

IN THE MAGISTRATE'S COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 287 of 2016

STATE

v

FEROZ KHAN

Appearance : **PC Lal** for the prosecution
Accused no appearance

Judgment : **2 August 2019**

JUDGMENT

1. The accused, *Feroz Khan* was charged for *Burglary* and *Theft* under *section 312* and *291* of the *Crimes Decree*, respectively.

2. The particulars of the offence are;-

Count 1

"Feroz Khan between the 2 and 17 May 2016, at Labasa, in the Northern Division, entered into the dwelling house of Prem Lata as a trespasser, with intent to steal therein."

Count2

"Feroz Khan between the 2 and 17 May 2016, at Labasa, in the Northern Division, dishonestly appropriated a Dhal

Grinder valued \$85.00, a Sao Maker valued \$30.00, and an Electric Hair Straightener valued \$85.00, all to the total of \$195.00 the property of Prem Lata with intention to permanently deprive Prem Lata."

3. On 23 August 2016, the Accused elected to be tried in this court for the offence of *Burglary*. On the same day, the Accused pleaded not guilty to both the offences.
4. On 30 September 2016, the Accused informed the court that his admission in the caution interview was made voluntarily.
5. The case proceeded to trial in the absence of the Accused on 29 October 2018. The Accused was present in court when the trial date was set, so he is fully aware of the trial date.
6. The Prosecutor called Prem Lata (Prem) as the first witness and PC 4264 Ravin as the second and final witness.

Law

7. Section 312(1) of the Crimes Decree state;-
"A person commits an indictable offence (which is triable summarily) if he or she enters or remains in a building as a trespasser, with intent to commit theft of a particular item of property in the building".
8. Section 291 of the Crimes Decree state;-
"A person commits a summary offence if he or she dishonestly appropriates property belonging to another with the intention of permanently depriving the other of the property".

9. The elements of the offence are:-

Burglary

- a. the accused,
- b. enters a building as a trespasser,
- c. with intent to steal,
- d. from the building.

Theft

- a. the accused,
- b. dishonestly appropriate the victim's property,
- c. with intention to permanently deprive the victim.

10. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

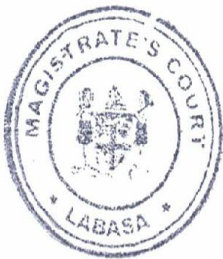
Analysis and determination

11. Prem is the Victim in this case. In her evidence, she stated that on 2 May 2016, they locked their house in Siberia and they went to Bua. No one was at their house. While in Bua, she received a phone call from a police officer in Labasa for them to come back as there are stolen items from their house. She returned to Labasa and went to the Labasa Police station. She was told to go to their house to check if there is any missing items. She found that the hand mixer use to grind dhal, Sao maker, and hair straightener were missing. Total value is around \$195.00 to \$200.00. She bought those items.

12. Prem said that she believe the thief entered from the back door. She said Feroz Khan stole her property. I give no weight on this evidence as she did not see Feroz break into her house and she also did not see Feroz took all those items from her house.

13. PC Ravin is the arresting officer. He said that on 2 to 17 May 2016, he saw the Accused carried a bag in town. He arrested the Accused at the BSP building and took him to the Market Police Station. The Accused was handed over to the charge room at the Labasa Police Station. In the bag were tools and suspected stolen items.
14. It is apparent from the evidence before the court that neither of the witnesses saw the Accused break into the house of Prem, or entered Prem's house and stole those items listed in the charge. There is no evidence before the court to show that the Accused admitted that he broke into the house of Prem and took out those items listed in the charge.
15. In assessing the evidence, I find that there is no evidence implicating the Accused on both the offences. The prosecution fail to discharge the burden.
16. In this judgment, I find the Accused not guilty as charge for both the counts. Accordingly, I acquitted the Accused on both the counts.

28 days to appeal



C. M. Tuberi
RESIDENT MAGISTRATE