

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 130 - 2016

STATE

-v-

VISHAL PRAKASH  
ASHIFA SHABNAM NISHA

**Before** : RM Fotofili L.  
**For The Prosecution** : WPC Chand A. [ Police Prosecution ]  
**For The Defendant** : Ms Henao G. [ Legal Aid Commission ]  
**Trial Date** : 30<sup>th</sup> April 2019  
**Date of Judgment** : 25<sup>th</sup> June 2019  
**Sentence** : 18<sup>th</sup> August 2019

**SENTENCE**

1. I have already sentenced the 1<sup>st</sup> defendant Vishal Prakash and his sentence was pronounced on the 27<sup>th</sup> of August 2019.
2. Police have managed to execute the warrant of apprehension on the 2<sup>nd</sup> defendant Ashifa Shabnam Nisha who was not present during her trial and who was tried *in absentia*.
3. The 2<sup>nd</sup> defendant Ms. Nisha was arrested on the 28<sup>th</sup> of July 2020 and that is after I had given judgment finding both the defendants guilty of the following.

***Count 1***

***Statement of Offence***

**THEFT**: Contrary to section 291 ( 1 ) of the **Crimes Act of 2009**.

*Particulars of Offence*

**VISHAL PRAKASH and ASHIFA SHABNAM NISHA** on the 30<sup>th</sup> day of April 2016 at Tavua town, Tavua in the Western Division stole a BREVILLE brand grinder valued at \$122.00 the property of COURTS ( Fiji )Ltd.

4. The 1<sup>st</sup> defendant is the only person charged and convicted for the 2<sup>nd</sup> count of breaching an order of a suspended term.
5. This sentence will address the sentence of the 2<sup>nd</sup> defendant Ms. Ashifa Shabnam Nisha for her conviction in count 1 or for stealing together with the 1<sup>st</sup> defendant.
6. The 2<sup>nd</sup> defendant Ms. Nisha is entitled to reverse the conviction entered in her absence pursuant to section 172 of the **Criminal Procedure Act 2009** if she can demonstrate that:
  - (i) her absence was from causes over which she had no control; and
  - (ii) there is an arguable defence on the merits.
7. Both factors must be demonstrated.
8. The 2<sup>nd</sup> defendant Ms. Nisha has waived pursuing this remedy.
9. Therefore, my finding of guilt against the 2<sup>nd</sup> defendant Ms. Nisha remains and she remains convicted as charged.
10. I repeat the following findings which I had summarised when sentencing the 1<sup>st</sup> defendant earlier.
11. The case against the defendants during the trial is based on a video recording captured by a stationary CCTV camera which was in place at the business or shop. The 1<sup>st</sup> and the 2<sup>nd</sup> defendant can be seen browsing around near the electrical appliances area of the shop. The 2<sup>nd</sup> defendant Ms. Nisha who was carrying a bag then handed the bag to the 1<sup>st</sup> defendant. The 1<sup>st</sup> defendant then goes to a corner of the shop and takes a grinder or blender valued at \$122 from the electrical appliance shelf or section and puts the grinder in the bag. The 2<sup>nd</sup> defendant Ms. Nisha provided 'body cover' for the 1<sup>st</sup> defendant while the 1<sup>st</sup> defendant smuggled the stolen item into the bag. The defendants then walk out of the shop. It was realized later by staff at the shop that the item was missing. The CCTV footage was reviewed. Some staff went around town the same day to look for the defendants. They were seen in town but they disappeared. About 20 days later, a staff saw the defendants

or not can attract sentences of up to three years.

(iv) regard should be had to the nature of the relationship between offender and victim.

(v) planned thefts will attract greater sentences than opportunistic thefts.

### **STARTING POINT**

21. Based on the objective circumstance of the case, I select a starting point of 3 months imprisonment.

### **AGGRAVATING FEATURES**

22. The theft was planned. It was committed skilfully by both the defendants and if it were not for the CCTV footage, they would not have been caught.
23. The defendants are presumed innocent until proven guilty and they have the right to contest the allegation. However, when there is compelling evidence which was the case here of clear uninterrupted video footage showing the theft and the mode in which both defendants committed it, it was futile denying the allegation and the exercise of the prosecution in having to call their witnesses and expand time and resources in proving their case must be brought to bear on you Ms. Nisha.
24. Your sentence is increased to 13 months imprisonment.

### **MITIGATION**

25. You are a first offender.
26. You are remorseful.
27. For your limited mitigation, I reduce your sentence to 7 months imprisonment.

**FINAL SENTENCE**

28. As explained, I will not consider any time spent in remand as time served.
29. Your sentence will be aimed at deterrence and is to punish you adequately.
30. Your sentence is 7 months imprisonment.
31. Departing from the sentence I imposed on the 1<sup>st</sup> defendant who had past convictions of a similar nature, I am inclined to suspend your sentence Ms. Nisha but this will only be in part.
32. 6 months of your imprisonment term is suspended for the next 18 months.
33. Do not commit any other serious offence or offence punishable with imprisonment in the next 18 months because if you do, you risk this 6 months imprisonment that is held in waiting being activated [explained to the 2<sup>nd</sup> defendant].
34. You will serve 1 month imprisonment immediately.
35. 28 days to appeal to the High Court if you are dissatisfied with your sentence.



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Lisiate T.V. Fotofili

**Resident Magistrate**

Dated at Tavua this 18<sup>th</sup> day of August, 2020.