

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. HAA 16 of 2025**  
**CRIMINAL MISC. NO. HAM 78 of 2025**  
(Magistrate's Court Criminal Case No's. CF.  
909 of 2018 and CF. 758 of 2019)

**BETWEEN** : **SALENDRA SEN SINHA**

**APPELLANT**

**A N D** : **THE STATE**

**RESPONDENT**

**Counsel** : Appellant in person.  
: Ms. M. Lomaloma for the Respondent.

**Date of Hearing** : 28 July, 2025

**Date of Judgment** : 01 August, 2025

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**JUDGMENT**

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**BACKGROUND INFORMATION**

1. The appellant and another were charged in the Magistrate's Court, Lautoka by virtue of an amended consolidated charge as follows:

***Statement of Offence***

**OBTAINING PROPERTY BY DECEPTION:** contrary to section 317 (1) of the Crimes Act 2009.

***Particulars of Offence***

**SALENDRA SEN SINHA** and another, on the 27<sup>th</sup> day of July, 2018 at Lautoka in the Western Division, dishonestly obtained assorted Water Blasters to the total value of \$48,780.00 the said property of CLYDE FIJI LTD with intention to permanently deprive CLYDE FIJI LTD of the said property.

2. On 8 October 2018, the appellant first appeared in the Magistrate's Court and was granted bail. Subsequently, the appellant entered a plea of not guilty, and a hearing date was assigned for 13 November 2024.
3. On this date, the appellant was not present in court and, upon the prosecution's application, the court ordered a trial in absentia. The prosecution called seven witnesses to prove the charge against the appellant and the co-accused.
4. On 17 January 2025, the appellant was found guilty as charged and convicted accordingly. On 10 February 2025, the appellant was sentenced in absentia to a term of 27 months imprisonment, effective from the date of apprehension.
5. The brief summary of facts is as follows:
  - a) On 25<sup>th</sup> July 2018, the complainant received a Viber message inquiring about the sale of water blasters. The message was followed up by a phone call. The caller identified himself as a Mr. Cargill said that he was calling from the Ministry of Agriculture. The complainant requested that the caller communicate via email. The caller complied, and the complainant subsequently sent a quotation to the email address provided.

- b) The next day, the complainant received an email with two purchase orders attached for the purchase of diesel and electric water blasters, valued at \$48,780.00. The purchase orders, purported to be from the Ministry of Agriculture, were forwarded to the accounts section for verification, along with the sales invoices raised. The Branch Operations Officer identified a discrepancy in the VAT component of one of the purchase orders, which did not tally with the invoices.
  - c) The person who had placed the order was contacted who said that the discrepancy in the VAT component should not be a concern and that the items were urgently required. On 27 July 2018, a truck arrived at the complainant's shop, the driver handed over the purchase orders, and the items were loaded. The complainant later forwarded the purchase orders and the sales invoices to Ministry of Agriculture for payment. It was subsequently revealed that the purchase orders were not genuine.
  - d) A complaint was lodged with the police. During the police investigation, it was revealed that the appellant and another were involved in moving some of the items alleged to have been stolen from the complainant to the flat of the appellant at Nadi Back Road. When the police raided the premises of the appellant they were able to confiscate seven water blasters. The appellant was arrested, charged and produced in court.
6. The appellant filed written submissions and also presented oral submissions during the hearing. The state counsel, while not filing any written submissions, made oral submissions and, in her usual fairness conceded the appeal.

## **APPEAL TO THE HIGH COURT**

7. The appellant, aggrieved by the conviction and sentence, filed an untimely appeal received by this court on 16 April 2025. The appeal was late by about one month and six days. As the delay is not substantial and the state counsel raised no objection, the court treated the appeal as having been filed within time. The appellant also filed an application for bail pending appeal. When the matters were called in court, it was directed that both matters be dealt with together. Accordingly, an early hearing date was assigned.
  
