

IN THE MAGISTRATE COURT OF FIJI

AT BA

CRIMINAL JURISDICTION

CR CASE NO. 90/15

BETWEEN: STATE

AND: SHALESHWAR SINGH

Prosecution: Sgt A Keresoni

Accused: Mr Singh (LAC)

JUDGMENT

Background

1. The accused person was charged for one count of theft contrary to section 291(1) the Crimes Act No. 44 of 2009.
2. The accused pleaded not guilty to the alleged offence and the matter proceeded to trial. Prosecution called two witnesses to testify. The prosecution witnesses were:
PW1 – Shakuntla Wati (complainant)
PW2 – Retired D/Inspector Surendra Prasad
3. The accused also testified and decide not to call any witnesses for the defence case.
4. For purpose of this judgment, I intend not to the recite the evidence in detail but will refer only to salient features of the evidence when assessing the same.

Issue

5. Whether prosecution had proved beyond reasonable doubt the allegation charged against accused?

Law/Analysis

6. Prior to assessing the evidence I bear in mind that prosecution has the burden of proving the charge against accused guilt beyond a reasonable doubt. This burden never shifts to the accused and remains with prosecution throughout the trial. Prosecution must prove all the elements of the offence beyond a reasonable doubt before an accused is found guilty for any criminal offence. (see: Woolmington v DPP (1935) AC 462).
7. When considering the elements of the said offence of theft as charged they are as follows:
 - Accused (Shaleshwar Singh).
 - Dishonestly appropriated one gold chain with two gold sovereign.
 - Belonging to the complainant (Shakuntla Wati).
 - With intent at the time of taking to permanently deprive the complainant of the said gold chain with two gold sovereign.
8. There is no dispute that on the date and time in question PW1 was at Ba Town when her jewelry namely one gold chain with two gold sovereign was taken from her without her consent. There is no dispute that the said jewelry was taken and has not been returned to her. Hence it was taken with intention to permanently deprive her of the same.
9. *The disputed fact in issue is whether the accused stole the jewelry of complainant?*
10. PW1 stated that someone was following her from the market to Paddy's and calling her aunty. That person gave her a plastic bag and started asking for her things and also asked for her gold chain with 2 gold pendant. Then he ran away from there. That person was wearing

long sleeve shirt, black trousers, and had short hair. The gold chain cost \$700.00. She then reported the matter to police. Later they called her at the police station and she was able to identify that person. She was seated on a bench and that person was a few meters away. That person is the accused.

11. In cross examination complainant stated that at the police station she was seated a few meters away from where accused was standing, about 2 – 3 meters away. She stated that accused was following her from the market then after that for some time she was following the accused. She went to the police station on the next day and saw the accused in one room at the police station and was told to wait outside. Then accused and other nine men were standing in the lineup. Police didn't tell her to point at accused. It was accused who stole her jewelry. She was with police in a room then she attended the ID parade and identified accused.
12. PW2 conducted the ID parade. 10 people were in the lineup including accused. The 9 men were already standing at the lineup and accused came in and chose position between 8th and 5th person. The complainant came in once all men were standing in position. She was explained the procedure. She walked from the 1st to 10th person and then pointed at accused.
13. In cross examination he stated that he doesn't know if PW1 was taken to a room where accused was, before ID parade.
14. The accused person testified and denied the allegation. According to him he was never in town on date and time in question. He was at home as he's mother was sick. He was at home when police came and took him to the police station. He recalls he was in a room interviewed for another case when police brought the lady into the same room and she was seated there. Then they took him to the bure and charged him.

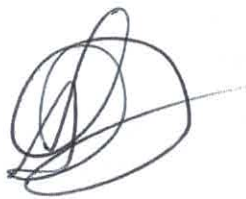
15. He stated in cross examination that he doesn't know as to how PW1 identified him.
16. It appears from the evidence that the complainant has made an identification of someone who is unknown to her. Regardless of whether identification is made of a stranger or someone known to the complainant, the "Turnbull" guidelines or principles need to be satisfied i.e. the distance between complainant and the suspect, the lighting condition, the time taken to identify the suspect, physical description of the suspect, any object to obstruct view from seeing the suspect and so forth.
17. None of these were clearly set out by the complainant and I have some reasonable doubt bearing in mind the defence case that he was never in town on the said date.
18. In addition, PW1 stated that she already saw the suspect at the police station before the ID parade. Accused also confirmed the same that he was in a room with police when PW1 was brought into the same room.
19. On the basis of said evidence by PW1 and accused, I thus find that the ID parade conducted at the police station was not conducted fairly and was prejudicial to the accused. Hence, I place no weight on the ID parade and disregard the same.
20. Therefore it follows that without any proper foundation being laid in relation to identification of the suspect, the dock identification will not be accepted as it will prejudice the accused (see: Peni Lotawa AAU0091 of 2011). In Lotawa's case (supra) at paragraph 7 the Court of Appeal stated as follows:
"Dock identification is completely unreliable in the absence of prior foundation of identity parade or photographic identification because it then becomes the ultimate leading question. The answer is obvious to any witness, the person to be identified is sitting in the dock."

21. Having noted the above on the identification issue, I further note that though PW1 may have lost her jewelry, it appears flimsy from the evidence as to how the jewelry was actually lost or taken from her. Aside her evidence that the suspect was talking to her and then suddenly run's away, there is no evidence to show that the suspect actually took the jewelry and ran away.
22. In any event reverting back to the identification issue, since I've placed no weight on the ID parade, I've also disregarded the dock identification as it would be prejudicial to the accused.
23. I find the evidence of DW1 as reliable and credible although he has nothing to prove. I refuse to accept the evidence of PW1 and PW2 as it is unreliable and not credible.

Finding

24. I find that prosecution has failed to prove beyond reasonable doubt the identification of the suspect.
25. I find the accused not guilty as charged and order that he be acquitted accordingly.
26. Twenty - eight (28) days to appeal.

I rule so accordingly.



.....
Samuela Qica
Resident Magistrate



20th August 2019