

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 028 of 2018
(From Labasa MC CC 91 of 2018)

SUBHASHNI RAVEENA SINGH

v

STATE

Counsel : Mr. A Ram for the Appellant
Mrs. A. Vavadakua for the State

Date of Hearing : 4 April 2019

Date of Judgment : 9 April 2019

JUDGMENT

1. On the 5th day of October in the Magistrates' Court at Labasa, the appellant entered a plea of guilty to one charge of Obtaining a Financial Advantage by Deception, contrary to section 318 of the Crimes Act 2009. The facts of the case were read to her. She admitted those facts and was convicted.
2. On the 30th November 2018 she was sentenced to a term of imprisonment of 2 years with a minimum of 18 months.
3. She now appears before this Court appealing sentence on the grounds that it was harsh for a first offender who had entered a plea of guilty at an early opportunity.

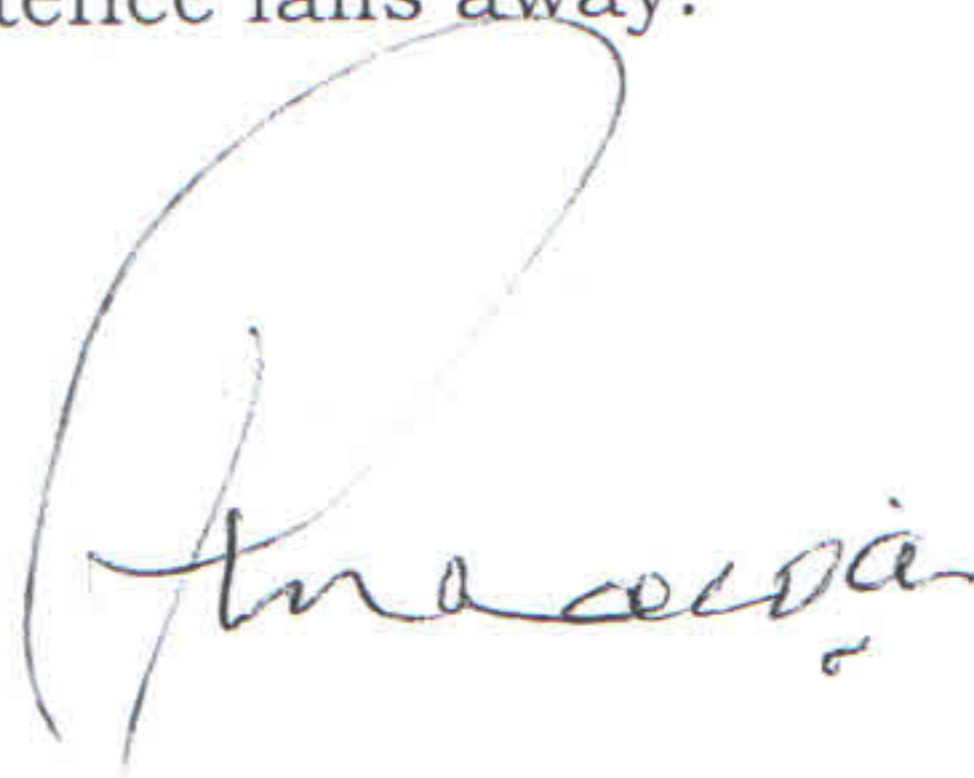
Facts

4. These were the facts put to the accused on the day of her plea. It is important to this judgment that they be rehearsed *verbatim*.
5. On the 10th day of February 2018 victim sends \$606 cash to accuse (sic) through M-PAISA on victim mobile phone number (number given but suppressed). Atesh Kumar carpenter of Benau Labasa accuse husband receives the money from Civic centre at Legend Distributers shop Labasa town, the sim card was registered under husband at Vodafone.
6. On above date time and place accused sends husband to withdraw money which was send (sic) by victim from Lautoka. Victim sends money to accused as accuse (sic) promises to go to Lautoka and stay with victim. Upon receiving the money accused uses the money \$606 for her personal use and fails to travel to Nadi Airport where victim was waiting for accused. Victim when rang and checked for accused she stated that she won't be able to come, since then accuse black list the phone number of victim.
7. It can immediately be seen that these facts are not only poorly worded, and grammatically woeful but most importantly they do not disclose any crime. The short summary of facts written by the learned Magistrate in his sentence does not even refer to the promise to go to Lautoka.
8. There is no fact given that would even suggest that the "victim" in Lautoka has been **deceived** into sending the money and it was not even sent to the accused.

9. Moreover, as Counsel for the State quite properly and fairly submits, there can be no deception as to a promise to act in the future, if indeed that promise was made.
10. Unfortunately the accused was represented by Counsel from the Legal Aid Commission when she entered her plea and this lacuna in the facts and the inapplicability of deceit applying to future promise was not addressed.
11. There being no crime, the conviction cannot be allowed to stand. It is quashed and the sentence set aside.
12. It is not necessary for the Court to address the grounds of appeal against the harsh sentence, an appeal which would have succeeded in any event.

Orders

1. The conviction entered in the Court below is quashed and the sentence set aside.
2. The appeal against sentence falls away.



P. K. Madigan

Judge



At Labasa

9 April 2019