

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 118 OF 2014

STATE

v

PREETIKA ANUWESH LATA

Counsel: Mr. Alvin Singh for State
Mr. Ronil Kumar for Accused

Dates of Hearing : 14th 16th & 17th & 20th November, 2017
Date of Summing Up: 21st November, 2017

SUMMING UP

Madam Assessors and Gentlemen Assessor,

- [1] It is now my duty to sum up to you. In summing up the case I will direct you on matters of law which you must accept and act upon. You must apply the law that I direct you on in this case. On the facts however, it is for you to decide what facts to accept and what facts to reject. In other words, you are the judges of fact.
- [2] If, in the course of this summing up, I express my opinion on the facts, or if I appear to do so, it is entirely a matter for you whether you accept what I say or form your own opinions.
- [3] Both Counsel have made submissions to you at the end of the trial about how you should find the facts of the case. That is their right as Counsel. But you are not bound by closing submissions. If what they have said appeals to your own sense of judgment, then you may accept them. You must decide what

really happened in this case as reasonable members of the community.

- [4] You will not be asked to give reasons for your opinions but merely your opinions themselves. Your opinions need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me but they will carry great weight with me when I come to deliver my judgment.
- [5] On the question of proof, I must direct you as a matter of law, that the prosecution bears the burden of proving the Accused's guilt. That burden remains throughout the trial upon the prosecution and never shifts. There is no obligation upon the Accused person to prove her innocence. Under our system of criminal justice, an accused person is presumed innocent until he is proven guilty.
- [6] The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the Accused person before you can express an opinion that he is guilty on each count. If you have any reasonable doubt about the guilt of the Accused, you must express an opinion that she is not guilty. You may only express an opinion of guilt if you are satisfied so that you are sure that she committed the offences alleged in the information.
- [7] Your deliberations must be based solely and exclusively upon the evidence which you have heard in this court and upon nothing else. You must disregard anything you may have heard or read about the case outside this court. Your duty is to apply the law to the evidence you have heard and draw reasonable inferences from facts proved by evidence.
- [8] In assessing evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.
- [9] In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.
- [10] Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw heard and felt the offence being committed. Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, bank statement is an example, if you believe that such a record

was made. Then you can act on such evidence. You can take into account the contents of the document if you believe that contemporaneous recordings were made at the relevant time on the document.

- [11] The Accused is charged with one count of Receiving and one count of Money Laundering. Information reads as follows:

FIRST COUNT
Statement of Offence

RECEIVING: Contrary to Section 306 (1) of the Crimes Decree, No. 44 of 2009.

Particulars of Offence

PREETIKA ANUWESH LATA between the 14th day of February 2013 and 14th day of May 2014, at Lautoka in the Western Division, dishonestly received \$285,680.96, knowing or believing the property to be stolen.

SECOND COUNT
Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (3) (b) of the Proceeds of Crime Act of 1997.

Particulars of Offence

PREETIKA ANUWESH LATA between the 14th day of February 2013 and 14th day of May 2014, at Lautoka in the Western Division, received money to a total value of \$285,680.96, and she knew or ought to have known the money being proceed of crime were derived directly or indirectly from some form of unlawful activity.

- [12] To prove the first count where the accused is charged with the offence of Receiving, the prosecution must prove the following elements beyond reasonable doubt;

- (i) the accused;
- (ii) received stolen property;
- (iii) dishonestly and knowing or believing the property to be stolen.

- [13] The Accused does not dispute the first element which is based on identity. To prove the second element, the prosecution must prove beyond reasonable

doubt that the accused received stolen money.