8. The amended grounds of appeal against conviction are as follows:

### **APPEAL AGAINST CONVICTION**

1. *That the learned trial Magistrate erred in law by proceeding to trial absentia without following the guidance laid down by the Court of Appeal as to the conditions that should be satisfied before an accused can be tried in his or her absence [Epeli Lealeavono v. State Crim. App. No. AAU 038 of 2019, (9 October, 2020)].*
  
2. *That the learned trial Magistrate erred in law and in fact by not directing himself in his Judgment on the doctrine of accomplice evidence. In failure to do so has resulted a grave miscarriage of justice to the appellant.*
  
3. *That the learned trial Magistrate erred in law and in fact when his worship failed to draw his mind that the identity of the accused person was not established by the prosecution beyond reasonable doubt and his worship also failed to draw his mind on the Turnbull guideline on the issue of identification in his Judgment.*

4. *That the learned trial Magistrate erred in law and in fact by not directing his mind in his Judgment that the totality of evidence adduced by the Prosecution does not fulfill all the elements of the offence of obtaining property by deception beyond reasonable doubt.*
5. *That the learned trial Magistrate erred in law and in fact by not directing himself in his Judgment on the doctrine of recent possession and the guidance laid down by the superior court on this issue as the items were allegedly taken from the complainant on 27 July 2018 and the search list was done on 6 September, 2018 as such this doctrine does not apply due to the prolonged period.*
6. *That the learned trial Magistrate erred in law and in fact by not directing himself in his Judgment the evidence of PW1 and PW5 in respect of communicating with someone at the Ministry of Agriculture was just hearsay evidence and does not carry any weight in the trial.*
7. *That the learned trial Magistrate erred in law and in fact by not directing his mind in his Judgment that the prosecution has not provided the source of the email to the court in trial beyond reasonable doubt that contained the local purchase orders from which the complainant was deceived come from the appellant.*
8. *That the learned trial Magistrate failed to direct his mind in his Judgment that the email the complainant received that had an attachment of the Local Purchase Order was generated from a Fiji Government owned email domain, and that which the appellant had no access to, thus could not have deceived the complainant as charged.*
9. *That the learned trial Magistrate erred in law by not directing his mind in his Judgment that there existed a very crucial contradicting evidence from state witnesses in respect of the Local Purchase Order. PW2 has stated that he delivered the Local Purchase Order to the complainant's office and*

*PW5 said that Local Purchase Order was sent to him on email and also the complainant stated there was 16 water blasters and the truck driver PW2 stated that there was 36 water blasters and the court believed the truck driver.*

- 10. That the learned trial Magistrate failed to direct his mind in his Judgment that the prosecution failed to produce the photographic evidence [CSI], so the same could be identified by PW3 and PW4 that it was the same water blasters that they saw as stated in the Judgment with the appellant.*
- 11. That the learned trial Magistrate failed to direct his mind in his Judgment that the evidence of PW7 in respect of the search done at the house of Shankaran (PW3) and the search list prepared is just hearsay as the prosecution did not called any police officer who conducted the search or prepared the search list to give evidence at trial.*
- 12. That the learned trial Magistrate failed to direct his mind in his Judgment that the evidence of PW3 Shankaran is not supported by any other witness or material evidence such as tenancy agreement, payment receipt, CCTV footage or any other form of proof to establish that the appellant did rented his flat at Nadi back Road.*

#### **APPEAL AGAINST SENTENCE**

- 1. That the sentence is harsh and excessive in all circumstances of the case.*
- 2. That the learned trial Magistrate took irrelevant matters into account in enhancing the sentence.*

9. The unrepresented appellant advanced twelve grounds of appeal against his conviction. Some of the grounds were overlapping, and for the sake of expediency and completeness, this court has considered the material grounds of appeal collectively. At the hearing the appellant withdrew his appeal against sentence.
10. It is important to consider the elements of the offence of obtaining property by deception. Under section 317 (1) of the Crimes Act 2009, it is for the prosecution to prove beyond a reasonable doubt the following:
  - a) The accused;
  - b) by a deception;
  - c) dishonestly obtained property belonging to the complainant;
  - d) with the intention of permanently depriving the complainant of the property.
11. Section 316 of the Crimes Act defines “deception” as follows:

*"deception" means an intentional or reckless deception, whether by words or other conduct, and whether as to fact or as to law, and includes:*

*(a) a deception as to the intentions of the person using the deception or any other person; and*

*(b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.*
12. In *Sisilia Chute v State* [2016] FJHC 1114; HAA015.2016 (8 December 2016) Perera J. at paragraph 33 made reference to Blackstone’s *Criminal Practice* 2007 at page 402 in order to find a simple meaning for the word “deception” which was:

*“The best known judicial definition of deception is that of Buckley J in Re London and Globe Finance Corporation Ltd [1903] UKLawRpCh 47; [1903] 1 Ch 728 at p.732:*

*“To deceive is ....to induce a man to believe that a thing is true which is false. This was quoted with approval in DPP v Ray [1973] UKHL 3; [1974] AC 370 and is consistent with the normal dictionary meaning of the term ...”*

