

THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 250 OF 2014

STATE

vs

MUKESHWAR NARAYAN SINGH

Counsel : Ms J Prasad & Ms M Konrote for the Statet
Mr J Reddy for the Accused

Date of Hearing : 9th May – 25th May 2016

Summing Up : 30th May 2016

SUMMING UP

Madam and Gentlemen Assessors,

- [1] We have reached the final stage of the proceedings before us. The presentation of evidence is over and it is not possible to hear more. You should not speculate about evidence which has not been given and must decide the case on the evidence which you have seen and heard. The Counsel for the State and the accused have addressed you on the evidence. After their addresses, it is my duty to sum-up the case to you. You will then retire to consider your opinions.
- [2] As the presiding judge, it is my task to ensure that the trial is conducted fairly and according to law. As part of that duty, I will direct you on the law that applies. You must accept the law from me and apply all directions I give you on matters of law. It is also important to note that, if I give you a caution, you have to take it also into consideration, in coming to your opinion.

- [3] It is your duty to decide questions of fact. But your determinations on questions of fact must be based on the evidence before us. In order to determine questions of facts, first you must decide what evidence you accept as truthful and reliable. You will then apply relevant law, to the facts as revealed by such credible evidence. In that way you arrive at your opinion.
- [4] During my summing up to you, I may comment on the evidence; if I think it will assist you, in considering the facts. While you are bound by directions I give as to the law, you are not obliged to accept any comment I make about the evidence. You should ignore any comment I make on the facts unless it coincides with your own independent view.
- [5] In forming your opinion, you have to consider the entire body of evidence placed before you. In my attempt to remind you of evidence in this summing up, if I left out some items of evidence, you must not think that those items could be ignored in forming your opinion. You must take all evidence into consideration, before you proceed to form your opinion. There are no items of evidence which could safely be ignored by you.
- [6] It is also important to note that, in forming your opinion on the charge against the accused, it is desirable that you reach a unanimous opinion; that is, an opinion on which you all agree, whether he is guilty or not guilty. However, the final decision on questions of fact rests with me. I am not bound to conform to your opinion. However, in arriving at my judgement, I shall place much reliance upon your opinion.
- [7] I have already told you that you must reach your opinion on evidence, and only on evidence. I will tell you what evidence is and what is not.
- [8] The evidence is what the witnesses said from the witness box, the documents received as prosecution exhibits and admissions made by the parties.
- [9] If you have heard, or read, or otherwise came to know anything about this case outside this Courtroom, you must exclude that information from your consideration. The reason for this exclusion is, what you have heard outside this Courtroom is not evidence. Have regard only to the testimony and the exhibits put before you since this trial began. Ensure that no external influence plays any part in your deliberations.
- [10] A few things you have heard in this Courtroom also are not evidence. This summing-up is not evidence. Statements, arguments, questions and comments by the Counsel are not evidence either. Things suggested by a Counsel during a witness's cross-examination is also not evidence of the fact suggested, unless the witness accepted the particular suggestion as true. The opening and closing submissions made by

Counsel are not evidence. They were their arguments, which you may properly take into account when evaluating the evidence; but the extent to which you do so is entirely a matter for you.

- [11] As I already indicated to you, another matter which will be of concern to you is the determination of truthfulness of witnesses, and the reliability of their evidence. It is for you to decide whether you accept the whole of what a witness says, or only part of it, or none of it. You may accept or reject such parts of the evidence as you think fit. It is for you to judge whether a witness is telling the truth and correctly recalls the facts about which he or she has testified.
- [12] Many factors may be considered in deciding what evidence you accept. I will mention some of these general considerations that may assist you.
- [13] You have seen how the witnesses' demeanour in the witness box when answering questions. How were they when they were being examined in chief, then being cross-examined and then re-examined? Were they forthright in their answers, or were they evasive? How did they conduct themselves in Court? In general what was their demeanour in Court? But, please bear in mind that many witnesses are not used to giving evidence and may find Court environment distracting.
- [14] Another consideration may be; has the witness said something different at an earlier time or whether he or she is consistent in his or her evidence? In assessing credibility of the testimony of a witness on consistency means to consider whether it differs from what has been said by the same witness on another occasion. Obviously, the reliability of a witness who says one thing one moment and something different the next about the same matter is called into question.
- [15] In weighing the effect of such an inconsistency or discrepancy, consider whether there is a satisfactory explanation for it. For example, might it result from an innocent error such as faulty recollection; or else could there be an intentional falsehood. Be aware of such discrepancies or inconsistencies and, where you find them, carefully evaluate the testimony in the light of other evidence. Credibility concerns honesty. Reliability may be different. A witness may be honest enough, but have a poor memory or otherwise be mistaken.
- [16] Does the evidence of a particular witness seem reliable when compared with other evidence you accept? Did the witness seem to have a good memory? You may also consider the ability, and the opportunity, the witness had to see, hear, or to know the things that the witness testified about. These are only examples. You may well think that other general considerations assist. It is, as I have said, up to you how you assess the evidence and what weight, if any, you give to a witness's testimony or to an exhibit.

- [17] Madam and gentlemen, I must make it clear to you that I offer these matters to you not by way of direction in law but as things which in common sense and with knowledge of the world you might like to consider in assessing whether the evidence given by the witnesses are truthful and reliable.
- [18] Having placed considerations that could be used in assessing credibility of the evidence given by witnesses before you, I must now explain to you, how to use that credible and reliable evidence. These are directions of the applicable law. You must follow these directions.
- [19] When you have decided the truthfulness and reliability of evidence, then you can use that credible evidence to determine the questions of facts, which you have to decide in order to reach your final conclusion, whether the accused is guilty or not to the charge. I have used the term "*question of fact*". A question of fact is generally understood as what actually had taken place among conflicting versions. It should be decided upon the primary facts or circumstances as revealed from evidence before you and of any legitimate inference which could be drawn from those given sets of circumstances. You as assessors, in determining a question of fact, should utilise your commonsense and wide experience which you have acquired living in this society.
- [20] It is not necessary to decide every disputed issue of fact. It may not be possible to do so. There are often loose ends. Your task is to decide whether the prosecution has proved the elements of the offence.
- [21] In determining questions of fact, the evidence could be used in the following way. There are two concepts involved here. Firstly, the concept of Primary facts and secondly the concept of inferences drawn from those primary facts. Let me further explain this to you. Some evidence may directly prove a thing. A person who saw, or heard, or did something, may have told you about that from the witness box. Those facts are called primary facts.
- [22] But in addition to facts directly proved by the evidence or primary facts, you may also draw inferences – that is, deductions or conclusions – from the set of primary facts which you find to be established by the evidence. If you are satisfied that a certain thing happened, it may be right to infer that something else also occurred. That will be the process of drawing an inference from facts. However, you may only draw reasonable inferences; and your inferences must be based on facts you find proved by evidence. There must be a logical and rational connection between the facts you find and your deductions or conclusions. You are not to indulge in intuition or in guessing.

