IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 59 of 1980

BETWEEN: SUREND SINGH s/o Shiri Ram Singh — Appellant

A N D: R E G I N A — Respondent

Mr. Sahu Khan — Counsel for the Appellant
Mr. D. Williams — Counsel for the Respondent

JUDGMENT

The appellant was charged with the offence of obtaining money (to wit $144.80) by false pretences contrary to Section 342(a) of the Penal Code but after hearing evidence, including evidence given by and for the appellant the magistrate found him guilty of larceny of $24. Although Section 176 of the Criminal Procedure Code provides for such an alternative verdict there is one very important difference in the elements of the two offences. Whereas in the first offence the complainant surrenders possession and property in the money on the strength of the false pretence, the essence of larceny is "taking without the consent of the owner", although in the case of larceny by a trick, which is what the magistrate found the present offence to be, the consent is said to be negatived by the use of the trick. What the magistrate found was that the appellant "by several tricks induced P.W.1 to part with this sum (i.e. $24)". No where has he specified what tricks he was referring to. At no time during the trial did the magistrate or anyone else refer to the possibility of any alternative finding so

that the defence must have been concerned throughout merely with the basis that the money - in fact a total of $312.65 - was handed over voluntarily to the appellant for repairs to a car, although perhaps induced to do so by a false pretence.

There was no dispute about this. The appellant carried out certain repairs and asked for $312.65 for his work. The complainant said he was satisfied that the work was carried out and quite happily handed over the money. The appellant gave him a receipt for only $167.85 but this was not disputed until later when a relation queried the discrepancy between the bill and the receipt. This was why the appellant was originally charged with obtaining the difference, i.e. $144.80, by false pretences. However this charge would clearly not stand up. Although the appellant may not have followed the procedure laid down by his employers Burns Philp Company Limited he had purchased spares outside Burns Philp in order to do the job. $167.85 seems to have been the amount due to his employers, whilst the balance, or at least most of it, was in respect of the cost of spares not due to Burns Philp. It doesn't seem to have been made very clear whether the appellant was acting entirely as an employee of Burns Philp, or whether he was acting partly as an employee and partly on his own account although it seems that the work was not carried out on Burns Philp's premises. The manager of his Burns Philp branch gave evidence on behalf of the appellant and he seemed to find nothing unusual in the way the appellant operated. The magistrate, for some reason, was not impressed with the manager's evidence, but in the circumstances it was very significant that he

did give evidence on behalf of the appellant, and surely this should have weighed very heavily on the side of the defence.

There was no question that the appellant did the work on the vehicle required of him, work which seems to have been to the satisfaction of the vehicle's owner. Most of the $312.85 charged seems to have been accounted for although after going through the items said to make up the total amount the court accepted that a sum of $24 (or $24.40) was unaccounted for. The appellant and the manager of Burns Philp seemed to have accepted that this might have been overcharged and tried to make it up with the offer of certain spares, which offer was not accepted, although by that time the matter was in the hands of the police.

But overcharging is not a criminal offence, the appellant was charged not with overcharging but with obtaining by false pretences, and he was found guilty of larceny by a trick of $24. The evidence concerning this amount of $24, or $24.40 (because it is not clear which was the correct amount), was rather confusing and it is difficult to see exactly what tricks the appellant is supposed to have used to obtain this $24. This is a most unsatisfactory state of affairs and is contrary to the accepted norm that an accused person should know the precise case against him.

There were numerous other objections raised by counsel for the appellant to the judgment of the magistrate all of which have some substance. However, I feel it is unnecessary for me to deal with them separately in the circumstances. After counsel for the appellant had concluded Crown

Counsel adopted a course which unfortunately he is adopting rather too often. He said "There is nothing I wish to say". I have commented on this practice in Rajendra Deo v. R. Criminal Appeal No. 34 of 1980 and the Fiji Court of Appeal commented on it in the case of Kushi Ram and Gurdayal Singh v. R. Cr.App. No. 20 of 1977. If the Crown does not oppose an appeal it should say so. If it does oppose it then the Court expects proper arguments, and in every case it has a right to expect every assistance from Crown Counsel in coming to a proper decision. I have previously drawn the attention of the Director of Public Prosecutions to this matter and trust that Crown Counsel will be properly directed as to their duties and functions.

In this case I must assume that the Crown does not oppose the appeal and I therefore set aside the judgment and sentence passed by the magistrate and acquit the appellant. The fine if paid should be returned to the appellant.

(sgd.) G.O.L. Dyke
JUDGE

LAUTOKA,
12th September, 1980.