

IN THE RESIDENT MAGISTRATE'S COURT
AT NADI WESTERN DIVISION
CRIMINAL JURISDICTION

Criminal Case No: 674 of 2016

BETWEEN : **THE STATE**
AND
RAM RAJ

Before : **NILMINI FERDINANDEZ**
RESIDENT MAGISTRATE

Date of Ruling : **15th day of March, 2022**

Acting Corporal 5153 Mikaele Salele for Prosecution
Ms. Vreetika for Accused present

RULING ON NO CASE TO ANSWER

1. The accused in this case, **RAM RAJ**, is charged with one count of Theft: contrary to Section 291 (1) of the Crimes Act 2009.

Particulars of the Offence

RAM RAJ on the 4th day of May, 2016 at Nadi in the Western Division, dishonestly appropriated 1 x Van drift valued \$400 and 3 x Suspension plates with drum valued at \$200 all to the value of \$600.00 the property of Ravindra Lal.

2. On the 29th September 2016, the accused has first appeared in court when the charge has been read out to him. He has pleaded not guilty to the charge.

3. The trial has commenced on the 21st of February 2020 and the Prosecution has called 03 witnesses at the trial and tendered to court as evidence 03 exhibits marked as **MFI -1** and **Pr. Ex. 2 to 3**.
4. When prosecution's case was closed, the Defence Counsel made an application for **No case to answer**. The defence has filed written submission in regard to the said application but the prosecution has not moved to tender any submissions.
5. I have considered the submissions made by the defence counsel as well as the evidence placed before court by the prosecution.

The Law relating to 'No Case to Answer'

5. **Section 178** of the Criminal Procedure Decree states as follows;
"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."
6. Justice Nazhat Shameem in **Abdul Gani Sahib V. The state** discussed the tests that are applicable in considering whether there is a **no case to answer**. Accordingly, the court has to consider;
 - a. **Firstly** whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence; and,
 - b. **Secondly**, whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.

7. The learned defence counsel in written submissions has drawn attention of court to the decisions **Rohit Latchan v State**, Criminal Action No. HAA00321 of 1996 and in **Moidean v. Reginam**, Criminal Appeal No. 41 of 1976.

8. It is noted that in **Moidean v. Reginam**, (supra) Court of Appeal has held that,

“A submission that there is no case to answer may properly be made and upheld:

(a) when there has been no evidence to prove an essential element in the alleged offence:

(b) when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it.

Apart from these two situations a tribunal should not in general be called on to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If, however, a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal (if compelled to do so) would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer.”

9. It should be noted that at this stage the Court is not expected to do a detailed analysis of evidence. All what the Court should consider is whether the evidence in its totality would touch all the ingredients of the offence and whether the Prosecution has produced reliable evidence.

10. The accused in this case is charged with one count of Theft: contrary to Section 291 of the Crimes Act 2009.
11. **Section 291 of the Crimes Act 2009** reads as follows.

291. — (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.

Penalty — Imprisonment for 10 years.

(2) for the purposes of this Decree an offence against sub-section (1) is to be known as the offence of theft.
12. Accordingly, to prove the offence of Theft, against the accused in this case the prosecution must prove the following elements beyond reasonable doubt:
 - a) That **the accused in this case**
 - b) has **dishonestly appropriated property**
 - c) which belonged to the complainant
 - d) **with the intention of permanently depriving the other** of the property.

The analysis of the prosecution's evidence

13. Upon examination of evidence adduced by the prosecution it revealed that **PWI Ravindra Lal**, has stated in his evidence that on the 04th May 2016 he has seen with his own eyes how the accused in this case has loaded vehicle parts to the value of \$600 which belonged to him, into the accused's car.