- [23] In order to illustrate this direction, I will give you an example. Imagine that when you walked into this Court room this afternoon, you saw a particular person seated on the back bench. Now he is not there. You did not see him going out. The fact you saw him seated there when you came in and the fact that he is not there now are two primary facts. On these two primary facts, you can reasonably infer that he must have gone out although you have not seen that. I think with that you will understand the relationship between primary fact and the inferences that could be drawn from them.
- [24] Then we come to another important legal principle. You are now familiar with the phrase burden of proof. It simply means who must prove. That burden rests on the prosecution to prove the guilt of the accused.
- [25] This is because the accused is presumed to be innocent. He may be convicted only if the prosecution establishes that he is guilty of the offence charged. Whether the accused has given evidence or not is immaterial in this regard and it does not imply any burden upon him to prove his innocence. It is not his task to prove his innocence.
- [26] I have said that it is the prosecution who must prove the allegation. Then what is the standard of proof or level of proof, as expected by law?
- [27] For the prosecution to discharge its burden of proving the guilt of the accused, it is required to prove it beyond reasonable doubt. This means that in order to convict, you must be sure that the prosecution has satisfied beyond reasonable doubt of every element that goes to make up the offence charged. I will explain these elements later.
- [28] It is for you to decide whether you are satisfied beyond reasonable doubt that the prosecution has proved the elements of the offence and the other matters of which you must be satisfied, such as identity, in order to find the accused guilty. If you are left with a reasonable doubt about guilt, your duty is to find the accused not guilty. If you are not left with any such doubt, then your duty is to find the accused guilty.
- [29] You should dismiss all feelings of sympathy or prejudice, whether it is sympathy for victim or anger or prejudice against the accused or anyone else. No such emotion has any part to play in your decision. You must approach your duty dispassionately, deciding the facts upon the whole of the evidence. You must adopt a fair, careful and reasoned approach in forming your opinion.
- [30] Let us now look at the charges contained in the amended information.

[31] There is only one charge preferred by DPP, against the accused:

THIRD COUNT

Statement of Offence

Money Laundering: Contrary to section 69(2)(a) and (3)(a) of the Proceeds of Crime Act 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree No. 61 of 2012.

Particulars of Offence

Mukeshwar Narayan Singh with another between 1st day of May 2005 and the 30th day in November 2009, at Suva in the Central Division, engaged directly or indirectly in transactions involving \$102,843.50, that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

[32] As you would have noted there is only one count of Money Laundering against the accused. Money Laundering is generally understood as an act done to cover up illegal source of funds and to make it look as if those funds have come from a legitimate source.

[33] The offence of Money Laundering is described in section 69(3) the Proceeds of Crime Act 2007, as amended. I shall now deal with the elements of the offence of Money Laundering. In order to prove the count of Money Laundering, the prosecution must prove beyond reasonable doubt that;

- a. the accused, engaged directly or indirectly in transactions involving \$102,843.50,*
- b. that were proceeds of crime,*
- c. knowing or ought to have known that the money is derived from some form of unlawful activity.*

[34] Each of these elements will be discussed in relation to the applicable law in the light of available evidence, later in this summing up, in the part titled analysis of law and evidence.

[35] Apart from these elements of the offence, the identity of the person who is alleged to have committed the offence must also be proved by the prosecution. There must be positive evidence as to the identification of the accused. However, in this matter identity of the person who encashed most of these cheques is not disputed by the accused.

[36] If you find that the prosecution failed to establish any of these elements in relation to the count of Money Laundering, then you must find the accused not guilty.

[37] These are some of my directions on law and I will now briefly deal with the evidence presented before this Court.

[38] The parties have consented to treat the following facts as “*agreed facts*” without placing necessary evidence to prove them:

1. *In 2011, Fiji Revenue and Customs Authority (FRCA) noticed anomalies in the FITS system where it was noted that there were 27 taxpayers using the same postal address which is PO Box 1671, Nabua.*
2. *Due to the postal addresses being the same, FRCA conducted internal investigations.*
3. *The 27 taxpayers who had the same postal addresses are listed in Annexure 1.*
4. *Mukeshwar Singh (Defendant 2) was acquainted with Sakiusa Vakarewa (Defendant 1) during 2005 to 2012 as Mukeshwar Singh used to drive the taxi of Sakiusa Vakarewa.*
5. *Mukeshwar Singh (Defendant 2) was married to Savita Singh (Defendant 3) in 2008. Prior to marriage, Defendant 2 and 3 were in a relationship in or about 2004.*
6. *Between the 1st of May 2005 to 30th November 2009, FRCA received tax returns from the following taxpayers and paid out the corresponding amounts via cheques as noted in Annexure 2.*

Statements:

7. The statements of the following are tendered as evidence:
 - A. Umesh Chandra dated 29th May 2012;
 - B. Leba Drole dated 3rd June 2011;
 - C. Losevati Lorosio dated 4th April 2011;
 - D. Arieta Veisamasama dated 28th April 2011;
 - E. Milan Raniga dated 12th May 2011;
 - F. Sanesh Prasad dated 8th April 2011.

Annexure 2

Name of Taxpayer	TIN	Cheque No.	Year of Payment	Amount
Joeli Bese	021762404	201140 210329 238936		\$ 3729.00 \$ 1320.00 \$ 1297.50
Peni Cavalevu	031981408	203256 210001 2410180		\$ 3777.00 \$ 1320.00 \$ 1305.50
Rajeshni Devi	041574904	19222755 137065 244491		\$ 2610.00 \$ 1999.00 \$ 1350.00
Kavita Dutt	041576504	138720 201041 219662 239974		\$ 1999.50 \$ 2604.00 \$ 1302.00 \$ 1320.00
Amrish Ritesh Narayan	142501906	136699 190583 218159 236728		\$ 1999.50 \$ 2550.00 \$ 1320.00 \$ 1320.00
Jaibun Nisha mother in Mukeshwar	142665301	202898 243628		\$ 3777.00 \$ 1350.00
Ritesh Yogendra Prasad	162303506	137066 198911 218160 237424		\$ 1999.89 \$ 2604.00 \$ 1320.00 \$ 1320.00
Anup Chand Maharaj	132200602	193843 210331 239973		\$ 2604.00 \$ 1320.00 \$ 1275.00
Mohammed Rashid	183082305		2005 to 2007	\$ 1999.85 \$ 2604.00 \$ 1320.00 \$ 1320.00
Watisoni Sigadina	194182403		2007	\$ 1320.00
Mukeshwar Narayan f/n Basant Singh	193842900		1999-2001 2006, 2008	\$ 1275.00 \$ 1275.00 \$ 1320.00 \$ 1350.00
Rakeshwar Narayan f/n Basant Singh	193844108		1999-2004	\$ 2604.00 \$ 1302.00 \$ 1320.00
Ranjit Singh	194056706		2007-2008	\$ 3729.00 \$ 1302.00 \$ 1275.00

