

**IN THE RESIDENT MAGISTRATE'S COURT OF FIJI**  
**AT NAVUA**

Criminal Case : 128/2013

STATE

VS

AJESWAR LAL

For Prosecution : Sgt. Lenitasi

For Accused : In person

Date of Hearing : 19 June 2013

Date of Judgment : 21 June 2013

**Judgment**

[1] The accused was charged with two counts of Criminal Trespass. The charge read as follows:

**Count 1**

**Statement of Offence (c)**

**CRIMINAL TRESPASS**:- Contrary to Section 387 (1) (a) of the Crimes Decree 2009.

**Particulars of offence (d)**

**ATESHWAR LAL**, on the 14<sup>th</sup> day of November, 2012, at Nasasa, Navua in the Central Division, entered into the compound of **ANNUSHAL CHAND** with intent to annoy the said **ANNUSHAL CHAND**.

**Count 2**

**Statement of Offence (c)**

**CRIMINAL TRESPASS**:- Contrary to Section 387 (4)(a) of the Crimes Decree 2009.

**Particulars of Offence (d)**

**ATESHWAR LAL**, on the 18<sup>th</sup> day of March, 2013, at Nasasa, Navua in the Central Division, by night entered into the compound of **ANNUSHAL CHAND** without lawful excuse.

- [2] The accused pleaded not guilty to the charge and this matter proceeded for hearing on 19 June 2013.
- [3] The prosecution called 06 witnesses (03 civil witnesses and 03 police officers) and for the defence the accused opted to remain silent.

### **Summary of Evidence**

- [4] PW1, Annushal Chand was the complainant in this case. He said on 14 Nov 2012 around 05.30pm he was sitting with his friends (PW2 and PW3) drinking when the accused started to shout from his house. Then the accused came to PW1's compound. PW1 did not invite him there. The accused came to PW1's poach and started swearing at them using words like "maichod". At that time the accused was drunk and left after they called police. On 18 March 2013 around 9pm PW1 heard someone knocking to door. The accused was outside and again he was there without any invitation.
- [5] In cross examination PW1 said on the first day there was one child of the accused with them and second day he came with a photograph. Also PW1 rejected that the accused asked medicine on that night. These positions he confirmed in re-examination too.
- [6] PW2 was Amith Singh, a friend of PW1. He was also drinking on 14 Nov 2012 with PW1 and said the accused came to place and started shouting with words like "maichod". Second time also the accused came to PW1's house in the night. In cross examination Pw2 said the accused came asking for his child and later started swearing.
- [7] PW3, Salveen Chnad was also with PW1 on first occasion and also said the accused came drunk and started swearing at them.
- [8] PW 4, PC 2039 Iowane was the charging officer of the first incident. Through him the first caution interview and the charge statement were tendered.
- [9] PW5, PC 4658 Ilimo was the interviewing officer for the second count and this statement was tendered.

[10] Last witness for the prosecution was PC 3465 Timoci, the charging officer for the second count. Thereafter prosecution closed their case and being satisfied with evidence I gave the accused his rights as per section 179 of the Criminal Procedure Decree. The accused opted to remain silent. He also did not want to call any other witnesses on his behalf.

### **The Law**

[11] The accused was charged with two counts of Criminal Trespass. First count is contrary to section 387(1) (a) and that provision read as follows:

**“— (1) A person commits a summary offence if he or she—**

**(a) enters into or upon property in the possession of another with intent to commit an offence or to intimidate or annoy any person lawfully in possession of such property: “**

[12] Based on the facts in this case the elements the prosecution needs to prove are:-

**[a] the accused**

**[b] enters in to property in the possession of another to annoy any person lawfully in possession of such person.**

[13] Second count is contrary to section 387(4) (a) the Crimes Decree. The section states :

**“A person commits a summary offence if he or she enters by night, and without lawful excuse —**

**(a) any dwelling-house;”**

[14] For the second count the prosecution has to prove that the accused without any lawful excuse entered in to any dwelling house in the night.

[15] The prosecution has to prove every elements of the offence. Section 58 (2) of the Crimes Decree states that this burden must be proved beyond reasonable doubt by the prosecution.

[16] **In State v Seniloli [2004] FJHC 48; HAC0028.2003S (5 August 2004) her Ladyship Justice Shameem in her summing up said :**

**“The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused persons before you express an opinion that they are guilty. If you have any reasonable doubt as to whether the accused persons committed the offence charged against each of them on the Information, then it is your duty to express an opinion that the accused are not guilty. It is only if you are satisfied so that you feel sure of their guilt that you must express an opinion that they are guilty. One of the defence counsel asked you if you had the slightest doubt about the accused’s guilt. That is not the correct test. The correct test is whether you have any reasonable doubt about the guilt of the accused.”**

### **Analysis of Evidence**

[17] PW1 in his evidence said the accused came to his premises two occasions without any permission. On 14 Nov 2012 whilst PW1 was drinking with his friends the accused came drunk and swore at them. This position was supported by PW2 and PW3.

[18] On the other hand the accused admitted in his caution statement going there but denied swearing. The accused remain silent in the Court therefore I have no opportunity to hear his side. But have no reasons to doubt PW1’s evidence which was corroborated by two other witnesses (PW2 and PW3)

[19] Second occasion happened on 18 March 2013 in which the accused went to PW1’s house in the night. This position is also not denied by the accused in his caution statement. Again as he did not give evidence I have no opportunity to hear his side. But in cross examination the accused was suggesting to PW1 that he came there to ask some medicine. This position was denied by PW1. Again I have no reasons to doubt PW1 who I believe was truthful in Court. Whilst admitting going to the PW1’s house in the night in his second caution interview the accused did not mention about asking for medicine which raises doubt about his claim.

[20] First interview was recorded on 15 Nov 2012 and the second one was conducted on 19 March 2013. Both these pointed out to me that complaints about these incidents were made promptly thus enhancing PW1's version.

[21] The demeanors of the witnesses can also assist the Court in deciding about a case. In this case since the accused did not give evidence I am not in a position to comment about that. But I have noticed that PW1 and other witnesses were confident in explaining about the incidents.

[22] Therefore I decide to accept the prosecution's version in this case. The prosecution has proved beyond reasonable that the accused committed these two counts.

[23] I find the accused guilty for this charge and convict him accordingly.

[24] 28 days to appeal.

21 June 2013

**H.S.P.Somaratne**  
**Resident Magistrate**