13. The evidence at trial established that the complainant, Praveen Chand, had never seen the person with whom he was corresponding or dealing with. The initial contact was made via Viber message, followed by email communication between the complainant and a person who had identified himself by phone call as a Mr. Cargill from the Ministry of Agriculture (see page 125 copy record).
14. The communication between the complainant and Mr. Cargill was confined to email correspondence. The complainant sent the quotations, and local purchase orders were allegedly received from the Ministry of Agriculture. In accordance with the instructions of the potential customer, the items were scheduled for collection.
15. The appellant was implicated based on the recovery of seven water blasters from the flat he was renting. When the police raided the flat around end of July 2018, the appellant was not present. However, at the request of the police, the landlord permitted entry. The police, in the presence of the landlord, seized seven water blasters. The search list was tendered in court by the investigating officer, Detective Sergeant Koli.
16. According to the sales invoices tendered in court, under the heading “Customer Sign,” there appears a signature accompanied by a rubber stamp

bearing the name “Ministry of Agriculture”. In both invoices, the customer is identified as one Mohammed Kadir Khan. During the trial, the complainant was asked who had affixed the rubber stamp on the sales invoices. The complainant responded, *“It was put by the Ministry of Agriculture the guy who received the items.”*

17. Moreover, Ajeshni Bali, the Branch Operations Officer, did not know or had seen the appellant in connection with the order and supply of the items. Ajeshni was questioned in court (see page 103 of the copy record) as follows:

*“Q: You mention in court about the name of the person from the Ministry of Agriculture office do you know the name of the person that you referring to?”*

*Ans” No, the person that was dealing with Mr. Praveen Chand he mention to us that he was in Sinha like that but was not clearly mention to us.*

*Court: What was the name?*

*Ans: It was Sinha and I really don’t recall it correctly.”*

18. Furthermore, the evidence of Ajeshni in respect of the name of the person they were dealing with is contradicted by that of Praveen Chand, who was dealing with a person identifying himself as Mr. Cargill. At page 124 of the copy record, the following appears during Praveen Chand’s evidence:

*“Q: And did he ever mention his name?”*

*Ans: Yes, he mention his name.*

*Q: What was his name?*

*Ans: Mr. Cargill from Ministry of Agriculture if I’m correct the name should be.”*

19. The inconsistency between the names “Sinha” and “Mr. Cargill” as recalled by two crucial witnesses raise questions about the reliability and precision of the identification evidence. Ajeshni according to the evidence presented never dealt with a person by the name of Sinha. The lack of direct interaction between the complainant, the Branch Operations Officer, and the appellant, coupled with the vagueness of the name “Sinha,” which was mentioned by Ajeshni but not clearly recalled, further weakens the prosecution’s case against the appellant. It is unbelievable that Praveen would tell Ajeshni that he was dealing with a person by the name of Sinha when he was dealing with a Mr. Cargill. The credibility of Ajeshni is very questionable in this respect.
20. In criminal proceedings, the burden lies with the prosecution to prove the accused's involvement beyond reasonable doubt. Reliance on ambiguous or speculative identification, fails to meet this threshold.

### **DETERMINATION**

21. There is no dispute that water blasters valued at \$48,780.00 were stolen. Some of these items were recovered from the flat occupied by the appellant. The landlord had observed the appellant bring cartons into the flat and, in the appellant’s absence permitted police officers to enter and search the premises, during which some items were confiscated. Additionally, Anoop Chandra testified that on one occasion he saw the appellant, along with an ITaukei male, loading cartons of water blasters.
22. The central issue before this court is whether the evidence establishes a sufficient connection between the appellant and the offence of obtaining property by deception. The complainant did not, at any point, have direct dealings with the appellant. The prosecution’s case relied solely on circumstantial evidence, namely the discovery of certain stolen items in the

appellant's flat as the basis for inferring that he was the person who had deceived the complainant. However, this inference is inconsistent with the totality of the evidence presented at trial and is not supported by any evidence of the appellant's involvement in the alleged deception.

23. At no stage did Ajeshni communicate with a person named Sinha from the Ministry of Agriculture. The evidence clearly indicates that it was Praveen Chand who dealt with an individual identifying himself as Mr. Cargill, who claimed to represent Ministry of Agriculture. In view of the above, it cannot be correct that Praveen Chand had mentioned the name Sinha to Ajeshni. On the totality of the evidence, the two elements of the charge that is the accused by a deception has not been established beyond reasonable doubt.

