

IN THE RESIDENT MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case No. 11 of 2017

The State

V

S R (The Juvenile)

For the State : Inspector Suli
For the Juvenile : Counsel Ms. Davids (Legal Aid)
Date of the Judgment : 26th October 2017

Judgment

Introduction

1. The Juvenile has been charged with two counts as follows;

1st Count

Burglary contrary to section 312(1) of the Crimes Decree No. 44 of 2009.

Particulars of the offence

The Juvenile, on 12th day of February 2017, at Raiwaqa, in the Central Division, wilfully and unlawfully entered into the flat of Laisenia Raibuli with intent to commit theft.

2nd Count

Theft contrary to section 291(1) of the Crimes Decree No. 44 of 2009

Particulars of the offence

The Juvenile, on 12th day of February 2017, at Raiwaqa in the Central Division, dishonestly appropriated (stole) \$360.00 cash, the property of Laisenia Raibuli with the intention of permanently depriving said Laisenia Raibuli of the said property.

2. 1st count is an electable offence in terms of Electable Offences Act 1988, which is triable summarily and the juvenile has elected the case to be tried by the Magistrate Court.
3. The Juvenile has pleaded not guilty to both counts on 19/04/2017 and the hearing took place on 07/08/2017 and 23/08/2017.
4. The prosecution alleged that the juvenile has broken into the house of the complainant and stole cash from his till, when nobody was at home. When they returned home, the juvenile was found inside the house with the money in his pocket.
5. The juvenile denied the allegation and his position is that he went to the complainant's house to buy something from his canteen and the door to the house was kept open. Once he entered the house he found that the money was scattered everywhere and he collected them to show his parents.

The Prosecution Case

6. The Prosecution called two witnesses to support its case and the caution interview and the charge statement were marked as PExb 1 and PExb 2, with the

consent of the Defence. Prosecution witness No. 1 (PW1) is Laisenia Raibulu, the complainant and the PW2 is Bua Doracini, the daughter of PW1.

7. PW1 testified that he runs a canteen at home in Naitasiri, in which he sells grog. On 12/02/2017, he left the house with the family to visit some relatives in Weinadoi. His son and his family who lives with him also have left the house later, locking the door and leaving the key with the neighbour. When PW1 returned home around 3 or 4pm, his daughter who went to open the door, has informed him that the door is already open and the juvenile is inside the house.
8. When he entered the house he has found the juvenile inside the house with pocket full of money and some cigarettes in his hand. He has demanded the juvenile to put the money on the table which he has obliged, and then the juvenile has run away. PW1 cannot exactly recall how much money was in the till and said it was more than \$100.
9. PW2 corroborated the evidence given by PW1 and the juvenile has told her that the door was open when he entered the house and the stuff were scattered everywhere.

The Defence Case

10. Only the juvenile gave evidence on behalf of the Defence. He denied all the allegations against him and said that he was asked to buy grog from the complainant's canteen by his mother. When he reached the canteen he has seen another unknown boy was coming out of the complainant's house and he entered the house with the impression that the residents are inside. Then he found out that all the stuff and money were scattered on the floor and his position is that he collected the money so that he can show them to his parents and explain what has happened at the grandfather's (complainant's) house.

The Analysis

11. In order to find the juvenile guilty, the prosecution has to prove the following ingredients beyond reasonable doubt.

For the 1st count - Burglary

- a. The juvenile
- b. Wilfully and unlawfully entered the complainant's house
- c. With the intention to commit theft

For the 2nd count - Theft

- d. The juvenile stole money belonged to the complainant
- e. With the intention of permanently deprive the money to the complainant

12. There is no dispute of the identity of the juvenile as he is related to the complainant and both prosecution witnesses identified the juvenile positively in court. Both witnesses have seen the juvenile at the crime scene and it has not been disputed by the Defence.

13. It is undisputed that the juvenile was found inside the house of the complainant and the money which was in his till was inside the pocket of the juvenile's trouser. The juvenile's position is that he collected the money to show his parents, which cannot be accepted as a credible explanation. If the juvenile wanted to report the incident to his parents or relatives, he would have done it without collecting money and putting them inside his pocket. It was further revealed from juvenile's evidence that he did not tell his parents what has happened at the complainant's house, until a relative came and informed.


14. It was further revealed from juvenile's evidence that this is the first time he went to complainant's canteen and his mother beat him when she heard the incident. Such evidence weakens the position of the juvenile that the mother sent him to the canteen to buy grog for his father.

15. Therefore the court finds that the evidence given by the juvenile is neither credible nor truthful. Therefore I refuse to accept the evidence adduced by the juvenile.
16. Though the juvenile says that the complainant's house was already open and an unknown boy came out from the house, such evidence too cannot be accepted as the court has refused to accept the juvenile's evidence as truthful and credible. The PW2 has said that there was a pin near the door which is suspected to be used to open the door and the PW1 has said that the particular door could be easily open. Therefore, the only inference which could be drawn is that the juvenile, who was found inside the house, has broken in to the house, with the intention to commit theft.

The conclusion

17. Based on the above mentioned evidence and the analysis, I conclude that the prosecution has proved all the ingredients of both counts beyond reasonable doubt.
18. Therefore I find the juvenile guilty to offences of Burglary and Theft.
19. Parties are entitled to appeal against this judgment within 28 days.




Geethani Wijesinghe
Resident Magistrate

At Suva

26th October 2017