Name of Taxpayer	TIN	Cheque No.	Year of Payment	Amount
Savita Singh	193832206		1999-2001 2003; 2006	\$ 1900.00 \$ 2400.00 \$ 1350.00
Atunaisa Sokomuri	194235103		2008	\$ 1350.00 \$ 2526.00
Vimal Prakash Sundar	193840609		1999-2003 2008	\$ 1999.50 \$ 2604.00 \$ 1320.00 \$ 1350.00
Iliesa Tora	202095901		2006; 2008	\$ 1200.00 \$ 1320.00 \$ 1350.00
Pradip Chand	032090707			\$ 1350.00 \$ 2520.00
Isikeli Ravono	183260103			\$ 3729.00 \$ 1320.00
Taniela Lalamata	121760209			\$ 2355.00 \$ 1350.00
Sanjit Singh	194235402			\$ 2520.00 \$ 1350.00
Jolame Ravouvou	183385002			\$ 1350.00 \$ 2520.00

[39] The prosecution, in support of their case, called Fereti Solomone; Afroza Khan; Litiana Sade; Seveci Tora; Makereta Masioliva; Rajendra Prasad; Ranjit Singh; Jaibul Nisha; Amrish Ritesh Narayan; Mohammed Rasheed; Ritesh Yogendra Prasad; Vimal Prakash Sundar; and D/IP Rajesh Kumar.

[40] In reproducing their evidence in summery form, the sequence by which they were called by the prosecution was omitted. It is for convenience and clarity in presentation, their sequence is rearranged. As for the first segment, the officials who are involved with this investigation in FRCA are dealt with; followed by official witnesses, who provided supplementary evidence, during investigations. Then the lay witnesses whose names resembles with the one that appear in the tax returns are dealt with. Lastly, the Investigating Officer's evidence is reproduced in summery form.

Case for the Prosecution

[41] Evidence of Fereti Solomone.

- (i) *It is his evidence that he served FRCA for the past 16 years and in 2008 was appointed as its National Manager - Internal Assessment. His responsibilities are to manage internal audit functions, ethical standards in unit services, risks and price risk. In addition, he is also tasked to liaise with law enforcement agencies.*
- (ii) *He recalls of an investigation about 27 tax payers using the same postal address. This investigation was initiated upon a referral sent by the Operations Office of the Tax Division of FRCA. It was then referred to Internal Assessment Section to carry out further preliminary checks.*
- (iii) *In explaining the internal administrative structure of FRCA, the witness said that the operations of the institution are divided to three divisions. These divisions consist of Corporate, Taxation and Customs.*
- (iv) *Referring to the matter before this Court, the witness said that it came up within the Taxation Division as it handles all administrative as well as tax matters. This Division is responsible for processing all tax returns which in turn falls under three different tax types. The three different tax types are individual salary and wage earners, individuals who have businesses and companies.*
- (v) *In 2005, there were different formats for tax returns and the individual tax payers were expected to use the format identified as Form S, individuals who owned businesses were to use Form B while the companies use Form C. It is the responsibility of the particular tax payer to send in his return on the correct format.*
- (vi) *The witness described the starting point of the process or the relationship with the individual tax payer and FRCA. This relationship starts when the particular individual registers himself with the FRCA as a taxpayer. Registration is done by filling in the tax registration application form with the required details and lodging it with FRCA. This is done annexing the application for registration with the Birth Certificate and a proof of identity. Then the staff would check the details provided in the registration form. The new tax payer will then be assigned a unique number called Tax Identification Number or TIN.*

- (vii) *FRCA has its own computer system called Fiji Integrated Tax System and referred to as FITS. The details of the newly registered tax payer are now in the system.*
- (viii) *The tax payer is then expected to file in his tax returns meant for individual tax payers. In relation to the employed or wage earning tax payers, the return should be in the format of Form S and it must be done annually. The tax payer must attach a certificate from his employer of the annual earning and amount of PAYE that was deducted. This process is called Lodgment and it's done at the customer enquiry. At the time of lodgement the information is fed into FITS and it generates a Tax Return Number – then the staff enters it in the appropriate box of the already lodged tax return and place a stamp. The tax payer is also issued with lodgement receipt. The tax payer's role ends with lodgement of the return.*
- (ix) *What happened thereafter to the tax return is called Validation. It is done by FRCA staff and they check whether the contents are complete and it has been signed by the tax payer. The tax return may have attachments in to it such as evidence of income and if employed, contract slips and P41.*
- (x) *After validation, these tax returns are bundles into "batches" and will go through the process called "Data Entry". What it means is the data contained in the return is fed into FITS by data entry staff and thereafter the "batch" will sent to "assessment of tax returns" or "processing".*
- (xi) *These "batches" of tax returns are assigned to designated assessors who are tasked to look into the contents and a decision will be made whether what has been deducted from the employed tax payer as PAYE tax by his employer is the correct amount of tax and if there is an overpayment, then a decision is taken to refund that amount. This completes the internal process that is involved with the tax returns. At this stage an assessor will not check the accuracy of the contractor slip and would process the return accepting this attachment on its face value.*
- (xii) *If a decision is made to refund of PAYE tax that had been deducted from the salary of the tax payer, then a FRCA cheque is prepared and it is then posted to the tax payer's postal address. This practice has been discontinued with and currently it is sent to the bank account of the tax payer direct. The postal address is provided by the tax payer at the time of initial registration could be changed if FRCA is informed of it in writing.*

- (xiii) *After this process is complete, then these physical tax returns are sent to Archives for storage and are generally kept for 10 years. At FRCA, the archives are called Record Management Unit.*
- (xiv) *In relation to this investigation, the witness said that it was done in public interest and to arrest leakage of revenue of the State. He had overall supervision of the internal investigation carried out by Ms. Afroza Prasad (Khan).*
- (xv) *The internal investigation revealed that although tax refunds were made in relation to 27 tax payers who had the same postal address, these tax payers could not be located as they did not exist. The certificates issued by their employers were also found to be fictitious as these companies confirmed these individuals were never employed and the seal appearing on the employer certificate is not the genuine seal.*
- (xvi) *Some of the physical tax returns could not be retrieved from archives as they have gone missing. Approximately \$113,000.00 was refunded on these fictitious claims. The investigations revealed names of Mukeshwar Singh, Ms Savita Singh and Rakeswar Singh and some others and they appeared to be real persons. The FRCA did not contact these individuals.*
- (xvii) *As the internal investigations by FRCA revealed a tax fraud, it was decided to refer the matter to Police to carryout detailed investigations.*

[42] Evidence of Afroza Khan (nee Prasad)

