

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 184 of 2016

STATE

v

VILIAME TUINAYAU

Appearance : **WPC Mere** for the prosecution
Ms Devi. S for the accused

Judgment : **13 September 2019**

JUDGMENT

1. The accused, Viliame Tuinayau is charge under *section 291* of the *Crimes Decree* for one count of *Theft*.
2. The particulars of the offence are that on the 26th day of March 2016, at Labasa in the Northern Division, the Accused dishonestly appropriates a black purse valued \$70.00 the property of Ramiza Bi with the intention to permanently deprive Ramiza Bi.
3. The Accused pleaded not guilty to the charge on 12 July 2016.

4. The case proceeded to trial on 7 December 2018.
5. The Prosecutor called Ramiza Bi (Ramiza) as the only witness. The Accused exercised his rights to remain silent and called no witness.

Law

6. *Section 291 of the Crimes Decree, state;-*
 "(1) A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property."
7. The elements of the offence are;-
 - a) *the accused,*
 - b) *dishonestly appropriates the victim's property,*
 - c) *with the intention,*
 - d) *to permanently deprive the victim.*
8. The words "*dishonesty*", "*appropriation*", and "*property belonging to another*" are defined in *section 290, 293(1), and 289(1)* of the *Crimes Act* respectively.
9. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

10. There will be no adverse inference drawn against the accused for exercising his rights to remain silent. There is no burden on the accused to prove his innocent.

11. Ramiza stated in her evidence that her purse was stolen from her 2 years ago. She forgot the date. It happened outside the market around 12 o'clock. When the area was crowded. Her husband and children were with her on her right side. Her purse was hanging on her left side.
12. Ramiza identified the accused in court as the same person that was arrested by the police. She did not know that the accused took her purse but one police officer saw the accused. The police officer came, and arrested the accused. The police officer informed her to report to the police station. The police took the purse and also took her and the accused to the police station.
13. In cross-examination, she said that her purse was inside the bag. She did not see the accused took out her purse. The police told her that someone took out her purse from her bag.
14. Ramiza did not see the accused took her purse from her bag. She said a police officer saw the accused took her purse from her bag. The police officer was not call to the stand to give evidence that the accused dishonestly appropriate Ramiza's purse. The record of the interview was not tendered. The evidence does not support the charge that the accused dishonestly appropriate Ramiza's purse. That creates doubt on the first two elements of the offence. With that doubt, there is no need to assess evidence relating to the last two elements of the offence as the case had failed and not possible to assess the last two elements without establishing the first two elements.

15. In assessing the evidence, I find the prosecution has not discharge the burden of prove as there are doubts as discussed above.

16. In this judgment, I find the accused not guilty as charge and I acquitted the accused accordingly.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C. M. Tuberi", written over a horizontal line.

C. M. Tuberi
Resident Magistrate