

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 14 of 2018

NILESH CHANDRA

v

STATE

Counsel: Mr. S. Sharma for the Appellant
Mrs. D. Kumar for the State

Date of Hearing: 30 July 2018

Date of Judgment: 07 August 2018

JUDGMENT

1. The appellant was charged in the Magistrates Court at Labasa with the following offence.

Statement of Offence

OBTAINING PROPERTY BY DECEPTION: Contrary to section 317(1) of the Crimes Decree 2009.

Particulars of Offence

NILESH CHANDRA on the 24th day of December 2013 at Labasa in the Northern Division, by a deception, dishonestly

obtained groceries to the value of \$375.75 the property of Davendra Kumar of L.R View Liquor Shop with intention of depriving the said Davendra Kumar of L.R View Liquor Shop.

2. He initially entered a plea of not guilty to the charge on 19th October 2015 but later changed his plea to one of guilty on 15th December 2015.
3. He was sentenced on the 16th May 2018 to a term of 2 years and 2 months imprisonment with a minimum term of one year and four months.
4. The appellant now appeals that sentence on numerous grounds that can be distilled into the following grounds.
 - i. There was little or no spontaneous deception.
 - ii. Not enough credit was given for the mitigating features.
 - iii. The sentence was inconsistent with those passed in similar cases.
 - iv. The sentence is harsh and excessive considering the circumstances.
5. The brief facts of the case are that on Christmas Eve 2014, the accused obtained goods from the complainant's store to the value of \$375.75 and in payment he wrote a cash cheque in the same sum drawn on the Westpac account of "Experienced Distributors". When the complainant went to cash the cheque at the bank he was informed that the account had been closed in November 2013. Efforts to locate the accused were fruitless.
6. When the accused was eventually located and interviewed by the Police under caution, he admitted that he issued the cheque knowing that the account was closed.

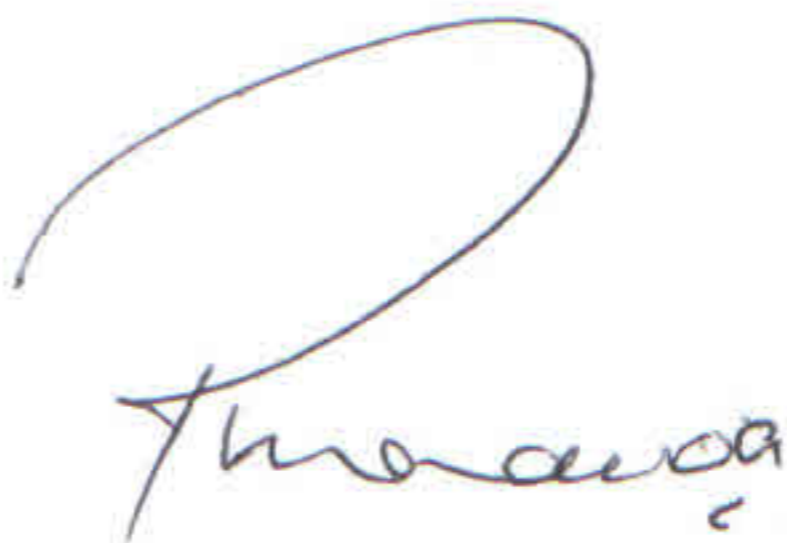
7. Counsel for the appellant has filed detailed submissions in support of the appeal. The State did not comply in time with an order of the Court to file a reply.
8. The maximum penalty for this offence is a term of imprisonment of ten years and this Court said in **Atil Sharma** HAC122/10L that the tariff is between 2 to 5 years with 2 years to be appropriate for minor offence with very little and spontaneous deception and the higher end for more serious and well planned deceptions. That still remains the case.
9. By drawing a cheque on an account that the accused knew had been closed a year previously is not a little and spontaneous deception; it is a calculated and planned act of deception in order to buy liquor for Christmas.
10. Counsel has fallen into error when he says that a well-planned fraud is an element of the offence. It is not and was quite properly taken into account by the Magistrate as an aggravating feature.
11. The Magistrate has taken a starting point of three years which is appropriate given the deception practiced and he has made appropriate deductions for the period spent in remand and for the late plea of guilty.
12. Unfortunately the Magistrate then fell into a mathematical error and instead of pronouncing a final sentence of three years and two weeks imprisonment he pronounced a term of two years and two weeks imprisonment with minimum term of 16 months.
13. This error was not noticed by the Court at the hearing of the appeal and to increase the sentence passed pursuant to section

256(3) at this stage without hearing from Counsel would be a denial of natural justice.

14. Perhaps if the State had followed the order of the Court to file submissions, then this matter may have been brought to the attention of the Court.
15. The erroneous sentence passed in the Court below is lenient in the extreme. The appellant is very fortunate to be benefitting from the Magistrates error in computation and this Court overlooking the error at hearing. The appeal is without merit and it is dismissed.
16. Before leaving this matter I deal with the issue of restitution. It was claimed at the hearing that full restitution had been made to the complainant and he even gave evidence of that before me. It was restitution made at a very late stage and it does not detract from the deception practiced by the appellant at the time, a deception that enabled him to obtain \$375 worth of goods. Subsequent restitution is entirely irrelevant.

ORDER

17. Appeal dismissed



P. K. Madigan

Judge



At Labasa

07 August 2018