- [14] To prove the third element, the prosecution must prove beyond reasonable doubt that the accused received the stolen money dishonestly and she knew or believed that the money is stolen. You will need to examine the evidence in relation to Accused's conduct to ascertain her state of mind at the relevant time.
- [15] To prove the 2nd count where the accused is charged with Money Laundering the Prosecution must prove that,
- (i) the Accused;
 - (ii) received money that are proceeds of crime;
 - (iii) accused knew, or ought reasonably to have known that the money was derived or realized directly or indirectly from some form of unlawful activity.
- [16] The offence of Money Laundering is not predicated on proof of the commission of a serious offence or foreign serious offence.
- [17] The Accused does not dispute the identity. Other two elements must be proved beyond reasonable doubt.
- [18] You would also note that the Accused is charged with two counts. Please remember that you should consider each count separately. You must not assume that the accused is guilty of the other count just because you find him guilty of one count. You must be satisfied that the prosecution has proved all the elements of each count separately.
- [19] Police Investigating Officer read the caution statement given by the Accused to police. Defence does not challenge what is contained in it. Therefore you can safely act upon her caution statement. Prosecution also tendered the previous statement made to police by the brother of the Accused Chandra and the letter written to FSC by the Accused herself on the 8th August, 2014. I now direct you as to how you should approach a previous statement of witness.
- [20] A previous statement made by a witness is not evidence in itself unless it is adopted and accepted by the witness under oath as being true. You can of course use those statements to test the credibility of the witness.
- [21] In testing the consistency and credibility of a witness you should see whether the witness is telling a story on the same lines without variations and

contradictions. You must however, be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter. If it is shown to you that a witness has made a different statement or given a different version on some point, you must then consider whether such variation was due to loss of memory, faulty observation or due to some incapacitation of noticing such points given the mental status of the witness at a particular point of time or whether such variation has been created by the involvement of some another, for example by a police officer, in recording the statement where the witness is alleged to have given that version.

- [22] You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
- [23] You must also consider the issue of omission to mention something that was adverted to in evidence on a previous occasion on the same lines. You must consider whether such omission is material to affect credibility and weight of the evidence. If the omission is so grave, you may even consider it to be a contradiction sufficient enough to affect the credibility or weight of the evidence or both.
- [24] You will remember you were asked to go out of the Court room when Accused's brother Ritesh Chandra was giving evidence. The Counsel for Prosecution made an application in your absence and complained that witness Chandra was giving evidence contrary to his previous statements made to police and that he had turned hostile to the Prosecution. Defence Counsel did not raise any objection to this application. Considering the application made by the Counsel for Prosecution, the Prosecution was allowed to treat Ritesh as a hostile witness and to cross examine him on the previous statement to police.
- [25] Prosecution says that Ritesh had not told police that her sister received a telephone call from Sudhanshu in late night of 13th August, 2014 and this omission is material enough to reject his evidence. Prosecution also tendered Ritesh's previous statement in evidence.
- [26] I must direct you as to how you should approach Ritesh's evidence. The evidence of a hostile witness would not be totally rejected, but it should be subjected to close scrutiny and that portion of the evidence which is consistent with the case of the Prosecution may be accepted. You decide what

weight you give to Ritesh's evidence, what parts of his evidence you accept and what parts you reject. Please remember that a statement made to police is not evidence unless it is adopted and accepted by the witness under oath as being true. You can of course use it to test his credibility.

- [27] I will now remind you of the Prosecution and Defence cases. In doing this it would not be practical for me to go through the evidence of every witness in detail and repeat every submission made by counsel. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

Case for the Prosecution

PW 1 Deepak Raj

- [28] In 2013, Deepak Raj was the Manager-Finance at Fiji Sugar Corporation (FSC). In 2013 and 2014 he was supposed to handle the finance operations of FSC and was in-charge of payroll of roughly around 2,000 employees.
- [29] In 2011 Sudhanshu Sharma joined the FSC as the Payroll Officer. According to the Staff History Card, Preetika A. Lata is Sudhanshu's wife. Payroll Officer handles staff and non-Staff Payroll. In 2012, new Payroll Processing software called Pay Global System was implemented. Sudhanshu was responsible for processing and consolidating the Payroll and generating bank files. Payroll Officer advises the Accountant, Head Office, to prepare cheques and then sends all the Bank files with the cheques to respective banks.
- [30] Sudhanshu was well versed with this system and was fully involved in the implementation of the new software 'Pay Global System'.
- [31] There were some misappropriations in terms of Payroll. Sudhanshu had transferred funds through bank transfers to his and his wife Preetika's accounts without the knowledge of the Corporation through non-staff payroll which is paid on a weekly basis.
- [32] Preetika was never employed by FSC or part of non-staff payroll. Sudhanshu is not supposed to be part of the non-staff payroll. It was revealed that on 4th December, 2013, and 11th December, 2013 significant amounts had been transferred via non-staff payroll to bank accounts of Sudhanshu and Preetika triggering the Corporation to investigate. There was no arrangement

