

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 042 OF 2020S

BETWEEN : **NAWIN AVIKASH DEWAN**

APPELLANT

AND : **THE STATE**

RESPONDENT

Counsels : **Ms. L. Manulevu for the Appellant.**

: **Ms. J. Prasad for the Respondent.**

Date of Hearing : 4 November, 2022

Date of Judgment : 13 December, 2024

JUDGMENT

1. On 19 April 2011, in the presence of his counsel, the following charge was put to the appellant (accused):

“...Statement of Offence (a)

MONEY LAUNDERING: *Contrary to section 69 (1), (2) (a), (3) (a) and (4) of the **Proceeds of Crime Act No. 27 of 1997** and section 25 of the **Proceeds of Crime (Amendment) Act No. 7 of 2005.***

Particulars of Offence (b)

NAWIN AVIKASH DEWAN, *between the 7th day of December 2009 and the 9th day of December 2009, directly engaged in a transaction that involved **\$USD119, 980.00**, these monies being proceeds of crime; and knowing that the said **\$USD119, 980.00** was derived directly from some form of unlawful activity...”*

2. The appellant said he understood the charge, and he pleaded not guilty to the same. After various pre-trial conferences, the matter proceeded to a hearing on 30 April 2015. The State called three witnesses, Mr. Stuart Winters (PW1), Mr. Napolioni Cavu (PW2) and Inspector Aiyaz Ali (PW3). In addition, the State tendered eight documentary evidences (i.e. Pros Exhibit No. 1 to 8).
3. A prima facie case was found against the accused, and he choose to give sworn evidence in his defence. He called no witness. He tendered ten exhibits, that is, Defence Exhibit No. 1 to 10.
4. The State’s case were as follows. The accused was employed by a company SODEXO in Laos, as an accountant in 2008. He did bank runs and assisted the main accountant generally. PW1 was the accused’s regional director. According to PW1, the accused was paid US\$1,000 net per month and he was entitled to a 20% bonus of his annual salary. PW1 said the accused assisted in other duties while working for the company. According to the State, the accused’s employment was terminated in December 2009.
5. It was alleged that the accused had falsified some contract documents and had falsified some bank remittance advises. It was alleged that he had sent US\$119,980 dollars without authority to Fiji, from the company. PW1 said he immediately contact

the Fiji Financial Intelligence Unit, and put a stop payment order on the above sum. PW2, worked for the Colonial National Bank of Fiji, which is now the Bank of the South Pacific (BSP). He confirmed what PW1 above said. PW2 said the US\$119,980 was at the Bank of New York, and the actual order was from a Bank in Vietnam. He said, although the money was destined for BSP in Fiji, it was nevertheless held by the Bank of New York in the USA because a third party was also claiming the money. PW2 said, the money had never arrived in Fiji, and it was in America, all this time.

6. PW3 was Inspector Aiyaz Ali from the Police's Criminal Investigation Department (CID). He was the Manager, Money Laundering Unit and Proceeds of Crime Unit in 2010. He caution interviewed the accused in this matter. He was the investigation officer in this case. He confirmed that the decision to charge the accused was made by the Director of Public Prosecution (DPP) in April 2011. He said the accused had no BSP account in Fiji at the time. In cross-examination, he admitted that he understood that the US\$119,980 had reached Fiji. Now that he is aware of PW2's evidence that the money was still in America, he felt that he was been misled.
7. In his evidence, the appellant (accused) denied the allegations against him.
8. In any event, the court found against him and convicted him on 13 December 2018. He was sentenced to 6 years imprisonment, with a non-parole period of 5 years imprisonment, from 11 September 2019. The appellant was not happy with the above.
9. On 19 September 2022, the appellant filed an amended petition of appeal. He was obviously out of time. He appealed against his conviction and sentence. In his verbal submission to the court on 4 November 2022, he wished to lodge his appeal on ground 1 of his conviction alone, which states:

*“...**THAT** the Learned Magistrate erred in law and in fact when he convicted the appellant on one count of Money Laundering when the evidence does not support the said conviction...”*

He appears to have abandon his other appeal grounds on conviction and sentence.

Appeal Ground 1 on Conviction:

10. The appellant complained that “... *the learned Magistrate erred in law and in fact when he convicted the appellant on one count of money laundering when the evidence does not support the said conviction...*” The appellant referred to four authorities to demonstrate his point. The authorities were **Monika Arora v The State**, CAV 0033 of 2016, Supreme Court, 6 October 2017; **Ashwin Prasad v The State**, HAA 19 of 2019, High Court, Suva, 7 February 2020; **Rosheen Praveena Raj v The State**, AAU 0096 of 2018, Court of Appeal, 5 August 2020, and **Rahul Rajan Naidu v State**, AAU 0099 of 2018, Court of Appeal, 16 June 2020. The appellant submitted that in all the above “*money laundering cases*”, the accuseds had unlawfully obtained money, had benefitted from the same, and used the same as if it was legitimately obtained.

11. In **Monika Arora v The State** (supra), the accused had allegedly unlawfully obtained \$472,466.47 from her employer Vinod Patel Company, between 6 January 2006 and 11 May 2007, and laundered it somewhere, to this day unknown. In **Ashwin Prasad v The State** (supra), the accused unlawfully obtained a total of \$71,521 from his employer Carpenters Hardware Ltd while making overseas supply orders for his employer. In **Rosheen Praveena Raj v The State** (supra), the accused and another, unlawfully obtained \$412,567.61 from their employer between 1 March 2010 and 30 November 2012, and used the same for their own benefit. In **Rahul Rajan Naidu v State** (supra), the accused unlawfully obtained \$13,535 from another person, and unlawfully used the same on himself. The above cases appear to demonstrate that for someone to be found guilty of “*money laundering*”, the person must first unlawfully obtained money from someone, one must deposit the same in an account which he had access to, and in fact, had access to the same for himself or for the benefit of someone else.

12. On the facts of the present case, it would appear that the appellant, although he denied the same, unlawfully obtained the US\$119,980 from his employers in Laos and had the same transferred from Laos to the Bank of New York in the USA. The money stayed at the Bank of New York and it never reached Fiji. The money did not reach the appellant, when he returned to Fiji. The money never reached the appellant via his bank account in Fiji. The money was sent to the Bank of the South Pacific in Fiji, but it did not reach Fiji, it stayed in the Bank of New York in the USA. The State said the appellant had no BSP Bank Account in Fiji. Therefore the US\$119,980 never reached the appellant in Fiji. Given the cases mentioned above, the appellant never received US\$119,980 in Fiji. He had never received any part of the US\$119,980 in Fiji. Therefore, given the examples of the four cases mentioned above, the learned Magistrate erred in law and in fact by convicting the appellant of money laundering when the evidence does not support the said conviction. I grant the appellant an extension of time to enable him to lodge his petition of appeal.
13. As a result of the above, the appellant's appeal against conviction succeeds. The appellant's conviction in the Suva Magistrate Court on 13 December 2018 is hereby quashed and set aside. The appellant's sentence of 6 years imprisonment, with a non-parole period of 5 years imprisonment, dated 11 September 2019 at the Suva Magistrate Court is also quashed and set-aside. I order so accordingly.




Salesi Temo
Acting Chief Justice

Solicitor for the Appellant: Legal Aid Commission, Suva
Solicitor for the Respondent: Office of the DPP, Suva

