

Appellate Jurisdiction

000373

Labasa Criminal Appeal No. 1 of 1981

Between:

AHMAD FARUK KHAN s/o GULSHER KHAN

and

REGINAM

Mr. A.K. Singh for the Appellant  
Mr. R.B. Lindsay for the Respondent

JUDGMENT

On the 1st September, 1980 the appellant was at Labasa Magistrate's Court convicted after trial on two counts of obtaining money by false pretences and two counts of obtaining credit by false pretences. Appellant was sentenced on the first count to nine months' imprisonment suspended for twelve months and in addition appellant was fined on each count for a total sum of \$1,150. Appellant also was ordered to pay costs of \$50.

There are four grounds of appeal, namely -

- "(a) That in none of the cases the pretence as laid in the charges proved, nor was any evidence led as to the falsity of the pretence.
- (b) That in any event, none of the persons named as victims in the charge stated that they had relied on the pretence, or falsity thereof, or parted with any money in reliance of the pretence, or the falsity thereof.
- (c) That in any event, the persons named in the charge stated that the sums they had advanced was a personal loan to the accused.
- (d) That the verdict is unreasonable and cannot be supported having regard to the evidence."

Crown counsel conceded at the outset of the hearing of this appeal that he could not support the convictions

entered in this case against the appellant on the ground that one of the essential elements of the offence in all four counts was not established. There was no proof that the false pretence used by the appellant induced any of the complainants to part with his money.

Count 1 relates to a sum of \$150 which it was alleged the appellant obtained from one Mahendra Kumar s/o Ram Suchit by falsely pretending that the said sum was required by his boss, Hari Prasad s/o Ram Narayan. At page 5 of the record Mahendra Kumar (P.W.1) said in his evidence as follows:

"Accused wanted \$50. Accused said his boss, Hari Prasad, was in need of this cash. Accused said he will pay me back. He gave me his personal cheque. Accused said he wanted loan and would pay me back."

and a little later he said:

"I would have given \$150 to accused even if he had not mentioned Hari Prasad's name."

The evidence with respect to the other three counts was similar in nature to the first count in that it clearly indicated that the complainant in each count was not in fact induced to part with his money by appellant's alleged false pretence. Indeed the evidence indicated that the transactions concerned were all in the nature of loans from the complainants to the appellant.

In Archbold Criminal Pleading Evidence and Practice (36th Edition) para. 1960 the law is succinctly stated in these words:

"It must also be proved that the goods, etc. named in the indictment, or some part of them were obtained by means of the pretences alleged; in other words, the prosecution must prove that the alleged false pretence operated on the mind of the person

alleged to have been defrauded and induced him either wholly or in part to part with the money or property. To prove this, counsel for the prosecution should ask the person alleged to have been defrauded "Why did you part with your money?" Or at least "Did you believe what the prisoner told you?" But proof that the false pretence operated on the mind of the prosecutor need not in every case be afforded by the direct evidence of a witness to that effect, if the facts are such that the alleged false pretence is the only reason which could be suggested as having been the operative inducement."

In all the circumstances of this case I would allow this appeal and order that conviction entered in respect of all four counts be set aside.



(T.U. Tuivaga)  
Chief Justice

Suva,  
16<sup>th</sup> April, 1981.