whatsoever between FSC and Preetika in relation to payments to be made to her.

- [33] Sudhanshu resigned from the FSC in May 2014, to go abroad. He had emailed the Executive Chairman at the time seeking forgiveness and expressing his willingness to return the money. Apart from that Preetika also approached FSC seeking forgiveness for the wrongdoing of her husband and expressed willingness to return the money.
- [34] Police recovered about \$169,000.00 from Preetika's house and this money was returned back to FSC.
- [35] Witness said under cross examination that he was not aware whether Preetika had voluntarily taken the said amount to the Police station or it was recovered by police.
- [36] Witness said that it was Sudhanshu that had entered Preetika's name in the payroll system for non-staff because he was the only one who had access to payroll related information from finance side.
- [37] Witness also admitted that the monies had been transferred into Preetika's account electronically and that Preetika had never signed any kind of documents with FSC confirming the receipt of payment. The missing money was discovered after Sudhanshu had left the country.
- [38] Witness admitted that on 07th of August 2014, Preetika telephoned him and inquired as to what was going on.

PW 2 Ritesh Chandra

- [39] Ritesh's sister Preetika was married to Sudhanshu Sharma. On 07th of August 2014, Preetika gave a call and told that Sudhanshu had gone somewhere and that she was in distress. When he went to see Preetika, she told that Sudhanshu might have done something wrong and gone somewhere.
- [40] On the 14th of August, 2014, he made a statement to police, read it and signed. He confirmed that whatever is written in the statement is the truth.
- [41] On the 13th of August 2014 Preetika received an overseas telephone call from Sudhanshu. Sudhanshu had informed Preetika that he had done something wrong. Preetika then came to him and informed that Sudhanshu had told her that the money had been kept in the old microwave oven. When they opened the microwave oven, they saw a lot of money inside. When inquired, Preetika

told him that her husband had done some stealing in FSC and wanted to return the money to FSC.

- [42] Ladies and Gentlemen, at this stage, you will recall I heard State Counsel's application in your absence. When you had returned, I informed you the Court's decision which allowed the State Counsel to cross examine his own witness.
- [43] Then Counsel for Prosecution then started to cross examine him accordingly. Witness admitted that he made that statement and whatever is written in it is correct.
- [44] However, he denied that on the 07th of August 2014, Preetika telephoned and informed him that there was an on going investigation against her and her husband since FSC Lautoka had reported that there is a misuse in pay packet.
- [45] Having refreshed his memory by perusing his statement to police, witness admitted that, on 13th August 2014, he came home with Preetika after the police interview and had dinner with her; in the same night, he was woken up by Preetika and asked him to follow her to the training room and told him to open the microwave oven. He also admitted that the reason for doing that was because her husband had told her that some money was being kept inside that microwave oven. When they opened the microwave oven he saw bundles of notes stacked inside. He however denied that they counted the money at that moment. He said that he gave a call to a church pastor who advised him to hand the money over to the to FSC or police.
- [46] He admitted that a total of \$169,640.00 was discovered from the microwave oven and that he took the money to FSC. When the FSC refused to accept the money, they took the money to Lautoka Police Station.
- [47] When asked why the version he was giving in Court about the phone call his sister had received from her husband is not mentioned in the statement made to police, the witness said that the detailed information he gave to police had not been recorded by the police officer who wrote the statement.
- [48] Under cross examination by Mr. Kumar, the witness said that Preetika received a call from Sudhanshu the same night the police officers had conducted the search at her house and Sudhanshu had informed her about an old microwave oven in the storeroom where he had kept some money. He said that he counted the money only on the 14th with the pastor before going to FSC.