- (i) *This witness was serving as a Senior Investigating Officer of FRCA in 2012, having served it for the past 13 years. It is her evidence that in FRCA, if the Office of the CEO receives written or oral information about any allegation against a member of staff, any malpractice in the internal system, it would refer that information to her section for investigation through the National Manager.*
- (ii) *In relation to this investigation, the witness was tasked to carry out an investigation. She commenced her investigations in 2011. It was already noted that 27 tax payers have used the same postal address, namely P.O. Box. 1671, Nabua. She needed to know exactly how many people used this postal address and she made a request to the IT section of FRCA for that information. In addition she had retrieved the physical tax returns filed in by these tax payers through Record Management Unit of FRCA.*

- (iii) *Having obtained the tax returns, she then used the computer system FITS to analyse the profiles of tax payers. To do this she had to physically examine each tax return on yearly basis, as per the year of lodgement. This physical examination of the tax returns revealed that all of these had P25 forms as they were salary based individuals. In addition she noted that all these returns were attached with P32 slips instead of P41 slips confirming the deduction of PAYE tax by the employer.*
- (iv) *She then wrote to all companies these P32 slips revealed requesting information whether that particular tax payer is employed with them. She also requests a sample of the company seal, for her to compare with the seal appearing in each P32. All these companies replied that those tax payers were never employed by them. She then compared the seal placed by the company in its tax returns and the seal placed on P32 with the specimen sent by the companies. Having realised fake seals were used in P32 documents, she continued with her investigation.*
- (v) *She retrieved names, father's names of the tax payers and dates of birth of these tax payers and wrote to Registrar General of Births and Deaths in order to verify the identity of these individuals. She received a reply from the Registrar General that to the given date of birth no such name has been registered. She considered the possibility of wrong date of birth was given in the tax return or the FRCA has received bogus tax returns.*
- (vi) *She then prepared Statement of Tax Affairs (STA) in relation to each of these tax payers. This revealed that tax refunds were made and paid by cheques. This information prompted her to physically examine the cheques. It is the practice that all FRCA cheques are returned to it after clearing and are not retained by the respective banks as usually done. These cheques are kept in the treasury of FRCA. She had then obtained these cheques and analysed the data using FITS and STA. She found that the names written on those cheques did match with the information available in FITS on these tax payers.*
- (vii) *The physical examination of majority of these cheques revealed that either they were encashed or encashment has been witnessed by Mukeshwar Narayan Singh. With this information, she concluded that Singh could be a real person. However, the details that were available in the FITS of him as a tax payer and his employment were sent to Registrar General and there was no match was found.*

- (viii) *She has then used the driver licence details of Mukeshwar Narayan Singh, which appeared on the reverse of these cheques, in order to verify with the Land Transport Authority. She was successful in obtaining a different date of birth from LTA to that was available in FITS. The Registrar General also confirmed his existence on this date of birth and his birth certificate was obtained.*
- (ix) *The witness then did an analysis of the data retrieved from the FITS and identified Sakiusa Vakarewa as one who had repeatedly had accessed these data on the system by logging in using his username. He is an employee of FRCA. He was not officially involved with the processing of tax returns in any of its stages. He had accessed these details and also had changed some data.*
- (x) *She had then reported her findings to the senior management with a report marked as P.E. No. 1, and a decision is taken to handover investigation to Police. In this report the information revealed during her investigations are given in detail.*
- (xi) *This witness tendered the documents marked D 82-1 to D 108- 2. These documents were the printed templates of the FITS in retrieving various items of information in relation to her investigation.*

[43] Evidence of Litiana Sade

- (i) *She joined FRCA in 1993 and currently attached to Gold Card Service of the Taxation Division. In 2011 she was Officer in Charge of assessment unit and processed Form S tax returns and VAT returns.*
- (ii) *It is her evidence that Form S received by FRCA are lodged into FITS by Lodgement Officers. When these officers enter the TIN and the year of return, the system generates the return number and then is copied on to the tax return. At lodgement, only two details are verified and other details are not checked. Then these returns are batched.*
- (iii) *The batched returns will then go to data entry and each batch will be assigned to a designated data entry officer. They will enter data into the system. Most of the personal information is already there in the system and therefore information such as date of birth, name and etc are not re-entered.*
- (iv) *If postal address is different to that already in the system it will be changed. In the rerun a particular field is left blank, the officers*

would also leave it blank. In the case of Form S it is checked whether P41 certificate is annexed.

- (v) Then the batch will pass into assessors. The batch will be assigned to a designated assessor and the system is updated as to the name of the assessor and the assigned batch number to him. The assessors will check the information that appears in the tax return with the information already available in the system. They would also check whether the forms are duly stamped and signed. If the assessor is experienced he can complete assessment. If not it will also go through a checker. In assessing contractor's provisional tax certificates, if the stamp and signature is there, no further cross checking will be done.
- (vi) After processing the assessor will update the system with "proceed" command. Once this change is done in the system, it will result in either a refund or a tax due. If the refund amount is less than \$1500, then the system will automatically generate the refund cheque. The dispatch unit will then sent to tax payer through post.

[44] Evidence of Makereta Masioliva

- (i) This witness is currently attached to Land Transport Authority as its Manager- Registration, Licensing, and Driving. She oversees issuance of Driver Licences and stated that when an applicant applies for a driver licence, he must provide personal details and must have photo ID and birth certificate. When all these details are submitted and he clears the competency test a driver licence is issued.
- (ii) In relation to this case she did a verification of the details of Mukeshwar Narayan Singh and from the records available driver licence No. 763903 was issued to him. The residential address is 10, Nokonoko Road, Laucala Beach and the postal address is given as P.O. Box. 1671 Nabua. A computer print of the details was marked as D 32.

[45] Evidence of Seveci Tora

- (i) This witness is currently the head of Fiji Post and was with it for the past 34 years.
- (ii) In explaining the procedure in obtaining a Post Office Box, the witness stated that after an application is submitted, Fiji Post will

inform the applicant of availability of a Box. Records are kept at the Fiji Post of the details of the customer. Annually all customers are expected to send in updates and pay the yearly rental for the Box.

