

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

Criminal Appeal No. 17 of 2018
(on appeal from Lautoka CC218/16)

STATE

V

RAGNI SHARMA
MOHAMMED SAIYAZ SADIQ

Date of Hearing : 28 November 2018
Date of Judgment : 6 December 2018

Miss Naibe for the State
Mr. Mark Anthony for the Respondents

JUDGMENT

- 1.] The two respondents were charged in the Magistrates Court at Lautoka with one count of theft contrary to section 291(1) of the Crimes Act 2009. The particulars of the offence read:

“RAGNI NALINI SHARMA and MOHAMMED SADIQ between the 1st January 2014 and 31st January 2014 at Lautoka in the Western Division, dishonestly appropriated assorted items all to the total value of \$17,441, being the property of Trent Larson with the intention of permanently depriving the said Trent Larson”

- 2.] The matter went to trial and the prosecution called three witnesses to prove their case. The defense thereupon made an application for no case to answer as is their right pursuant to section 231 of the Criminal Procedure Decree 2009. Six months later the learned Magistrate ruled that there was no case to answer and acquitted the two accused.
- 3.] The State aggrieved by this decision appealed the ruling out of time and seeks to have the ruling of the learned Magistrate overturned.
- 4.] Leave to appeal was granted by Aluthge J. on 3rd October 2018.
- 5.] The brief facts of the case were that an elderly lady, a U.S. citizen retired to Fiji and was living in Saweni running several horticultural businesses. The two respondents lived in a cottage in the same compound and helped her both professionally and domestically. The lady's health deteriorated and she devoided herself of her business interests giving one business to the two accused to manage for themselves. This business was called variously throughout proceedings as "Eden Forest" and "Eden Florist". She retained a 1% interest in this business but to all effects and purposes it was owned and run by the respondents.
- 6.] The couple became the caregivers for the terminally ill lady and it is a clear that a close bond was formed between them and the lady.
- 7.] The lady died near the end of year 2013 and her son Trent came to Fiji from California to wind up her affairs. He gave evidence to say that he was "basically acting as trustee executor to his mother's will". When he arrived in Fiji in February 2014, he saw that a lot of his mother's possessions were missing. He had

visited before and knew what she owned. Items “missing” included furniture, tools, plants.

- 8.] The will did indeed make Trent the executor and a beneficiary along with the first respondent as a co beneficiary.
- 9.] He instructed a Lautoka Solicitor to apply for Probate.
- 10.] Trent suspected that the respondents had taken the property and reported the matter to the Police.

11.] The Magistrates No Case Ruling

The Magistrate correctly addressed the test for a no case submission relying on appropriate authorities.

- 12.] He then immediately stated:

“I am of the view that the prosecution has not succeeded in adducing relevant and admissible evidence implicating the accused in respect of each element of the offence pertaining to the above charges and taken at its highest, a reasonable tribunal could not convict on it. The Court’s view is fortified based on the following grounds:

- *There was no proof as to ownership and therefore there can be no theft if the identity of the owner cannot be established. “*

- 13.] The State pleads that this ruling is inadequate because the Magistrate failed to analyse the evidence appropriately.
- 14.] Counsel for the respondents submits that the Magistrate was actively analyzing and evaluating the evidence as it was being given, and that in any event the matter should never have been

before the Criminal Court because the dispute was civil in nature.

- 15.] This court is troubled by the woeful drafting of the charge against these two respondents and it is certain that the Magistrate found that troubling as well.
- 16.] For a start it is duplicitous, with the respondents apparently claiming that some of the items alleged stolen were in fact theirs. Secondly, there can be no proof that the property was that of Trent Larson. If the property was his mother's, then on her death it became property properly belonging to the estate. In the month of January 2014, that estate had not been formally established by Probate.
- 17.] The evidence adduced at trial was equally woeful. Nowhere in the evidence of Trent does he say that the two respondents took the items he says were stolen and even if he did accuse them of that he has no evidence of it by seeing them take the goods or seeing the goods in their possession. The two other witnesses were equally vague as to who took the property.
- 18.] There was no evidence that if these two had taken the property, then they intended to permanently deprive the "owner" of it.
- 19.] In the premises, the Magistrate was quite justified in finding that the Prosecution had not proved each and every element of the charge.
- 20.] One of the respondents was a beneficiary and entitled to 40% of the entire estate in any event.

- 21.] The entire dispute is a civil dispute not a criminal matter. Now that Probate has been granted to Trent, the executor, he has recourse to the Civil or Probate Courts to sue for his lost property.
- 22.] A defective charge and a very poor prosecution lead to this inevitable no case ruling and it will not be disturbed.
- 23.] The State's appeal is dismissed.



P.K. Madigan
Judge.
High Court Lautoka