- [49] He said that her sister's life with Sudhanshu was not very happy and she was frequently beaten up and controlled in a violent manner. He also said that before the end of August 2014, Sudhanshu was holding the keys of the family mail box.
- [50] He also said that after mother died, her house was put on rent and rent money was to be received by Preetika. He further said that the rent money was being used by him to supplement his income after he received injuries in an accident.
- [51] Under re-examination by Mr. Singh, the witness said that he would do anything he could to prevent her sister from going to prison. He agreed that his statement to police is not as same as his evidence because some important things had been missed out by police officer who recorded it.
- [52] Witness admitted that although her sister wanted to take the money to police, it was first taken to FSC because her sister knew that the money belonged to FSC.

PW 3 Savinesh Kumar

- [53] The next witness is Savinesh. He was the Manager of Risk and Compliance at FSC. In 2014, he, as the Internal Auditor carried out an investigation into a payroll fraud involving payroll officer, Sudhanshu, and his wife Preetika and had to confirm the total amount misappropriated by the payroll.
- [54] Witness conducted the investigation with his team regarding discrepancies in payroll sometimes in June and July, 2014 in the General Ledges amounting to \$162,000. In August 2014, he conducted investigation to determine the full amount misappropriated from January, 2013 to 31st May, 2014.
- [55] He said that Sudhanshu was responsible for consolidating the bank files sent to the head office from mills. They observed that names of Sudhanshu and Preetika were appearing on non-staff FSC Bank files. The relevant non-staff bank file was tendered marked as PE2.
- [56] The bank statements in relation to accounts of Sudhanshu and Preetika were also obtained from two banks, namely, Westpac and BSP with the assistance of Police and reconciliation was done.
- [57] Witness said that non-staff employees are paid on weekly basis from non-staff payroll. However, they noted that Sudhanshu who was paid from staff

payroll fortnightly appeared in the non-staff bank file. Preetika's name also appeared in non staff bank file although she was not an employee of FSC.

- [58] Upon these revelations, a reconciliation done with bank statements of Preetika and her husband. On the basis of the reconciliation, it was revealed that a total amount of \$285,680.96 had been deposited into Preetika's two bank accounts, one at BSP and the one at Westpac. The police had recovered a sum of \$169,640.00. The reconciliation sheet was tendered marked as (PE4).
- [59] You will recall that the witness pointed out particular transactions in the reconciliation sheet where certain amounts had been transferred from FSC to Preetika's accounts.
- [60] Under cross examination by Mr Kumar, the witness said that he managed to retrieve two bank files, one dated 4th December, 2013 and the other on 11th December, 2013, where two such remittances had been recorded. Other bank files had been amended and stored in the system by the payroll officer. He tried to retrieve the original files from the banks statements obtained by the Fiji Police Force.
- [61] He admitted that transfers made to Preetika's BSP account do not appear in the report (PE4). He said that other bank files had been amended in the system and the investigating team managed to identify the transfers done into her BSP account with the help of the original files that were available at the Bank.
- [62] He said that Sudhanshu resigned sometime in May, 2014 before financial year ended and discrepancies were detected by the Lautoka Mill accountant during the reconciliation of year end accounts. The matter was reported to police in August 2014, after a thorough investigation.

PW 4 IP Harish Prasad

- [63] Final witness for Prosecution was IP Harish Prasad, the police investigating officer. He recorded the witness statements, prepared search warrants to uplift documents from banks, searched the house of the Accused and interviewed the Accused.
- [64] The matter was reported by Deepak at FSC in August 2014. He searched Accused's house on the 13th of August, 2014, but nothing was recovered from the house. On the same day, all relevant documents were obtained from the two banks on search warrants including the bank statements of Sudhanshu

and Preetika. Preetika's Wespac bank statement was tendered marked as PE7 and Bank of South Pacific as PE9.