24. At paragraph 23 of the judgment, the learned Trial Magistrate, inter alia, stated:

*"... (PW-1) spoke to a person named Sinha from the Ministry of Agriculture but it was confirmed later there was no person by the name Sinha as an employee in the Ministry."*

Later, at paragraph 29 the learned Magistrate further observed:

*"I believe that Sinha is the same person as Salendra Sen Sinha that had a conversation with (PW-1) for the purchase of the water blasters from Clyde Fiji Ltd."*

25. As mentioned earlier, the evidence is that Ajeshni (PW1) did not communicate with any individual named Sinha. It was Praveen Chand who was in contact with a person identifying himself as Mr. Cargill from the Ministry of Agriculture.

26. There is no evidence establishing that the appellant deceived the complainant into releasing the items. The suggestion that the name “Sinha” referred to the appellant, is speculative, and unsubstantiated by evidence. Furthermore, at paragraph 27 of the judgment, the learned Magistrate relied on the caution interview of the accomplice, Mohammed Ramjan, who had told the police that the appellant had hired his carrier to collect some water blasters from Matavolivoli, Votualevu and he delivered them to the appellant’s flat at Nadi back road.
27. The learned Magistrate failed to consider that when an accused implicates another accused in his caution interview, that aspect of the assertion made is inadmissible against the latter (see *Joeli Baleilevuka v State* [2019] FJCA 209; *AAU58.2015* (3 October 2019), *Rhodes* (1959) 44 Cr. App. R 23, and *Bhagchandka* [2016] EWCA Crim 700). The appellant was prejudiced as a result. In his evidence Mohammed said nothing about the contents of the two boxes loaded in his carrier by an unidentified iTaukei man.
28. Upon a thorough assessment of the evidence, it is evident that the prosecution failed to discharge the burden of proving beyond a reasonable doubt that the appellant committed the offence of obtaining property by deception as charged. This case demonstrates a lack of evidence connecting the appellant to the allegation, as well as material inconsistencies in the evidence of two key witnesses, namely Ajeshni Bali and Praveen Chand, regarding the identity of the individual purportedly representing the Ministry of Agriculture. The vague reference by Ajeshni to “Sinha” and the reference by Praveen to Mr. Cargill undermines the prosecution’s case. Accordingly, the learned Magistrate erred in convicting the appellant based on insufficient and unreliable evidence.
29. In view of the above, this court finds that the conviction is unsafe and therefore it cannot be allowed. Accordingly, there is no need for me to

consider the application for bail pending appeal. Although not raised by any of the parties, it is pertinent to note that the particulars of the offence in the amended consolidated charge filed in the Magistrate's Court omit any reference to "deception," which is an essential element of the offence with which the appellant was charged. Notwithstanding this omission, the learned Magistrate, at paragraph 20 of the judgment, correctly considered "deception" as an element of the offence. Accordingly, the oversight by the police prosecution in the drafting of the charge did not prejudice the appellant.

30. A further concern arises in respect of the manner in which the search and seizure were conducted by the police officers. No search warrant was produced during the trial, nor any search list prepared at the time of the seizure (at the end of July 2018). As per evidence, the police officers also did not provide any search warrant to the landlord prior to entering the flat as required by section 100 (1) of the Criminal Procedure Act. Furthermore, by failing to produce a search warrant in court, section 98 of the Criminal Procedure Act was not complied with. Lastly, the officer who prepared the search list was not called as a witness.
31. The search list tendered in court was dated 6<sup>th</sup> September 2018, indicating a material discrepancy of more than a month between the date of actual seizure and the date of the formal record. As the appellant did not challenge the lawfulness of the search and seizure process, I refrain from further comment, except to state that when questions arise regarding the reliability and lawfulness of search and seizure procedures, the prejudice caused to an accused and the right to a fair trial becomes a paramount consideration.
32. A perusal of the copy record clearly indicates a lack of evidence to sustain the substantive charge (or the alternative offence of receiving stolen property), investigative oversights, crucial procedural irregularities

(search/seizure), and prejudicial information about the appellant brought into evidence by the prosecution (see copy record pages 117 and 156) affected fair trial hence a retrial is not in the interest of justice.

**ORDERS**

1. The appeal against conviction is allowed;
2. The conviction is quashed and the sentence set aside;
3. The appellant is acquitted and is to be released from the Corrections Centre unless held for any other lawful reason.

  
**Sunil Sharma**  
**Judge**



**At Lautoka**  
01 August, 2025

**Solicitors**

**Appellant in person.**

**Office of the Director of Public Prosecutions for the Respondent.**