

IN THE MAGISTRATES COURT AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. 254 of 2016

STATE

v

1. RONIL RITESH LAL

2. SHAMAL SHELVIN RAM

Appearance : **WSGT Mere** for the prosecution
Mr Raramasi. S for the first accused
Mr Dayal. R for the second accused

Ruling : **1 November 2019**

RULING

NO CASE TO ANSWER

1. Ronil Ritesh Lal and Shamal Shelvin Ram you stand tried for *Theft* contrary to *section 291* of the *Crimes Act*.
2. The particulars of the offence are that on 9 March 2016, at Labasa in the Northern Division, Ronil Ritesh Lal and Shamal Shelvin Ram dishonestly appropriated two 20 litres drum of oil 90 filled with 37.5 litres valued \$481.11 the property of Niranjana's Auto Port Limited with the intention to permanently deprive Niranjana's Auto Port Limited.

3. The first accused pleaded not guilty to the charge on 26 September 2016. The second accused pleaded not guilty to the charge on 17 March 2017.
4. The case proceeded to trial on 20 September 2019. The Prosecutor called two witnesses and closed her case. Your respective Counsels made an application for no case to answer. The first accused filed his submission on 26 September 2019. The second accused filed his submission on 3 October 2019.

Application

5. The first accused submitted that all the essential elements of the offence were not proven by the prosecution and no tribunal could safely convict the first accused on such evidence. The second accused submitted that the prosecution was unable to prove every element of the offence beyond reasonable doubt. There is no relevant evidence that requires the second accused to put his defence.

Law

6. *Section 178 of the Criminal Procedure Act provides for such application to be made.*
7. *Section 291 of the Crimes Decree, state;-*
"(1) 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."
8. The elements of the offence are;-
 - a. *the accused,*
 - b. *dishonestly appropriated the victim's property,*
 - c. *with intent to permanently deprive the victim.*

9. The test for no case to answer in the Magistrate Court was stated in ***Shabib v The State*** [2005] FJHC 95; HAA0022J.2005S (28 April 2005) as :-
- a. *Whether there is relevant and admissible evidence implicating the accused in respect of each element of the offence.*
 - b. *Whether on the prosecution case, taken at its highest, a reasonable tribunal could convict.*
10. The burden of proof is on the prosecution to establish the above test.

Analysis and determination

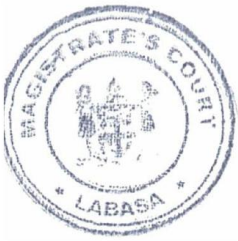
11. Viliame Ryland (Viliame) is the first witness for the prosecution case. He identified the first accused in court as the person whom he saw sometimes in March 2016, that carried two 20 litres gallon of oil in front of his house. Viliame's house is at the back of Niranjans'. Viliame then took the first accused with the two 20 litres gallon of oil to the front gate of Niranjans' and called the security officer and informed the security officer of the first accused and the two 20 litres gallon of oil.
12. Naren Mishra (Naren) is the second witness for the prosecution. He identified the accused in court as the person who was brought in by Viliame with the two 20 litres gallon of oil when he was on duty at the front gate of Niranjans'. He stated that he knew the first accused as he is a staff of Niranjans'.

13. The first accused had been positively identified in court by Viliame and Naren as the person who was carrying two 20 litres gallon of oil sometimes in March 2016.
14. Still on the issue of identity, neither of the witnesses was able to identify the second accused in court. Not only that, throughout their evidence, they did not mention the second accused or any evidence implicating the second accused to the allegation. As such, the other elements of the offence cannot be linked or connected to the said accused. There is no evidence against the second accused.
15. The first accused had been seen by Viliame and Naren with the two 20 litres gallon of oil. However, there was no evidence adduced from the alleged victim or complainant Niranjans or its employee to say that two 20 litres gallon of oil 90 with 37.5 litres were missing or stolen. As such, on the face of the evidence adduce there is no complaint of theft or items stolen. Viliame and Naren only saw the first accused with two 20 litres of gallon oil. No evidence from them that the first accused stole that oil from Niranjan's. There was no exhibit tendered to prove to the court the alleged stolen items. Accordingly, there is no evidence of dishonestly appropriation of property. Consequently, there are insufficient evidence or no evidence to show that the first accused has intention to deprive Niranjan's Auto Port Limited.
16. With the analysis of evidence as discussed above, there is no evidence to implicate the second accused on all the elements the offence. There are insufficient evidence to implicate the first accused on the second and the third elements of the offence.

17. In assessing the evidence, I find that there are insufficient evidence against both the accused that requires them to put their defence.

18. In this ruling, I allow the application. Pursuant to section 178 of Criminal Procedure Act, I dismiss the case, and I acquitted both the accused.

28 days to appeal



A handwritten signature in blue ink, appearing to read "C.M. Tuberi". The signature is fluid and cursive, enclosed within a faint, light blue oval outline.

C.M. Tuberi
Resident Magistrate