

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL CASE NO. HAA13 OF 2017**

**(Magistrates' Court Case No. 381 of 2011)**

**BETWEEN:**           **THE STATE**

**APPELLANT**

**AND:**                 **SANTA PRASAD**

**RESPONDENT**

**Counsel:**       **Mr L Fotofili for the Appellant**  
                  **Mr A Kohli for the Respondent**

**Date of Hearing:**   **16 January 2018**

**Date of Judgment:** **02 March 2018**

**JUDGMENT**

[1] This is a timely appeal against an acquittal by the State.

[2] The respondent was charged with two offences based on the same facts. It was alleged that the respondent forged the signature of his sister in a motor vehicle transfer document and then used that document at the Land Transport Authority to get a tractor transferred under his name. The respondent was charged with forgery and uttering a forged document. He pleaded not guilty to the charges. After a defended hearing, the respondent was acquitted of the charges by the Magistrates' Court.

[3] The sole ground of appeal against the acquittal is:

In acquitting the Respondent, the learned Magistrate erred when he failed or did not adequately consider whether the evidence of Sarojni Wati or PW2 was sufficient on its own to prove the prosecution's case on both counts beyond a reasonable doubt.

[4] At the trial, the prosecution led evidence from three witnesses. The key witness was the complainant, Sarojini Wati. Ms Wati is the sister of the respondent. She claimed that the respondent had fraudulently transferred a tractor that was held under a trust of their deceased father's estate. She was a joint trustee of that estate with her brother, the respondent.

[5] In 2008, there was an application made at the Land Transport Authority (LTA) to transfer the ownership of the tractor to the respondent. After the transfer document was filed at the LTA office, the respondent became the sole owner of the tractor. The transfer document contained the name and signature of Ms Wati giving consent to transfer the ownership of the tractor solely to the respondent. Ms Wati's evidence was that she did not sign the transfer document and that her signature was forged. She did not know who had forged her signature. The transfer document was led in evidence by the police officer who seized the document from the LTA office in Labasa.

[6] According to the transfer document, Ms Wati's consent and signature was witnessed by a Commissioner for Oaths, Salesni Lata Chand. Ms Chand was not called to give evidence. The prosecution led evidence that Ms Chand could not be served with a subpoena because she was overseas.

[7] At the trial, the respondent gave evidence. He denied forging the transfer document. He said Ms Wati signed the transfer document before a Commissioner for Oaths.

[8] In his judgment, the learned trial magistrate after identifying the essential elements of the charged offences, made the following findings:

58. In dealing with the offences the court shall first consider whether prosecution has proven beyond reasonable doubt that forgery

has occurred. If the court finds that there has been forgery then automatically the second count is also met in light of the fact that the Defendant does not dispute that he uttered the Land Transport Authority Application for Transfer of Ownership of Motor Vehicle Form at the Land Transport Authority. Should the court find to the contrary then the converse would apply.

59. This court is satisfied that the **Identity**<sup>1</sup> of the accused and the **Document** (LTA Transfer Form Application) used<sup>2</sup> has not been disputed and those<sup>3</sup> elements has been proven beyond reasonable doubt.
60. The court however finds in terms of the second<sup>4</sup> and third element<sup>5</sup> of the offence for count 1, Prosecution has not proven the same beyond reasonable doubt.
61. It is the court's view that is was absolutely crucial to the Prosecution case to have called the Commissioner for Oaths as a witness however due to the administrative issues which this court shall not delve into Prosecution was not able to call the Commissioner for Oaths as a witness.
62. As an independent witness the evidence of the Commissioner for Oaths would have clarified the second and third element of count 1 for the court in light of the fact that the complainant and the Defendant (who had nothing to prove) were at opposite poles in terms of their version of events.
63. The Commissioner for Oaths would have settled the issue on whether Sarojni Wati signed or whether someone else did. The court can only speculate what the evidence might or could have been but the law requires a higher standard of proof from prosecution as a opposed to calculated guesses.
64. Prosecution has not been able to meet that standard of proof and as such as a result count 1 has not been proven beyond reasonable doubt which also means that count 2 is also not proved beyond reasonable doubt as a result.

[9] Counsel for the State submits that the learned magistrate made an error when he concluded that the respondent's guilt could not be established without corroboration of Ms Wati's evidence. This submission is misconceived. The learned magistrate gave no impression that he required corroboration of Ms Wati's evidence. The learned magistrate concluded that the respondent was not guilty of the charges because he entertained a reasonable doubt as to the guilt after he heard the respondent's evidence. The respondent's evidence was that Ms Wati had signed the transfer

document before a Commissioner for Oaths. The Commissioner for Oaths would have cleared the doubt that arose from the respondent's evidence. Since the Commissioner for Oaths was not called to give evidence, the learned magistrate was left with a reasonable doubt as to the guilt of the respondent. The learned trial magistrate acquitted the respondent of the charges and there is no error shown for this Court to disturb that finding of the trial court.

[10] For these reasons, the acquittal is affirmed and the State's appeal is dismissed.



.....  
**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the Appellant  
Kohli & Singh for the Respondent