- (iii) P.O. Box. 1671 Nabua is assigned in 2005 to Rakesh Kumar of Lot No. 154, Benau Street, Vatuwqa.*

[46] Evidence of Rajendra Prasad

- (i) This witness said that in 2002 he was a building contractor and has registered his company as Rajendra's Construction. He was based in Nadawa and carried on with business. He operated a bank account at that time.*
- (ii) His son Ritesh Yogendra Prasad was friendly with the accused and the witness got to know him only through his son. One day, the accused sought his help to cash a cheque. When the accused brought the cheque, he deposited it in his account and when the cash was received, he withdrew it from his account and gave the entire amount to the accused, when he returned to collect it. Witness recognised the cheque he encashed through his account and marked it as D4 - 6.*
- (iii) When the accused came to collect the cash, he came in a taxi with another person whom he described to the witness as a Government worker and the taxi belonged to that person. After this transaction, the witness did not meet the accused. He also said that he does not know who Kavita Vikash Dutt is.*

[47] Evidence of Ritesh Yogendra Prasad

- (i) It is the evidence of this witness that Rajendra Prasad is his father and was attached to Carpenters Motors where he was employed for 8 years as a service advisor. In 2001, he came to know the accused when he brought a car for service and later they became friends. The accused used to visit his home regularly.*
- (ii) The accused wanted the witness's help to register a signboard business as the registration needed identification paper. Witness agreed to help the accused by helping to register the business using his passport as a form of identification. He has got his passport back after registration.*

- (iii) *This witness was emphatic that he did not submit any tax returns to FRCA as his salary is not qualified for taxation. He did not receive any tax return from FRCA either.*
- (iv) *When shown the four cheques marked as D7 - 8 to D7 - 11, the witness said he did not receive any of them and the endorsements appearing on the reverse side of these cheques are not made by him. He did not assist the accused to encash them.*
- (v) *He was also shown the tax returns marked as D7 - 1, D7 - 6 and D7 - 9. The witness said he did not submit them to FRCA and except for his name and sex, all other details appearing on these returns are wrong.*

[48] Evidence of Mohammed Rasheed

- (i) *His evidence is that 6 to 7 years ago he was doing mechanical jobs at AAB signs, a business owned by one of his cousins. This business was located at 36, Namena Road, Nabua. He did panel beating, and painting of motor vehicles in that establishment.*
- (ii) *The accused was also working there doing office work. They became friends and at that time the witness was not registered as a tax payer. At AAB signs, no deductions for FNPF were made at that time. The accused then asked for his driver licence and got his signature on a paper. The witness could not write or read and his licence was returned within 15 to 20 minutes. The witness has not received any document from FRCA.*
- (iii) *When shown the tax returns marked as D9 -1 and D9 - 3, the witness said his date of birth, postal address, father's name are wrongly filled in and he was never employed by Fiji Fish Marketing Ltd.*
- (iv) *The four cheques marked as D9 -4 to D9 - 7 were never received, endorsed or encashed by him.*
- (v) *This witness knew an iTaukei man called "Saki" who came to his workplace to get his vehicle attended. The accused told witness, that "Saki" worked at FRCA.*

[49] Evidence of Jaibul Nisha

- (i) *She is married to Ranjit Singh and they have three children. Savita Singh is one her daughters and was married to the accused. They got married in 2008. In 2005, Savita was studying at USP. The*

witness had a driver licence and kept it with her daughter at that time, as she needed it at Suva.

- (ii) During 2005 to 2009 she was not registered as a tax payer with FRCA and not received any cheques from it. When shown the tax return, marked as D6 - 1, she said except for the name, all details are wrong and never was employed at Northern Projects.
- (iii) The cheques, marked as D6 - 4 and D6 - 5, the witness denied having cashed any of them, and further testified that hand writing appeared on the reverse of these two cheques are not of hers.

[50] Evidence of Ranjit Singh

- (i) This witness is Jaibul Nisha's husband and was a labourer attached to Fiji Forest Industries for 39 years.
- (ii) During the period 2005 to 2009 he did not lodge tax returns and did not receive any tax refunds from FRCA. In the tax returns, marked as D14 -1 and D14 - 2, the witness said that except his name, all other details given are wrong.
- (iii) In relation to the three cheques, marked as D14 -3 to D14 - 5, the witness said he did not receive any of them and had not encashed them either. When asked as to how his driver licence number appearing on the reverse of these cheques, the witness said, his licence was with his daughter Savita during that period. She wanted to keep it with her as it is needed for payment of her school fees. He identified the accused as his son in law.

[51] Evidence of Vimal Prakash Sundar

- (i) He holds Diploma in Automotive Mechanics and employed at Merchant Finance Ltd., as its mechanic since 1998 until now. He married Kaveeta Vikashni Dutt in 1999.
- (ii) During the period 1998 to 2008, he was attached to the warehouse of his company at Vatuwaqa. He used to attend to all re-possessed vehicles and during this period came to know the accused as a regular visitor to the facility. The accused used to live close to Khemindra Street. They became friends and the witness had then entrusted his vehicle to the accused to run it as a taxi.
- (iii) When the accused was working as the witness's taxi driver, he requested a help from the witness. The accused told him that he is new to Suva and had no bank account. The accused wanted the witness's help, if he gets a cheque whether the witness would

encash it through his bank account. The witness agreed to help the accused, as that time the accused's family was in need of money.

- (iv) After that request and on a subsequent date, the accused said that he is about to get a cheque. The witness confirmed his willingness to deposit it in his account and give cash to the accused. However, it did not happen the way they agreed and the accused wanted the witness to come to boulevard at Suva and at a Chinese shop he was asked to place his signature on a cheque. The accused wanted the identification of the witness as well. His ID was returned thereafter and the witness returned to his workplace.
- (v) After about two weeks, the accused stopped driving the witness's car and before that the car was broken into whilst parked at the accused's house.
- (vi) The CID contacted him after a couple of years and showed him 3 or 4 cheques which are issued to him.
- (vii) When the tax returns marked as D17 -1 to D17 -6 were shown to the witness, he said only his name is correct and all other information filled in are wrong.
- (viii) He identified the cheque marked as D17 – 7 as the one he placed his signature and wrote different address upon instructions of the accused and also placed his FNPF number. In relation to the cheques D17 -7 to D17 -10, the witness denied having received them and denied making any endorsements on the reverse of these cheques. He also said he did not receive any money from any of these cheques.

[52] Evidence of Amrish Reitesh Narayan

- (i) This witness is currently employed by USP as a trainer in quality management. He holds a B.Sc degree and also a Post Graduate Certificate in Human Resource Management.
- (ii) In 2007/8 he was registered as a taxpayer through his then employer Fiji Sugar Corporation and filed tax returns in Form S upon his employer request.
- (iii) When shown the tax returns marked as D5 -1 to D5 - 5, the witness stated that except for his name all other details filled in them are wrong including the TIN number. He accepted the TIN number as appeared in the document marked D5 - 1A is his correct

TIN number. His student ID card number, issued by USP, is S 11005566 and his FNPF No. is 251022.