- [65] The accused was interviewed in the presence of her brother and witnessing officer. Accused gave the statement voluntarily. It took a few weeks to complete the interview. Recoveries were done on 14th of August, 2014, when cash of \$169,640.00 was brought to the police station by the Accused, her brother and one Pastor. Accused said that the money was found in her house inside an old microwave oven on information received by her husband from America.
- [66] The record of caution interview was tendered marked as PE11. Witness said that two bank statements PE 7 and PE 9 were shown to the Accused at the interview and that Accused admitted that those statements belonged to her bank accounts.
- [67] That was the case for the Prosecution.
- [68] When the Prosecution had closed its case, you heard me explain to the Accused her rights in defence that she could remain silent and say that the Prosecution had not proved the case beyond reasonable doubt; she could give evidence and be subjected to cross examination and call witnesses on her behalf.
- [69] You are aware that the Accused elected to give evidence under oath although she had nothing to prove in this case. Please bear in mind. By doing so, she assumes no onus of proof. That remains on the Prosecution throughout. She is under no obligation to prove her innocence. Her evidence must be considered along with all the other evidence and you can attach such weight to it as you think appropriate.

Case for the Defence

Accused- Preetika Anuwesh Lata

- [70] Accused said that she worked for Lautoka Hotel since December 2004, first as a receptionist and then as front office supervisor for a weekly wage of \$136.00.
- [71] She was married to Sudhanshu in 2010 and got divorced from him very recently on 18th August, 2017. Sudhanshu was employed by FSC in 2012 for an annual salary of \$18000+ and he drew the salary fortnightly. Sudhanshu was running the household finances and wanted her to save her money. Sudhanshu used to pay for the groceries.

- [72] On 13th August, 2014, IP Harish picked her up from the workplace in respect of something Sudhanshu had done regarding FSC money.
- [73] Sudhanshu went to the USA on 7th August, 2014, to see his sick mom. He called her from the airport and informed that he was leaving for America and that he had done something wrong in FSC. He didn't say much but asked her to call Deepak for further details.
- [74] When contacted Deepak, he didn't say much but only said that the matter is with Police. He never revealed anything else. She became aware of the incident only on 13th August when IP Harish told her that \$376,000.00 plus amount had been misused from FSC. When she was shown her BSP and Westpac bank statements, she was shocked because she had no idea about those figures.
- [75] She opened that Westpac account with just \$10.00 in February, 2013, and did not deposit any money thereafter. She opened that account because Sudhanshu insisted her to save rent money on a separate account after the demise of her mother on 13th December, 2011. However, she could not save rent money in this Westpac account because the money was being used by her brother for his medical expenses. She received the Westpac bank card at the mail box and kept the card inside an unlocked drawer. Only Sudhanshu knew about the card and its PIN.
- [76] She also maintained an account at BSP bank to receive her wages. However, she could not use the BSP bank access card after 2013 because Sudhanshu took the card insisting that he should be keeping it as she was not saving. The last time she used that card was when she withdrew \$500.00 in January, 2012 when she asked Sudhanshu for few dollars to repair her house in Banaras.
- [77] When Accused was referred to answer to Q.185 of her caution interview, she confirmed that, on 1st of November, 2012, a sum of \$500 was deposited in her BSP account by Sudhanshu for her mom's 1year ritual expenses. When she was referred to BSP bank statement where \$714.52 was deposited on 9th January 2013, she said that it was done by Sudhanshu for her to fix the house in Banaras which was severely damaged by cyclone.
- [78] Accused said that BSP bank card was with Sudhanshu but it was given to her to withdraw the money. So she withdrew \$500. She further said that Sudhanshu really got angry and blamed her for withdrawing that much and took the card to his custody. She never got the card back and he was financing for everything. Between 14th February, 2013 and 14th May, 2014, she did not

buy anything expensive for herself although she was earning \$ 136 per week.

