

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 09 OF 2024
(Labasa Magistrates' Court Criminal Case No. 713 of 2019)
(Labasa FICAC Case No. MACD 07/2021)

BETWEEN: **SHALENDRA ATISH CHAND**

APPELLANT

AND: **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION**

RESPONDENT

Counsel: **Mr. D. Kumar for the Appellant**
 Ms. L. Ravuikadavu for the Respondent

Date of Hearing: **29 January 2025**

Date of Judgment: **28 February 2025**

JUDGMENT

1. On 16 November 2023, in the Magistrates' Court at Labasa, the learned Resident Magistrate ("the Resident Magistrate") convicted the appellant of obtaining a financial advantage, contrary to section 326(1) of the Crimes Act 2009.
2. On 5 April 2024, the appellant was sentenced to a term of 24 months' imprisonment, of which 22 months was suspended for a period of 3 years.
3. By a timely Notice and Grounds of Appeal, the appellant appealed against his conviction and sentence, enumerating seven grounds of appeal.
4. On 22 July 2024, Messrs Dharmendra Kumar Lawyers, on behalf of the appellant, filed an Amended Notice and Grounds of Appeal, enumerating no fewer than ten grounds of appeal.

An overview of the prosecution case

5. The prosecution case against the appellant at trial was that he was the Market Master, and was under a duty to handle monies with the highest degree of honesty and integrity.
6. Mr Mohammed Faiz Ali, the Acting Chief Executive Officer of Labasa Town Council, testified that, on Saturday 10 August 2019, at around 8.15am, he received a call from the Market Attendants, Sachin Narayan and Seema Chand, that they suspected the appellant of having misappropriated stall fees on 9 August 2019. He instructed the accountant, Seema Dutt, to visit the market straightaway to conduct a spot check of stall fees collected on 9 August 2019.
7. At around 11.00am on 10 August 2019, Ms Dutt called him and informed him that there seemed to be an issue with the denomination of cash kept in the safe. It appeared that a \$100 note had been replaced by the same amount in \$10 and \$20 bank notes. Mr Ali testified that no one is permitted to use the cash after it is tallied. The total in the tally sheet should reconcile with the denominations of cash received.
8. It was Mr Narayan's evidence that his duties included collecting fees, balancing the collections, and updating the tally sheets for daily collections.
9. After balancing, the money is put into a cash bag and locked in the safe.
10. On 9 August 2019, after balancing the collections, he went for a smoke with the appellant. When they returned from smoking, he saw Ritesh Kumar take out a \$100 note from his pocket and give it to the appellant, together with the key.
11. The following day, the accountant was in the office with the appellant. The appellant opened the safe and, at the same time, asked Mr Narayan for \$50.00 to add to the collected fees since it was short by \$100. He gave the appellant 2 x \$20.00 and 1 x \$10.00. Mr Narayan said that the accountant would not have seen this as she was sitting on the other side of the door.
12. Mr Ritesh Kumar's duties included assisting the appellant. He testified that once the monies collected are tallied, they cannot be used for any other purpose.

13. Mr Kumar stated that the appellant sent him a text at around 3.00pm on 9 August 2019 requesting \$100, and stating that he would return it the next day.
14. After the accused returned from smoking, he gave \$100 to the accused.
15. According to the tally sheet, there should have been 2 x \$100 notes.
16. Ms. Dutt testified that when she carried out a spot check on 10 August 2019, as directed by Mr Ali, she found instead of 2 x \$100 notes, there was only 1 x \$100 note. The appellant told her that it had been replaced by 4 x \$20 and 2 x \$10 notes. The total cash had balanced. It was Ms. Dutt's evidence that denominations matter for verification purposes.
17. The prosecution also adduced the appellant's record of interview under caution. He admitted that he was the Market Master employed by Labasa Town Council at the material time. The appellant also admitted that he was aware that council staff are not permitted to use council money for personal use.

An overview of the defence case

18. The appellant elected not to give evidence in his own defence, and did not call any witnesses.
19. The defence was advanced through cross-examination of prosecution witnesses and in closing submissions.
20. In a nutshell, the defence case was that the prosecution witnesses gave unreliable evidence, and were contradictory and evasive such that their evidence was incapable of discharging the prosecution burden.
21. The defence also argued that the appellant had not obtained a financial advantage.

