

**IN THE MAGISTRATE'S COURT AT LABASA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 236 of 2014*

**STATE**

V

**NILESH CHANDRA**

Appearance : **Wsgt Mere** for the prosecution  
**Accused** in person

Judgment : **7 August 2020**

**JUDGMENT**

1. The accused, is charge with two counts, of *Obtaining Property by Deception*, contrary to *section 317(1)* of the *Crimes Decree*.
2. The particulars of the offence for the first count is that Nilesh Chandra on the 8<sup>th</sup> day of March 2014, at Seaqqa, by deception, you dishonestly obtained 76.6kg of chicken valued \$690.00 belong to Ian Chute with intention to permanently deprive Ian Chute of the said property.

3. The particulars of the offence for the second count is that Nilesh Chandra on the 9<sup>th</sup> day of March, at Seagaqa by deception, you dishonestly obtained 116.1kg of chicken valued \$1,045.00 belong to Ian Chute with intention to permanently deprive Ian Chute of the said property.
4. The accused pleaded not guilty to both the counts on 19 October 2015. The case proceeded to trial on 7 July 2020.
5. The Prosecutor called two witnesses. The accused is the only witness for the prosecution case.

**Law**

6. *Section 317(1) of the Crimes Decree state;-*  
*"A person commits a summary offence if he or she, by a deception, dishonestly obtains property belongings to another with the intention of permanently depriving the other of the property."*
7. The elements of the offence are;-
  - a. *the accused,*
  - b. *by deception,*
  - c. *dishonestly obtained the property of the victim,*
  - d. *with intention to permanently deprive the victim.*
8. The burden of proof is on the prosecution to prove all the elements of the offence beyond reasonable doubt.

**Analysis and determination**

9. Ian Chute is the first witness for the prosecution case. He identified the accused in court.
10. Ian Chute said that on 8 and 9 of March 2014, the accused came to his chicken farm at Seagaqa. The accused informed

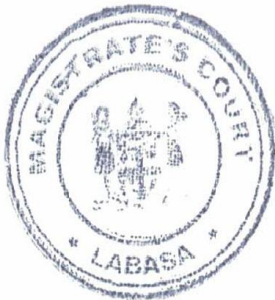
him that he wanted to buy some chicken for some function. The accused told him that he is a good salesman, he took his words and trusted him and he gave the chicken to the accused. The accused took 76.6kg of chicken on 8 March 2014 and 116.1kg on the 9 March. It was on the weekend so the accused made payments by cheque. Ian Chute said that in the following week, they went to bank the cheque given by the accused and it was bounce from the bank. He tried to retrieve the money from the accused and informed the accused that he can pay slowly but the accused did not make any payments. So he reported the matter to the police. He tendered the Westpac cheque No 9804620756 of 8.3.14 for \$690.00 as PE2 and Westpac cheque 9804620756 of 10.3.14 for \$1,045.00 as PE1.

11. Dianne Chute is the second witness for the prosecution case. She stated that on Monday or Tuesday she took the cheque PE1 and PE2 to the bank for banking. When she deposited both the cheques, she was informed by the bank, that both the cheques were bounced.
12. The accused stated in his evidence that on 6 March 2014, he went to Suva and he returned back to Labasa on 13 March 2014. He stated that on 8 March he did not went to Ian Chute and he did not make any transaction with Ian Chute. He did not buy chicken from Ian Chute and he did not give any dishonoured cheque to Ian Chute. The accused said that on 28 February 2014, he gave his cheque book to the police. He tendered a copy of a search list as defence exhibit 1. The exhibit shows that Nilesh Chandra voluntarily gave his Westpac Banking Cooperation cheque book 0390079804620756 000001-000200 (00026-00200) to the police on 28 February 2014. The accused stated that when he gave his cheque book to the police the cheque leaf was on number 26 but the

cheque leaf used for the purchase of the chicken in this case was cheque leaf number 40 and 44.

13. The accused said that he did not have any evidence with him to show that he went to Suva.
14. The evidence of the prosecution has established all the elements of the offence. The evidence of the accused has created some doubt on the two cheques used to purchase the chicken. In assessing the evidence, I find that the Prosecutor has not discharge the burden required. The surrender of the cheque book to the police shows that the two cheques given to Ian Chute were in the material times were in the possession of the police.
15. In this judgment, I find the accused not guilty as charged and I acquitted the accused accordingly.

**28 day to appeal**



A handwritten signature in blue ink, appearing to read "C. M. Tuberi". The signature is stylized and written over a horizontal line.

C. M. Tuberi  
**RESIDENT MAGISTRATE**