- (iv) *In respect of the cheques marked D5 -6 and D5 -7, witness said that they are issued in his name but the handwriting on the reverse side are not of his. How his personal details appear on these cheques he had no idea and he suspects that someone else may have given this information.*
- (v) *Recalling an incident the witness said that one Mukesh he knew at that time visited his flat regularly. The witness came to know this Mukesh as he used Mukesh's taxi often. The witness was in the habit of leaving his identity cards in the flat and his friends used to remain there even in his absence. He could recall this Mukesh once asked him to witness a document to his employer. Mukesh identified his employer as "Saki". Witness also remembered going to boulevard or harbour centre to witness the document.*
- (vi) *Whilst waiting in the foyer, Mukesh did ask for his ID and was with a group of people. Mukesh may have returned the ID card to witness. However, he did not witness a document as was requested of him.*
- (vii) *The witness never been to Real Me Dressing and did not receive any cash from the cheque.*
- (viii) *Witness said that the Mukesh he knew resembles the accused.*

[53] Evidence of D/IP Rajesh Kumar

- (i) *Having served the Police for the last 27 years, this witness currently serves as an Inspector of Police attached to Major Frauds Unit of the CID. He conducted investigations into a complaint lodged by FRCA with a letter addressed to Director of CID. This was in March 2011. There was a meeting of senior officers of CID with FRCA. The witness acted as the Investigating Officer while several other Police officers assisted him with the investigation.*
- (ii) *In commencing investigations, this witness collected all relevant documents from FRCA inclusive of 27 tax files and 61 cheques. He liaised with Ms. Afroza Prasad of FRCA. He started by analysing the documents available and acting on the information available such as FNPF numbers, residential addresses, employer addresses, he verified these details with the relevant institutions.*
- (iii) *The witness has checked the accuracy of the residential addresses as appeared on the tax returns by physically visiting the addresses.*

- He found only two addresses were correct and those two are AAB signs of Navena Road and Bimal Prakash of Lobati Road.*
- (iv) He then wrote to the several employers who have issued Contractor slips which were attached to these tax returns and recorded statement from the relevant officials of these companies and found that none of these 27 tax payers were ever employed by them.*
- (v) Then he wanted to verify whether these tax payers actually existed. He wrote to Registrar General for Births and Deaths and a statement was recorded to confirm they did not exist as per the official records. The statements of these officials were marked as P.E. Nos. 6, 7, 8, 9, 10 and 11.*
- (vi) After this verification, the witness went back to FRCA to check on the registration details to obtain any other document which could be used to identify these tax payers and failed. With that information, he concluded the tax returns were false.*
- (vii) Then the officers verified all the cheques through bank statements in relation to the names appeared on its reverse. The witness found that one Savita Narayan had deposited one single FRCA cheque in her account. An interview was conducted of Savita at Labasa Police by this witness. After the interview they realised that cheques were encashed at one shop in Suva called Real Me Dressing. This shop was investigated. It was located in the down town boulevard and was owned by a Chinese woman called Zou Min. He also noted a notice displayed outside this shop saying that they encash Government cheques.*
- (viii) Most of the cheques were encashed by one Mukeshwar Narayan Singh and his name again came up in the tax returns as a tax payer. His driver's licence number was written on the reverse of these cheques and the witness obtained details from LTA. The officer managed to locate him. Savita provided information on Mukeshwar Narayan Singh including his mobile number. They were legally married.*
- (ix) Then the witness called him on this number and having introduced himself, he told Mukeshwar to come over to the Headquarters of CID at Toorak. He agreed. He turned up at the agreed time and date. Having given him an overview of their investigations, the witness then told him that a caution interview would be conducted. The witness then conducted a caution interview in Question and Answers form.*

- (x) *This interview commenced on 1st March 2012 at CID Head Quarters and was witnessed by two other officers. The interview was recorded on a computer simultaneously by typing in the questions and answers. This was done by the witness himself. The interview was concluded on 22nd May 2012 as several long breaks were given during the course of the interview. Mukeshwar Narayan Singh was not arrested at that time. Interviewing was done in a fair manner and the witness independently worked. The caution interview statement was tendered marked as P.E. No. 12.*
- (xi) *The witness found out that account No. 5736513 belonged to Mukeshwar Narayan Singh. He also found out that Rakeshwar Narayan Singh is a real person and also is the brother of Mukeshwar Narayan Singh. Account No. 5116931 of ANZ bank, belonged to Rakeshwar Narayan Singh. Savita Singh also had a bank account under the number 7150266. Witness identified Mukeshwar Narayan Singh as the accused.*
- (xii) *The witness also read the questions and answers of Q 33, Q 80, Q 164, Q 191, Q 135, Q 143, Q 144, Q 367.*
- (xiii) *He was also shown Files P.E. Nos. 2, 3 and 4 containing tax returns cheques and computer templates of FITS obtained from FRCA. The witness said that the accused was given opportunity to peruse these documents during the interview. After the interview was conducted these documents were exhibited in the exhibit room of the Police. It is a secure place with restricted access. When these documents are examined during the examination in chief he found no tampering or interference on them.*
- (xiv) *Since the accused admitted placing his thumb print on these cheques, an elimination print was obtained from him and was compared. A Forensic Examination Report was then issued. This report is tendered as P.E. No. 13. Of the 61 cheques examined 51 cheques were identified with the accused thumb print.*
- (xv) *Thereafter upon the advice by the DPP, the accused was charged with.*

[54] That was the case for the prosecution. You then heard me explaining several options to the Accused. I explained to him that he could remain silent or give sworn evidence and call witnesses on his behalf. He could also address Court. He was given these options as those were his legal rights. He need not prove anything. The burden of proving his guilt rests on prosecution at all times. The accused, in exercising his legal right opted to remain silent.

Analysis of law and evidence

- [55] The prosecution relied on the evidence of FRCA staff, witnesses from Land Transport Authority and Fiji Post, several lay witnesses and the investigating officer to prove its case in addition to 9 considerable volumes of documents as exhibits, while the accused opted to exercise his right to silence.
- [56] During the 12 day trial, the prosecution presented a large volume of evidence in support of its case. Similarly the accused too, during his cross examination of almost all the witnesses, elicited more items of evidence. It could be a daunting task for you to consider all these material, analyze them and to arrive at the appropriate conclusions without some assistance. In providing some assistance to you, in discharging your responsibility as assessors, I will make an attempt to lessen your responsibility, by making the decision making process simpler as possible.
- [57] You will recall at the beginning of this summing up, I explained to you that you must decide the truthfulness and reliability of the prosecution witnesses. This is important as it is from that truthful and reliable evidence you will consider whether the prosecution has proved all the elements of the offence of Money Laundering.
- [58] In order to avoid, repetition of evidence and thereby creating a possible confusion in your minds, what I propose to do is that, under each element of the offence, I will discuss the law and evidence and how to assess them for its truthfulness and reliability. After that consideration, if you find that evidence is truthful and reliable, then how to consider that evidence in determining the issue whether, the prosecution has proved that particular element beyond a reasonable doubt.
- [59] Let me repeat what I said in this form also. First you will consider the evidence for its truthfulness under each element of the offence. Then by that truthful evidence you will consider whether that particular element is proved to the required level.
- [60] This will be the format for presentation of the analysis of all evidence, in this summing up.
- [61] However, before I venture to present you with the analysis there are few more important things I should direct you with.
- [62] You already know the prosecution has placed evidence before you through their witnesses. Then what about the evidence for the accused? In this situation I must caution you, that it is important to remember that the accused elected to exercise his right to remain silent and as a result there is no evidence placed before us by the accused, other than the suggestions put to the prosecution witnesses. You must be careful not to draw any adverse inference against the accused in exercising his legal

right. But you have to consider his suggestions, as the version of events he wants you to take note.