The impugned Judgment

22. In her impugned Judgment, the Resident Magistrate correctly identified that the central issue for her determination was whether the prosecution had made her sure that the appellant obtained a financial advantage.
23. The Resident Magistrate made reference to the statutory definition of the offence. What constitutes "*a financial advantage*" is not defined in the Crimes Act 2009.

The Resident Magistrate also cited *Sukanaivalu v Fiji Independent Commission Against Corruption (FICAC)* [2021] FJCA 171 (22 October 2021).

24. After carefully reviewing all the evidence, the Resident Magistrate was sure that the appellant obtained a financial advantage of \$100, which he tried to cover up by replacing that amount when the accountant conducted her audit.

The grounds of appeal

25. Although ten grounds of appeal were advanced in the Amended Notice of Appeal, several of those grounds overlap and are repetitive. At the hearing of this appeal, Mr Kumar quite properly acknowledged as much, and abandoned grounds 6, 7, 8 and 9.
26. In reality, the appellant advances his appeal on the dual basis that: (1) the conviction was unreasonable, in the sense that it was not properly open to the Resident Magistrate to convict him on the totality of the evidence; and (2) the Resident Magistrate erred in law in finding that the appellant's taking of a \$100 note from the tallied monies constituted a financial advantage within the meaning of section 326(1) Crimes Act.

The submissions

27. I am grateful for counsels' oral and written submissions. It is not necessary for me to deal with all the points raised, but I have considered everything advanced by the parties.
28. In seeking to develop his complaint that the prosecution witnesses were inconsistent and unreliable, Mr. Kumar reproduced "*bits and pieces*" of their testimony in his written submissions.
29. Mr Kumar also cited various learned texts on the meaning of 'identification'. During the hearing, he fixated on the fact that none of the witnesses at trial had pointed to the appellant in the dock.
30. In relation to the alleged error of law, Mr Kumar argued that the essence of the concept of financial advantage is that the person alleged to have obtained such an advantage has obtained *a benefit which can be valued in terms of money*. Mr Kumar submits that in this case there was no value of money that was missing

or misplaced or misused. He reasons that it must follow that the appellant did not obtain a financial advantage.

31. Ms. Ravuikadavu, for the respondent, points out that the Resident Magistrate expressly reminded herself that she was required to assess the totality of the evidence, and did address that evidence in the impugned Judgment.
32. Ms. Ravuikadavu submits that the Resident Magistrate did not err in law on the meaning of a “*financial advantage*”, but she did not significantly develop that argument or refer me to any relevant case authorities.

Discussion

33. The appellant bears the burden of satisfying this Court that the Resident Magistrate fell into error in convicting the appellant.
34. In my considered view, it is not remotely arguable that the Resident Magistrate erred.
35. Having reviewed the evidence adduced at trial, it is clear to me that the totality of the evidence supported the conviction. The evidence established beyond doubt that the appellant obtained a \$100 note from the tallied monies on 9 August 2019, and that he arranged for \$100 in smaller denominations to be replaced the following morning when he realised this discrepancy would be discovered by the accountant.
36. The appellant’s complaint about the failure to identify him at trial is wholly misconceived, and frivolous, for the simple reason that his identity was never a litigation issue. The defence case was founded on the appellant being the Market Master.
37. Whilst scant authority has been drawn to my attention on the question of what constitutes a financial advantage for the purposes of the index offence, I am satisfied that the Resident Magistrate did not err in her conclusion that by obtaining a \$100 note on Friday evening, and not replacing an equivalent amount until the following morning, the appellant had obtained a financial advantage. This appears to me to be axiomatic.

Conclusions

38. For the reasons given, I conclude that the conviction was supported by the evidence, and the Resident Magistrate did not err in law, and there has otherwise been no miscarriage of justice.

Orders

1. The appeal is dismissed.
2. The conviction recorded by the Resident Magistrate is affirmed.



Hon. Mr. Justice Burney

At Labasa

28 February, 2025

Solicitors

**Dharmendra Kumar Lawyers for the Appellant
FICAC for the Respondent**