- [79] She said that her passport which had valid multiple visas for USA and Australia were taken by IP Harish on 13th August, 2014 during the search.
- [80] She said that she received a call from Sudhanshu in the early morning of 14th and was advised that there's some money inside the old microwave oven and asked her to give it to FSC. She woke up her brother and opened the microwave oven. The money she found in the microwave oven was packed and she went to FSC with her brother and pastor on 14th August, 2014. She was advised by FSC that that money needs to be given to the Police. Accordingly, a sum of \$169,640.00 was handed to police.
- [81] She said that in 2014, Sudhanshu bought cash a Toyota Fielder car sometimes in March, 2014. She further said that during 2013- 2014 period, Sudhanshu was having the keys of the mail box and was responsible for checking the mailbox. Before 2013, her brother, Ritesh was checking the mailbox.
- [82] Then she said that Sudhanshu took over the mail box keys in February, 2013, the day he brought the envelope containing the Westpac card. She said her husband was a possessive and aggressive guy and therefore, she used to listen to him as she didn't want her marriage to break off.
- [83] She said that she was not aware that from 3rd February 2013 till 14th May 2014 she was receiving monies into her BSP Bank account from FSC. She said she never withdrew money from any of the ATM's as mentioned in the bank statements during that period and said that she was engaged in her work at the Hotel when suspicious withdrawals were done. She said that she took the dates of withdrawal from the bank statements shown at the interview and matched them with the duty roster at her work place.
- [84] Under cross examination, Accused said that it was only on the 7th of August 2014, when Sudhanshu was leaving for America, that she was informed of his departure and prior to that she was not aware that he was leaving on that day. It was at the same time that Sudhanshu informed her that he did something wrong at FSC but he did not mention anything about money being kept in the microwave oven. She did not approach the Police on the 7th to inform what her husband had informed but she spoke to Deepak at FSC.
- [85] She denied that the only reason she returned money on the 14th was because she realized that the investigation had begun and she'll get into trouble. She admitted that, in her interview, she never mentioned about the conversation she had with Sudhanshu on the 7th when he was leaving.

- [86] She admitted that they had no other income apart from the salaries and the house on rent and even rent money was being taken by her brother for his medical expenses. She admitted that rent money was never deposited into her Westpac account although it was opened only for that purpose.
- [87] She agreed that it was her responsibility to have the custody of the both bank access cards, use the PIN number and do withdrawals and deposits.
- [88] She said that her last withdrawal of \$500 from BSP account was done on 10th January, 2013 and on that day, the card was taken away by Sudhanshu. When she made the last withdrawal she saw the balance, but she was not suspicious as to why there's more money than what it supposed to be.
- [89] She said that she asked for cash to repair her mom's house, but Sudhanshu had deposited in her account.
- [90] By looking at her bank statements, she admitted that FSC money had been deposited into her two accounts and that money did not belong to her. She however denied that she withdrew any cash from Westpac Bank and, after 10th January, 2013 from BSP.
- [91] She had no idea at all about any trips made to Suva in 2013 or 2014 and cash withdrawals done in Suva or Nadi from her account. However, she admitted the withdrawal of \$500.00 done on 27th May 2014 at Sofitel, Nadi from her BSP account but she gave a detailed explanation and said that she only entered the PIN but the amount and the actual withdrawal was done by her husband. She admitted that the detailed explanation was not given to police. In a short while, she said she never pressed the PIN number but only '500'. Again she admitted she pressed \$500 after pressing the PIN. By looking at the bank statement, she said that, after withdrawal, the balance was \$96,068.65. She said she was not able to collect money or the receipt after the withdrawal because of Sudhanshu's intervention. She admitted that, in her caution interview at question 164, she had told police that she could not recall if Sudhanshu did any withdrawals while in Denarau because she was not specifically referred to 'Sofitel'.
- [92] She admitted that both bank statements would have been sent to post box 3526 whose keys were with Sudhanshu from 2013. She then said her brother Ritesh was checking all the mails as he got the key and he was giving the bank statements to her husband. Explaining the contradiction, she said that what her brother brought was not the statements but the envelope received from Westpac bank in 2013.