- [63] In relation to this issue, there is one more important matter that I must bring to your attention. You will recall the prosecution, through the Investigating Officer tendered the caution interview statement of the accused, and marked it as P.E. No. 12. Then the prosecution led through the police officer certain questions put to the accused and the answers given by the accused. The prosecution relied on these admissions made by the accused. Similarly, during cross examination, the accused too had elicited certain other questions and answers, in support of his version of events. It is my duty to direct you as to how to consider the contents of the caution statement of the accused.
- [64] The caution statement of the accused is evidence. You may read the copy of this document as it was made available to you. The prosecution contends that although you should not accept everything said by the accused in that statement but it contains certain admissions which they say are true. In considering this item of evidence, you must first decide two issues.
- [65] As the first issue, you must consider whether the accused in fact made these admissions. If you are not sure of that then you should ignore them. If you are sure that he did make these statements then as the second issue, you must consider whether you are sure that these admissions are true.
- [66] In doing so, you should have regard to all the circumstances which might cast doubt upon reliability of these admissions. It is your responsibility to assess what weight that should be given to these admissions. If you are not sure that the admissions are true, then you must disregard them. If you are sure that they are true, then you could rely on these admissions.
- [67] In this regard you will recall the evidence of Inspector Kumar where it is revealed that the accused was interviewed by him with witnessing officers. He had allowed the accused to peruse all the documents that were taken charge of by the Police. The interview was conducted over a period of three weeks with regular adjournments. There were suspensions during the interview for breaks. The accused was not under arrest during the recording of the interview and it was typed into a computer instantaneously. The accused was given the option to read, add, delete or alter what he said and was given opportunity to refresh his memory when continued after an interruption.
- [68] Let us now move on to consider the elements of the offence of Money Laundering. The first element is whether the accused, engaged directly or indirectly in transactions involving \$102,843.50. The accused admits having encashed 51

cheques amounting to \$91,292.00 as his thumb print was identified on the reverse of these cheques as per P.E. No. 13. However, the prosecution maintains that the accused was involved with the encashment of all 56 cheques.

- [69] The prosecution relies on the evidence of Rajendra Prasad, to prove that accused wanted him to deposit cheques D4 - 6 and later collected money from him. Similarly they placed evidence of Vimal Sundar that it was the accused, who got him to encash the cheque D17 -7. Savita Singh deposited the cheques in her account with the concurrence of the accused. The accused in his caution statement in answering to Q 160, Q 187, Q 195, Q 200, Q 205, Q 209, Q 214, Q 225, Q 231, Q 240, Q 247, Q 252, Q 260, Q 261, Q 259, Q 269, Q 277, Q 281, Q 284, and Q 288 admitted having encashed these cheques.
- [70] If you find the evidence of these witnesses as truthful and reliable, then you must consider whether the prosecution has proved that the accused, engaged directly or indirectly in transactions involving \$102,843.50.
- [71] It is time we move to consider whether the 2nd element of the offence of Money Laundering has been proved by the prosecution.
- [72] The second element is whether the money received by the accused after encashing these cheques are proceeds of crime. The phrase "*proceeds of crime*" has a definitive legal meaning. I shall try to simplify this definition of law, in relation to the case before us, so that you will understand it in the correct way. What is understood by law in relation to proceeds of crime is whether the cash received by the accused after encashment of cheques are totally or partly due to commission of a "*serious crime*".
- [73] Now I shall explain to you what is a, "*serious offence*" in the eyes of law. An offence is considered as "*serious*" one when its prescribed punishment is death or imprisonment for a period over one year.
- [74] If we are to consider these two definitions together, it would mean if the encashment of each of these cheques and the cash received partly or wholly upon its encashment, which were derived upon commission of an offence which could be punishable by death or imprisonment for period over one year, then that cheque and the cash received upon its encashment, becomes tainted and therefore could be termed as "*proceeds of crime*".
- [75] With these legal principles in mind let us now consider the evidence presented by the prosecution, to prove this element.
- [76] Before we venture to consider the prosecution evidence, it is time for you to remind yourselves about the responsibility of deciding what evidence is truthful and reliable

and what evidence is not. A long line of official witnesses and lay witnesses have given evidence for the prosecution before us. In my opening address to you I requested you to be mindful when these witnesses were giving evidence. You were expected to observe their manner of giving evidence, whether they gave consistent evidence, whether they were partial witnesses and whether the version of events as spoken to by them is probable.

- [77]** In applying these standards, you have to identify the truthful and reliable witness. If do not think that a particular witness is not truthful or reliable, you are at liberty to reject that evidence altogether or to act on parts of his or her evidence, you think is truthful and reliable.
- [78]** It is only through these truthful and reliable evidence, you should consider whether the prosecution has proved a particular element of the offence.
- [79]** The prosecution case is an unknown person or persons have secured TIN on non-existing persons, and then lodged annual tax returns in relation to these non-existing persons with the employer certificate that certain amount of monies were deducted from the salaries of these tax payers. The FRCA staff handles these tax returns from the time of its lodgment to the point where the PAYE tax refund cheques are generated by the FITS, upon approval by an assessor. The prosecution led evidence through Mr. Solomone that false declaration on tax returns is a punishable offence.
- [80]** During cross examination, it was elicited through the prosecution witnesses who are attached to FRCA, that Sakiusa Vakarewa and Robin Sayaham who had some involvement in the process of these fictitious tax returns and no outsider could have access to the internal process of FRCA and the decision making to make a refund. Sakiusa Vakarewas was an auditor while Robin was a team leader of assessors. The prosecution led evidence through Ms. Khan, that Sakiusa had left a trail of regularly accessing these fictitious returns through the FITS and had even altered some data fields in the system.
- [81]** Robin is currently serving a sentence for committing an offence of Money Laundering. Sakiusa, who was charged with the accused and another in respect of this same transaction, has already pleaded guilty.
- [82]** The prosecution led evidence, that ordinarily when employer deducts the PAYE tax component from an employee, that deduction is remitted to FRCA. After the tax returns are received from that particular tax payer, if his income is below the threshold value of PAYE tax liability, then a refund of already received funds from that employee is made. In this situation, the employer certificates that had been attached to all these tax returns were found to be bogus as these employers have

clearly denied employing such an employee. It was also discovered that all the company seals that were placed on these employer certificates were fictitious.

