

IN THE MAGISTRATE COURT OF FIJI
AT RAKIRAKI
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 53/10

BETWEEN: STATE

AND: SHAMEEM MOHAMMED

Prosecution: Cpl Chin Samy

Accused: Ms N. Khan

Ruling on No Case To Answer

Background

1. The accused person was charged for the offence of Larceny contrary to section 259 & 262 of the Penal Code, Cap 17.
2. The particulars of the offence were as follows:

SHAMEEM MOHAMMED between 31st December 2008 and 23th April 2009 at Waimari Rakiraki in the Western Division stole 31 bee hives valued at \$8000.00 the property of MOHAMMED SHAFIQ.

3. The accused pleaded not guilty and matter proceeded for hearing. Prosecution called seven witnesses to prove their case. It is to be noted that the witness statements of Wahid Ismail (PW2), Ismail Ahmed (PW3), Nasib Ali (PW4) were tendered by consent. The complainant Mohammed Shafiq (PW1), Mohammed Feroz (PW5), the caution interviewing officer and the charging officer testified on oath.

Evidence

4. I now briefly consider the salient evidence adduced by prosecution during the trial.
5. PW1 - Mohammed Shafiq

He had some bee hives (32) and agreed with one Shameem to live the same at Shameem's farm at Waimari, Rakiraki. He had known Shameem for 8 years. Shameem is the accused. The hives were kept at accused land and they agreed orally that accused be given a bottle of honey per month for hives to be kept at his farm. He came once in a month or once after two months to check the bee hives and also to harvest. One day he went to check the hives and saw that all the hives were missing from there. He went to see accused family then reported the matter to police. Later police informed him that the hives were at Lautoka. They went there and identified the bee hives at Lautoka. Total value of the hives is \$8000.00. The hives about 23 were being kept at the land belonging to Wahid. Wahid was informed about the bee hives. He was told that the bee hives were bought from accused for \$2,200.00. After clearance by police he took the bee hives to Ba. Accused was never a bee farmer.

In cross examination he stated that accused was his work mate. That the bee hives were kept at one Jumbo's place and he didn't mention accused. He didn't mention anything about the agreement in his statement to police. He denied borrowing \$800.00 from accused. Couldn't recall when the bee hives were stolen. Harvest is done twice per year and supplies 1 bottle of honey per month to accused from his stock. He denied that he gave the bee hives to accused in return for money borrowed from accused.

In re-examination he stated that accused from Rakiraki and the person Jumbo is accused brother. He didn't borrow any money from accused.

6. The statements of PW2 – Wahid Ismail, PW3 – Ismail Ahmad and PW4 – Nasib Ali were tendered by consent.
7. PW5 – Mohammed Feroz
He testified and nothing said links accused to charge.
8. PW6 – Constable Abdul
He caution interviewed the accused. He is also investigating officer. They located the bee hives from Lautoka and returned it to owner.

In cross examination stated that information was received from complainant. He was directed by his boss to return the hives to owner.

Issue

9. Whether there is a case to answer for accused person?

Law/Analysis

10. Section 178 of the Criminal Procedure Decree states that *"if at the close of the evidence in support of the charge it appears to the court that a case is not made out against the accused person sufficiently to require him or her to make a defence, the court shall dismiss the case and shall acquit the accused."*
11. In the case of State v Mahend Prasad HAA 019 of 2008, at paragraph 17, the Court had this to say when dealing with the issue of case to answer *"...The test to be applied in the Magistrates Court, was explained in Abdul Ghani Sahib v The State [2005] FJHC 95; HAA 0022 of 2005; 28 April 2005, as:*
- 'In the Magistrates Court, both tests apply. So the Magistrate must ask himself firstly whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence, and second whether the prosecution evidence, taken at it's highest, a reasonable tribunal could convict. In considering the prosecution at its highest, a reasonable tribunal could convict. In considering the prosecution case, taken at its highest, there can be no doubt at all that where the evidence is entirely discredited, from no matter which angle one looks at it, a court can uphold a submission on no case. However, where a possible view of the evidence might lead the court to convict, the case should proceed to the defence case.'*
12. When considering the elements of the said offence of Larceny as charged they are as follows:
- i. Accused (Shameem Mohammed);
 - ii. Without consent of owner (Mohammed Shafiq);
 - iii. Fraudulently and;
 - iv. Without claim of right made in good faith;
 - v. Takes and carries away anything capable of being stolen (bee hives);
 - vi. With intent at the time of taking to permanently deprive the owner.

13. When considering the facts there is ample evidence that PW1 as agreed with accused had given his bee hives to accused to be kept at his place in Waimari Rakiraki.
14. There is ample evidence to show that PW1 was the owner of the bee hives and that he was to give accused a bottle of honey per month for looking after the bee hives.
15. There is no dispute that the bee hives were then sold by accused to Wahid Ismail from Lautoka without PW1's consent or knowledge. For that reason PW1 reported the matter to police and relevant enquiries carried out.
16. There is ample evidence to show that the bee hives were actually removed from its known location at Waimari Rakiraki and placed at Johnson Road Lautoka. PW1 was unaware of this until police investigations.
17. When considering the above evidence, the court is of the view that there is ample evidence to prove each element of the offence.
18. I bear in mind that at this stage, the duty of the court is to analyze the evidence using the objective as opposed to the subjective test. It's not for the court to decide on witness credibility and weight to be placed on material evidence at this stage.
19. When considering the prosecution evidence at its highest, the Court is of the opinion that on the evidence so far adduced, a reasonable tribunal could convict on the prosecution evidence.

Conclusion

20. On the basis of the evidence, the court finds that there's a case to answer against the accused person.
21. Accused should be put to his defence.

Samuela Qica
Resident Magistrate

19th June 2013