford University Press, "deception" means "the act of deliberately making somebody believe something that is not true". "Dishonesty" means "not being honest" or "intending to deceive people". "Advantage" means "a thing that helps you to be better or more successful than other people".

9. As mentioned in paragraph 6 hereof, the trial Magistrate was the judge of fact and judge of law. After hearing the parties' witnesses, she found the prosecution's version of events credible, and accepted the same. She found the accused deceived the complainant with a so-called loan to obtain \$4,000 from her. She found this as "Obtaining a financial advantage by deception", and found the accused guilty as charged, and convicted him accordingly. I find she had not erred, and I dismiss this ground accordingly.

(iii) Conviction Appeal: Grounds No. 3 and 4:

10. I will consider these grounds together. They really follow on from the discussion on conviction appeal grounds no. 1 and 2. On looking at the record, and the court's judgment, the Learned trial Magistrate obviously rejected the defence's version of events. She considered their witnesses' evidence not credible, and thus rejected them. She was the judge of fact, and was

entitled to do the above. Furthermore, in my view, the Learned Magistrate did not misdirect herself on the elements of the charge. She correctly understood them, and correctly applied the facts to the same. These grounds are not made out, and I therefore dismiss them.

(iv) Sentence Appeal: Ground 5:

11. I have carefully read the Learned Magistrate's sentencing remarks. In my view, she applied the correct law and procedure in sentencing the accused. She relied on the authority of State v Atil Sharma, Criminal Case No. HAC 122 of 2010, High Court, Lautoka. She identified some aggravating and mitigation factors, made the necessary addition and deduction, and arrived at a sentence of 2 years imprisonment, with a non-parole period of 1 ½ years imprisonment. In my view, she did not err in sentencing the accused, and I dismiss this ground.
12. In summary, I dismiss the appellant's appeal against his conviction and sentence. I order so accordingly.



Salesi Temo
JUDGE

Solicitor for Appellant : **M. Raza and Associates, Suva.**
Solicitor for Respondent : **Office of the Director of Public Prosecution, Suva.**