- [83]** It is highlighted by the prosecution that these refund cheques of PAYE tax in relation to all 27 fictitious tax payers were posted to P.O. Box. 1671 Nabua as per the postal address entered into the FITS in respect of them. The first of these refund cheques (D9 -4) was in the name of Mohammed Rasheed and issued by FRCA on 11th May 2005. The last of these cheques (D19 -1) was issued to Pradip Chand on 27th November 2009. The accused has collected the keys to this Post Box and had even addressed his wife's examination results to this box. He has, in addition, given it as his postal address to LTA.
- [84]** In this situation, FRCA had not received any deductions from these tax payers, but refunded its funds through these 56 cheques marked during the prosecution case. The prosecution says they were "*ripped off*" of \$102,843.50 of Government Revenue.
- [85]** The accused, invited you to consider that the prosecution has failed to prove that these 56 cheques were in fact honoured by FRCA and funds were remitted out of FRCA, as they failed to tender a document that FRCA accounts were debited with amounts appearing in these 56 cheques. He also wants you to consider when he obtained cash from Real Me Dressing, that money actually belonged to that business establishment as the cheque was yet to be presented for payment through a bank.
- [86]** In relation to the keys to the P.O. Box, the accused maintains that, having collected the keys, he had handed them to his then employer Sakiusa and has had no control over the box whatsoever.
- [87]** Thirdly, the prosecution must prove that the accused knew that the money derived from some form of unlawful activity or the accused ought to have known that the money is derived from some form of unlawful activity. If the prosecution proves you either of these two limbs, then the 3rd element is proved.
- [88]** In the first limb of this element, what is required to prove by the prosecution is that the accused had knowledge. Knowledge is a state of mind. If it is to be shown to have existed generally, it must be inferred or deduced from the relevant circumstances which existed prior to, at the time of or even after the encashment of the cheques. Inferences are conclusions of fact rationally drawn from proved facts call primary facts including any statement the accused made. You can only conclude that the accused had knowledge if it's the only reasonable inference that can be drawn from the evidence and that there is no other explanation possible.
- [89]** It is your duty to consider the truthful and reliable prosecution evidence, whether the accused had actual knowledge that the money is derived from some form of

unlawful activity. It is also actual knowledge if the accused had wilfully shut his eyes to the obvious, wilfully and recklessly failing to make such inquiries as an honest and reasonable man.

- [90] If you consider that there is a reasonable doubt exists whether the accused had actual knowledge, when you consider the all the circumstances, then you can proceed to consider whether the accused ought to have known that the money is derived from some form of unlawful activity under the second limb. There is an important difference in these two limbs. In the first limb, you are to consider whether the accused had the knowledge. In this second limb what you must consider whether knowledge of circumstances which would indicate the facts to an honest and reasonable man or knowledge of the circumstances which would put an honest and reasonable man on inquiry. Please note the required criterion is the honest and reasonable man in relation to the second limb.
- [91] With these applicable principles of law in mind, we can now proceed to consider the evidence led by the prosecution to prove the knowledge of the accused or he ought to have known.
- [92] The prosecution led evidence that these cheques were encashed by the accused, these cheques were drawn in the names of people known to the accused, the accused admitted giving these names and details of their identities to Sakiusa Vakarewa, the accused voluntarily gave his bank account and ATM card to Sakiusa Vakarewa, having known Sakiusa did not want to use his bank account, the accused knew that Sakiusa Vakarewa is employed at FRCA and during the relevant period was employed as his driver, keys to P.O. Box. 1671 Nabua were collected by the accused from the Post Office on the instructions of Sakiusa Vakarewa, the bank details of the accused, his wife and brother are in the FRCA system, the accused used his friend Vimal Prakash Sundar to encash a cheque and got him to write a false address on the reverse of the cheque, in this instance the accused knew well in advance that there will be a cheque in Sundar's name, the accused lied to Sundar that he did not have a bank account even though he had been operating one since 2004. The accused was encashing cheques drawn in the names of others and lied to them to secure their details of identity. After some time Sakiusa Vakarewa allowed the accused to run the taxi without any payment and instructed that he could keep all the earnings.
- [93] The accused, through the investigating officer elicited his answers given at the caution interview. The accused denied any knowledge of these false tax returns, all the money received from encashing cheques were either given to Sakiusa or Robin. No evidence led by the prosecution that it is not. Sakiusa already pleaded guilty to the charge, the accused absolutely did not have any knowledge that the cheques

presented to Real Me Dressing by him originated from an unlawful activity. There are no evidence that it was the accused who lodged these tax returns at FRCA.

- [94] The prosecution has failed to prove that cheques were paid out by the bank and there is no evidence that cash movement from FRCA accounts in relation these cheques.
- [95] Having denied any knowledge of the unlawful activity of the cheques, the accused said that he was told by Sakiusa that names of Indian people are needed for a project undertaken by FRCA. He provided names and when the accused tried to ask Sakiusa and was told not to ask questions and to do as he was told. In the caution interview the accused said that he declined to take part in these transactions when a cheque issued to Pradip Chand had problems and he was asked to pay back the amount received to the Chinese lady. The accused gave honest answers during the caution interview and co-operated with the investigative authorities.
- [96] I must caution you over one other important matter. When I present the accused's version, alongside the version of the complainant, you might get an impression that the accused must prove that that he had no knowledge that the cheques he encashed originated by unlawful activity. That is wrong. He is under no legal duty to disprove the case for the prosecution. He is not even under a legal duty to offer evidence. He opted to remain silent in exercising his right and you should not draw adverse inference on him for doing so.
- [97] There is one more important item that I must direct you with. The fact that Sakiusa Vakarewa and Savita Singh already pleaded guilty to the same information does not lead to the inference that the accused also has committed the offence. You have to consider the law and evidence and independently come to a conclusion whether he is guilty or not.
- [98] During the closing address, counsel for the accused made a reference to the charge statement. You may consider that, but it's important to remind you that you are to decide whether the accused is guilty or not to the charge which is contained in the amended information before us.
- [99] I have referred to applicable law and the evidence before you. It is your duty to consider these items of evidence in the light of the legal principles explained. After considering the evidence, if you find that the prosecution has failed to prove one element or more then you must find the accused not guilty to the charge of Money Laundering. If you find that the prosecution evidence, is both truthful and reliable and through that truthful and reliable evidence, it has proved all elements of the offence of Money Laundering, then you must find the accused guilty.

[100] If you have any reasonable doubt about the prosecution case as a whole or an element of the offence, then you must find the accused not guilty.

[101] Any re directions, the parties may request?

[102] Madam and Gentlemen assessors, this concludes my summing up of law and evidence. Now you may retire and deliberate together and may form your individual opinions. When you have reached your individual opinions you will come back to Court, and then you will be asked to state your opinion.

[103] I thank you for your patient hearing.



Achala Wengappuli
JUDGE



Solicitor for the State : **Office of the Director of Public Prosecution, Suva**
Solicitor for the Accused : **Jiten Reddy Lawyers**