14. The witness has identified the accused sitting in court at the trial as the person who loaded those vehicle parts and has identified the vehicle parts in the photos marked as **MFI -1** as the items that that were so loaded by the accused.
15. The cross examination seems rather important as the learned defence counsel has managed to reveal that PW1 has been renting the land from where the vehicle parts were alleged to have been stolen in May 2016 and that he has vacated the said land in April 2010.
16. It has been suggested to the PW1 by the learned counsel that the witness has been requested several times by the owner of the land to remove all his belongings including the vehicle parts from the land, but the witness has failed to remove them.
17. The witness has stated in his evidence that he was not allowed by the owner of the land, Arvind, to remove his belongings from the land, but admitted at cross examination that from 2010 to 2016 he has not officially reported it to the police nor obtained a court order to remove his items.
18. It has been suggested to this witness that the vehicle parts that were alleged to be stolen were of no use and that the accused has been working as a rubbish collector at the relevant time.
19. It has been also suggested that only recently the Nadi Town Council has started to provide the service of rubbish collecting from compounds.
20. Further and most importantly, the complainant has stated at cross examination how he saw Arvind, the owner of the land, helping the accused to load the vehicle parts into the accused's vehicle.
21. **PW2 Arvind Kamal Prasad**, is the owner of the land from where the accused is alleged to have stolen the vehicle parts that belonged to PW1.

22. He stated in his evidence that PW1 has been renting his house until he vacated it when it was damaged by Cyclone Winston. This witness has later repaired the house and has moved into it with his family.
23. When he moved into the premises, the compound has been littered with junk vehicle parts including a junk van that was not in use. Therefore, he has instructed the accused to inform PW1 to clear the compound, but when PW1 has failed to turn up and clear the compound, he has further instructed the accused to load all the junk vehicle parts into his truck and to dispose them. However, when the accused has done so, it has been reported to police that the accused has stolen PW1's vehicle parts.
24. This witness has stated at cross examination how he has given PW1 enough opportunities to clear his vehicle parts from the compound, how PW1 has failed to clear up his items and how he has not even requested for further time to remove them.
25. He further stated that the vehicle parts which were left in the compound were junk parts that were of no use and that since there were no reason for those junk to be in his compound, he has given instructions to the accused to clear them.
26. He confirmed to court that the accused has not entered into his compound at any time to steal the vehicle parts.
27. The last witness for the prosecution **WPC 4194 Shobna Prasad**, was the investigating officer as well as the officer who interviewed the accused at the caution interview.
28. While tendering the record of the Caution interview marked as **Pr. Ex. 2**, this witness informed court that the accused has stated in his statement that he had been called by one Arvind (PW1) to come and clean up his compound because he had shifted there with his family and that the accused had gone there in his car to clean the compound.

29. This witness has confirmed at cross examination that the exhibits tendered by the prosecution were, in fact, old vehicle parts and that the accused has stated many times at the caution interview that those vehicle parts were a part of the rubbish, and that he had no intention of stealing the vehicle parts as they were a part of the rubbish.
30. As pointed out earlier, court is not expected to do a detailed analysis of the evidence, but it is evident from the available evidence for the prosecution, that the accused has only acted according to the instructions he received from the owner of the land to clear the compound by disposing the junk in it and that he did not have the necessary intention to steal.
31. It is admitted that although the complainant (**PW1**) has vacated the premises that belonged to **PW2** in April 2010, he has not cleared his belongings including vehicle parts off from the said premises until May 2016. Although he has claimed that the owner did not allow him to enter the premises to remove his goods, he has admitted not reporting it to police nor obtaining a court order. It is obvious that he has kept quiet for 6 years without claiming his goods and this leaves an inference that he has lost interest of those items and has given up the ownership. Further, a serious doubt too arises about the genuineness of his evidence in court.
32. It is evident that **PW1** has, in fact, obstructed **PW2** from freely enjoying his property by leaving his old vehicle parts in it for 6 years and that it was not wrong for **PW2** to take steps to clear his property after giving sufficient opportunity for **PW1** to remove them if he had wanted them.
33. Accordingly, this court is satisfied that **PW1**'s evidence is so manifestly unreliable and that it needs to be discredited. Further, the *mala fide* of the accused as well as the other essential elements of the charge have not been

proven sufficiently by the evidence adduced by the prosecution. Therefore, this court is unable to safely convict the accused on those evidence.

34. As such, the submission made by the defence that there is no case to answer is upheld.

Conclusion

18. In the circumstances it is decided that a case has not been made out against the Accused sufficiently, to require him to make a defence.
19. Accordingly, the case is dismissed, and the accused is acquitted under Section 178 of the Criminal Procedure Act.

DATED at Nadi on 15th day of March, 2022.



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Nilmini Fernandez

RESIDENT MAGISTRATE