- [93] Accused said that she never tried to find out how much money her BSP account had received from the Lautoka Hotel because she got the pay slip and she trusted her husband.
- [94] She agreed that bank statements are confidential documents so are the PINs. She trusted her husband but her relationship with him was not that well; there were fights with his 'possessive husband'. She agreed that she was carrying his child in 2014 and made trips to Sofitel and Suva.
- [95] She denied that she met Deepak Raj on 14th August 2104 and pleaded that money stolen from FSC will be repaid.
- [96] She said that she could have afforded a trip to America because she believed Sudhanshu's brother Salesh who is a multi-millionaire would sponsor. Her husband's US trip was also sponsored by Salesh.
- [97] By looking at the Westpac bank statement she agreed that after the deposited of \$10 at the opening on 11th February, her account had started receiving FSC money on 14th February. However, she denied that the account was opened merely to facilitate her husband to deposit FSC money into her account. She denied having had any knowledge at all regarding all those transactions.
- [98] She admitted that until her last withdrawal of \$500 in January 2013, she had been using the BSP account right throughout until the card was taken by Sudhanshu.
- [99] She agreed that on the 8th August 2014 she wrote a letter (PE12) to FSC seeking forgiveness on behalf of her husband and agreeing to return all the money her husband had stolen from FSC and whatever money that had been transferred to her and her husband's accounts without her knowledge.
- [100] When the letter (PE12) was shown to the Accused she admitted that Deepak Raj had mentioned details about money transfers from FSC to her and Sudhanshu's accounts.
- [101] She agreed that in that letter (PE12) she clearly stated that her husband is willing to pay the money back because she knew his brother is a multi-millionaire and that money can be given back to FSC. She also agreed that she never mentioned in PE 12 that Sudhanshu had fled the country.
- [102] She however denied that even before the caution interview on the 13th she was aware of what Sudhanshu had done.

[103] Under re-examination by Defence Counsel, the Accused said that she opened the Westpac account because Sudhanshu insisted that she deposit the rent money to be saved.

[104] She said that if she had known what her husband had done or if she was a thief or money minded person like Sudhanshu, she would have flown out on that very first day. She further said that she maintained a clear record at the Lautoka Hotel during her long career which involved money and had never been convicted of an offence.

[105] That is the case for the Defence.

Analysis

[106] Ladies and gentleman assessor, Accused is charged with Receiving and Money Laundering. There is no dispute about the identity of the Accused. There is also no dispute about the physical element of each offence. Accused agrees that her two bank accounts had received money stolen from FSC. Therefore, the money received by Accused's two bank accounts can be considered as proceeds of a crime for the purpose of the 2nd count.

[107] The only dispute is with regard to the mental element of each offence. In respect of the 1st count, Prosecution must prove to you beyond reasonable doubt that she received the money dishonestly and knowing or believing the property to be stolen. In respect of the 2nd count, you must be satisfied that Accused knew, or ought reasonably to have known that the money was derived or realized directly or indirectly from some form of unlawful activity.

[108] Accused denies any knowledge of those transactions of her own account. We don't know what ran in Accused's mind. Therefore, ladies and gentleman, your task here is to form an opinion on Accused's knowledge in regards to money deposited in to her accounts drawing reasonable inferences from all the proved circumstances and her conduct.

[109] The Accused in her evidence and her caution interview specifically denies that she had any knowledge about the stolen money or the proceeds of crime in her two accounts. Accused takes up the position that even though the two bank accounts belonged to her, exclusive control and operations of these bank accounts during the time in question were the sole responsibility of her ex-husband Sudhanshu and therefore she had no knowledge as to what was happening in her bank accounts. The defence Counsel stressed to you that Sudhanshu had smartly and subtly taken control of and used her two

accounts to carry out his criminal activity.

[110] Prosecution on the other hand says that Accused lied to this court and all the deposits and withdrawals and everything happened with knowledge of the Accused.

[111] It is up to you ladies and gentleman to decide where the truth lies. It appeared to Court that Prosecution relies on following arguments and invites you to draw certain conclusions as to the knowledge of the Accused.

