

IN THE FIJI COURT OF APPEAL

Criminal Appeal No. 95 of 1985.

Between: SURENDRA PRASAD Appellant

- and -

R E G I N A M Respondent

Appellant in Person.
Director of Public Prosecutions (Mr. M. D. Scott)
for the Respondent.

Date of Hearing : 25th June, 1986

Delivery of Judgment: 4th July, 1986

JUDGMENT OF THE COURT

Speight, V.P.

The appellant who appeared on his own behalf filed no less than sixty-five grounds of appeal and canvassed these before the Court. Before discussing them, it is necessary to outline in brief the counts upon which he was convicted. They comprised two allegations of theft - a television set and video deck in each instance. In the first case, the allegation was that on the 16th of May, he stole a television set and video deck which he had on hire from a video firm owned by Nitend Singh. The second charge was similarly for the same type of offence on the 29th of May - a similar equipment from another dealer Indar Deo.

In respect of the first count, there was no dispute that he hired the set in the ordinary way for a rental period of approximately five days. There was evidence from one Baswa Nand that on the same day as the hiring, appellant had approached Nand and concluded a sale to him of the equipment for \$500.00 which was paid. Baswa Nand's wife supported her husband's evidence and subsequently the police recovered the property from their house. The appellant's explanation given in evidence and supported by some witnesses was that a television set and video had continued in his house for a week after the hiring and it was then claimed by appellant when he was interviewed and again at trial that he awoke one morning to find his house had been burgled and the machine stolen.

The grounds of appeal put before us were lengthy and many overlapped. They all consisted of claims that a burglary had indeed taken place, that the police had been negligent or dishonest in not making appropriate investigations to catch the thief, that Baswa Nand and his wife were untruthful witnesses and that the assessors should have accepted the defence evidence. No attack was made upon the accuracy or the fairness of the learned trial Judge's summing-up. Nor indeed, we would wish to say, could there possibly have been any such criticism for the directions to the assessors were a model of clarity and fairness.

After canvassing the evidence for and against in an even handed way, the learned Judge said:-

" If you believe the defence or if the defence version leaves a reasonable doubt in your minds, then you will advise me that the 1st accused is not guilty on Count 1. Remember, the accused does not have to prove anything. If you come to the conclusion that the defence might be true then the accused is entitled to be declared not guilty.

However, if you reject the defence version and are sure that Baswa Nand and his wife are telling the truth, then you will advise me that 1st accused is guilty on the 1st count."

We have considered each of the thirty-eight criticisms which the appellant put before us. All that need be said is that they are repetition and enlargement of matters which the appellant obviously advanced to the court at the trial, matters which were appropriately discussed and summarised in the summing up and which were rejected by the assessors when they returned their unanimous opinions of guilty.

The facts surrounding the second count were somewhat similar. In this instance, it was the accused's wife who hired the set and deck from the dealer Indar Deo, and she went along with the delivery van when the sets were taken on her instructions not to their own home, nor to the fictitious address which she had given on hiring, but to the residence of one Amol Chand. Amol Chand and his wife gave evidence to the effect that this delivery must have been pursuant to an approach made to Chand earlier in the same day or probably a day or so before when appellant had told him that he was going overseas and wished to sell the equipment as well as other property.

Chand's evidence was that he had indicated that he was interested but would not conclude a purchase until he had seen the set. To the same effect was the evidence of his wife who said that when appellant's wife delivered the set, she had repeated this story about a prospective sale. In his evidence, the appellant said that Chand and his wife were not telling the truth, and that in fact the transaction had been a genuine one of hire carried out by the appellant's wife as a result of a request from Chand who had provided \$15.00 fee for the hire.

Again the matter amounted to a pure conflict of evidence and again the learned Judge's directions were appropriate in contrasting the evidence for and against. Indeed, the Judge took the prudent step of alerting the assessors of the possibility that Amol Chand himself may have been implicated and that his evidence should be treated with care. It was made clear to the assessors that it was only if they were satisfied that the appellant's version was to be rejected, that they should conclude that the case had been proved beyond reasonable doubt.

Once again, a number of points were raised on appeal, in this instance some twenty-seven, and as before no criticism was made of the summing-up. Points which had undoubtedly been ventilated previously were gone over again, all touching the witnesses and their credibility. The appellant

also quite sensibly pointed to the fact that when the police repossessed the set from the home of Amol Chand, the hire period was still running and there had been no restriction imposed upon where the set was to be kept. He raised the question of whether or not the police had acted improperly in repossessing at so early a stage.

Counsel for the respondent however has quite correctly submitted that in view of the false name and address given when the set was hired, and the surreptitious way in which the appellant's wife diverted the delivery van to another address, coupled with an effort by her and by the appellant to sell, there could be no other conclusion, given this evidence was accepted, than that this amounted to a dishonest dealing inconsistent with the true owners rights to the property, and hence constituted theft. We conclude by saying that nothing else has been said by the appellant to the court other than attacks upon the credibility of the witnesses in respect of matters which were ventilated at the trial and which were the subject of a correct direction to the jury by the learned trial Judge. The learned assessors gave opinions which clearly demonstrated their acceptance of the truth of the prosecution witnesses and their rejection of the defence evidence, as they were entitled to do, and in giving his judgment the trial Judge concurred with their view. That is their province, and nothing has arisen in

this Court which could disturb that verdict.

The appeal is dismissed.



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Vice-President



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Judge of Appeal



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Judge of Appeal