

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 412 of 2009

STATE

v

RISHI RAM SAHAY

Appearance : **PC Lal** for the prosecution
Accused no appearance

Judgment : **25 February 2019**

JUDGMENT

1. The accused, Rishi Ram Sahay was charged for *Larceny of Cattle* contrary to *section 275* of the *Penal Code*.
2. The particulars of the offence are;-
“Rishi Ram Sahay between 31 July and 1 August 2009, at Labasa, in the Northern Division, stole a cow valued \$500.00 and a calf valued \$300.00 both to the total value of \$800.00 the property of Mohammed Ismail.”
3. On 13 February 2012, the Accused waived his right to counsel and pleaded not guilty to the charge. On 16 March 2015, Mr Sen who appeared as counsel for the accused informed the court that there is no admission in the caution interview. When the case was called for hearing on 14 August 2015, Mr Sen sought for

adjournment of trial to allow him to advise the accused that he has no defence for the case.

4. Due to the non-appearance of the accused, the prosecution application for trial in absentia was granted by the court on 15 March 2017. The case proceeded to trial in absence of the accused on 22 November 2017. The Prosecution called three witnesses to the stand.

Law

5. *Section 275 of the Penal Code, state;-*

“Any person who steals any horse, cattle or ship is guilty of a felony, and is liable to imprisonment for fourteen years.”

6. The definition of theft is provided in *section 259 of the Penal Code* and has been considered in this judgment.

7. The elements of the offence that the Prosecution must prove beyond reasonable doubts are;-

- a) *the accused,*
- b) *fraudulently and without any claim of rights in good faith,*
- c) *takes and carries away,*
- d) *a cow and a calf,*
- e) *without the consent of Mohammed Ishmail,*
- f) *with the intention to permanently deprive Mohammed Ishmail.*

Prosecution Evidence

8. Mohammed Ismail is the first witness for the prosecution case. He stated in his evidence that he can recall the 31 July to 1 August 2009, when his cow and calf valued \$800.00 was stolen. His cow and calf were tied across the drain at where he is staying at Vakamasisuasua. He reported the matter to the police. The police conducted search and locate his cow and calf. He was called by the police to identify the cow and calf and he confirmed that was his missing cow and calf. The same was returned back to him by the police after 3 days.

9. Rashid Ali is the second witness for the prosecution. He stated in his evidence that he can recalled in 2009, but cannot recall the date clearly, when Rishi Ram sold a cow and calf to him. Rishi Ram sold the cow and calf to him for his wife school fees. Before buying the cow and calf, he asked the owner of the house in which Rishi Ram is staying, where the owner of the house confirmed to him that the cow and calf belongs to Rishi Ram. He bought the cow and calf under a written agreement. He tendered the agreement as *prosecution exhibit 1*. He kept the cow and calf for 3 months until the police came and informed him that the cow and calf were stolen and they took the cow and the calf.
10. PC Deo is the third witness for the prosecution. He caution interview Rishi Ram Sahay, where he admitted stealing the cow and the calf. He tendered the caution interview as *prosecution exhibit 2A* the Hindustani version and the translated version as *prosecution exhibit 2B*.

Defence Evidence

11. This is a trial in absence of the accused. The accused absence will be taken that he is exercising his rights to remain silent. There will be no adverse inference drawn against the Accused in his absence as the burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

Analysis and determination

12. The second witness signed the agreement with Rishi Ram the accused and he knows the accused as he went to the accused house. If the accused was present there will be no difficulty with the second accused in identifying the accused.
13. The victim stated that his cow and calf was tied opposite the drain from where he is staying at Vakamasisuasua. When he went to see the cow and the calf they were missing. The second witness stated that Rishi Ram Sahay sold to him a cow and a calf which was taken by the police. The victim identified the cow and the calf from the police as his missing cow and calf.
14. In the caution interview, Rishi Ram admitted stealing the cow and calf from the Naseakula bridge and sold it to Rasheed. Mr Sen had informed the court that

there is no admission and there is no defence for the accused. I hold it that the accused is not challenging the admission.

15. With the admission of the accused in the caution interview and the evidence of the victim and the second witness for the prosecution, I find that the prosecution has discharged the burden of proof required in this case. Though the cow and the calf or photograph of the same was not tendered, I am satisfied with the admission of the accused in the caution interview and the evidence of the prosecution.
16. In my assessment, I find that it was the accused who stole the victim's cow and calf in 2009.
17. In my judgment, I find the Accused guilty as charged and I convicted the Accused accordingly.

28 days to appeal.



C. M. Tuberi
RESIDENT MAGISTRATE