- Accused is the owner of the two bank accounts and easy access cards issued for those accounts and therefore all the transactions ought to have been done with her knowledge.
- During the period in question, withdrawals had been made from Automated Teller Machines (ATM's) using Accused's easy access cards and her Personal Identification Numbers (PIN's).
- Her family expenses had gone beyond their legitimate means and therefore Accused should have known that stolen money was being used.
- Accused gave a written assurance that stolen money will be returned to FSC on the 8th August 2014 no sooner she became aware of the police investigation.
- The Westpac Bank Account was opened by the Accused just 3 days before the stolen money started coming into her account. Prosecution says it was opened solely for the illegal purpose.
- Bank statements were delivered to her family mail box.
- Accused lived in a small three bed roomed simple house and therefore the money discovered could not have been hidden without her knowledge.
- Accused took the stolen money first to the FSC because she knew where the money belonged.

[112] Accused on the other hand gives following explanations on each point to deny her knowledge.

- Her husband Sudhanshu was in exclusive and effective control of bank

accounts during the period in question.

- Sudhanshu took the BSP card into his custody in January 2012 and thereafter he was in effective and exclusive control of the bank card during the period in question.
- The Westpac card was kept in an unsecure/unlocked place where Sudhanshu had access and he knew its PIN.
- She knew extra expenses were supported by Sudhanshu's brother who is a multi-millionaire in the US. Sudhanshu is also a thrift minded person.
- She gave the assurance to the FSC in the belief that she would get support from Sudhanshu's multi-millionaire brother.
- The Westpac Bank Account was opened on the insistence of Sudhanshu in order to receive and save the rent money.
- Family mail box key was in Sudhanshu's control during the period in question.
- Money was hidden in an old microwave oven which was kept in a storeroom.
- She took the money to FSC because she became aware that the money was stolen from FSC when she was informed by her husband on the 13th August night.
- She told the truth to Court.

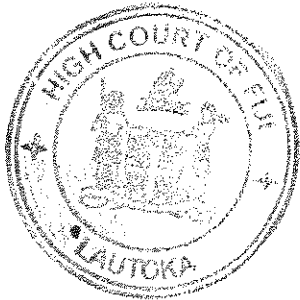
[113] The Counsel for Accused argues that Accused had maintained a good character and a clear record at her work place and if she was aware that proceeds of a crime had been deposited in her accounts she could have easily fled the country before being caught by police. It is for your consideration.

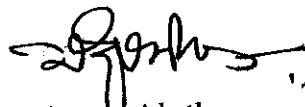
[114] Prosecution on the other hand says that explanations given by the Accused are unbelievable and her version is not consistent not only with her own previous statements but also with her own evidence in Court. They say that Accused lied to this Court to save her own skin and her brother also changed his version to save her only sister. You observed the Accused's demeanor and her conduct in Court. You consider whether her evidence is credible and believable. If the Accused's version is appealing to you that means she has

been able to create a doubt in the Prosecution case. If her version is acceptable to you, you must find the Accused not guilty.

- [115] Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the Prosecution throughout the trial, and never shifts to the accused, at any stage of the trial. The accused is not required to prove her innocence, or prove anything at all. In fact, she is presumed innocent until proven guilty.
- [116] If you accept the Prosecution's version of events, and you are satisfied beyond reasonable doubt so that you are sure of Accused's guilt on each count you must find her guilty on each counts. If you do not accept the Prosecution's version of events, and you are not satisfied beyond reasonable doubt so that you are not sure of the Accused's guilt, you must find her not guilty.
- [117] Well ladies and gentleman that is all I wish to say. You will retire now and deliberate your opinions. Your possible opinions will be "guilty" or "not guilty" in respect of each count. It is desirable if three of you could all agree but that is not strictly necessary. When you are ready you may inform our clerks, so that we could reconvene, to receive your opinions.

[118] Any re-directions?




Aruna Aluthge
Judge

AT LAUTOKA
On 21st November, 2017

Solicitors: Director of Public Prosecution for State
Iqbal Khan and Associates for Accused