

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 414 of 2014

STATE

v

AVISHAL AVIKASH PRASAD

Counsel : **WPC Qolitabua** for the Prosecution :
Mr Paka. A for the Accused

Judgment : **13 July 2018**

JUDGMENT

1. The accused, *Avishal Avikash Prasad* was charged for *Burglary* and *Theft* under *section 312* and *291* of the *Crimes Decree 2009*, respectively.
2. On 11 August 2015, the accused in the presence of his counsel elected to be tried in this court for the offence of *Burglary*. On the same day, the accused pleaded not guilty to the offence of *Theft*.
3. On 28th September 2015, the accused pleaded guilty to the offence of *burglary* in the presence of his counsel.
4. This judgment will only focus on the offence of *Theft*, which is count 2.

5. The particulars for the offence of *Theft* are;-
“Avishal Avikesh Prasad, between 25 and 26 July 2014, stole a black puma bag valued \$60.00, a black pair of safety boot valued \$80.00, a small gold sovereign chain valued \$200.00, a twisted gold chain valued \$200.00, a gold bracelet valued \$130.00, a green wallet valued \$6.00, a orange round neck T-shirt valued \$60.00, a black shinny long pant valued \$55.00, a wrist watch valued \$25.00, a bluish red long sleeve shirt valued \$100.00, a bottle Gordon London Dry Gin valued \$100.00, and cash of \$25.00, all to the total value of \$1,121.00 the property of Harish Chand.”
6. The case proceeded to trial on 3 May 2016. The prosecution called two witnesses and closed her case. The Counsel for the accused submitted no case to answer and directed to file his submission. After several adjournment, Counsel for the accused withdraw his application for no case to answer on 23 January 2017, and seek trial date for the defence case. On 1 May 2018, the case was set for hearing of the defence case. The Counsel for the defence informed the court that the accused will remain silent.
7. There will be no adverse inference drawn against the accused in exercising his rights to remain silent.
8. *Section 291(1) of the Crimes Act* state;-
“A person commits a summary offence if he or she dishonestly appropriates property belongings to another with the intension of permanently depriving the other of the property.”
9. The elements of the offence are:-
 - a. *the accused,*
 - b. *dishonesty appropriates the victim’s property,*
 - c. *with intention to permanently deprive the victim of the property.*
10. The burden of proof remains with the prosecution to prove her case beyond reasonable doubt. There is no obligation on the accused to prove his innocent.

11. Before the recording of the prosecution evidence, the Counsel for the accused informed the court, that they are not disputing the elements of the offence of theft, they are only disputing some of the items listed in the particulars of the offence. With this admission, I find the accused guilty as charged. To assist in sentencing, I will proceed to analyse the evidence and make a finding on the stolen items.
12. Harish Chand is the first prosecution witness. He stated that items stolen includes- a Puma school bag, a safety boots, a wrist chain, a gold chain tied with thread because it was broken, children shirt and pants, his son's wallet, 1 bottle gin, and some other things he cannot recall. His wife checked the drawer and notice that \$1800.00 was missing. His son called him on Saturday to check his clothes as he saw the accused in town wearing his shirt, with his bag and the safety boot. In cross examination, he confirmed that his son did not see the bottle of gin with the accused. His son only saw the Puma bag, gold chain, and safety boots. The price of items stolen are all estimated price.
13. Ashiteshwal Chand is the second prosecution witness. His long sleeve shirt, safety boots, school bag, wrist watch, T shirt were stolen. He saw the accused in town with his bag and chain. He calls the accused in town and asked the accused. He went and report to the police. Items were stolen includes wrist watch, some money, gin, wallet, about \$180.00 cash. In cross-examination, he said that the bottle gin was missing.
14. In assessing the cross-examination of the two witnesses called by the prosecution, the question is focussing on the bottle of gin. It appears from those questions that the accused is disputing taking the bottle of gin. Both the prosecution witnesses confirmed that the bottle of gin was missing, but there was no evidence to prove that the accused steal the bottle of gin or see the accused holding or in possession of the bottle of gin.
15. Considering the burden of proof required, I find that there are doubt that the accused steal the bottle of gin. The Prosecution failed to prove beyond reasonable doubt that it was the accused who steal the bottle of gin. I

therefore, find that the accused did not steal the bottle of the gin. That will reduce the total value of items stolen by \$100.00. The new total value of items stolen is \$1,021.00. Further, the total value is the estimated value as confirmed by the first prosecution witness.

16. With the admission to the elements of the offence by the accused through his counsel, I find that the prosecution has proven all the elements of offence beyond reasonable doubt.
17. In my judgment, I find the accused guilty as charged and convicted the accused accordingly.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE