

IN THE RESIDENT MAGISTRATE'S COURT

AT NADI

CRIMINAL JURISDICTION

Nadi Criminal Case No: 1190 of 2017

Ba Criminal Case No: 404 of 2012

Tavua Criminal Case No: 227 of 2005

BETWEEN : **THE STATE**

AND

1)BAL RAM

2)ABINESH NAND (DECEASED)

Before : **NILMINI FERDINANDEZ**

RESIDENT MAGISTRATE

Date of Judgement : **29th October 2021**

Sergeant Vurakania for the Prosecution

Ms. Bilivalu of Legal Aid for the Accused

JUDGEMENT

- 1. BAL RAM, the 1st accused in this case has been charged for one Count of **Forgery** contrary to Section 336(3) (g) of the Penal Code, Cap 17.**
- 2. Particulars of the offence states:**
Count 1 –Bal Ram s/o Ballaiya on the 11th day of September 2001 at Tavua in the Western Divisionk, with intent to deceive Subramani Naicker s/o Dorsami Naicker forged the land sale and purchase agreement under the name of said Chandar Lok s/o Ballaiaya.

BACKGROUND

- 3.1** It has revealed upon perusal of the case record that the alleged offence has been committed in the year 2001 although this case has originally commenced at Tauva MC in year 2005 against two accused persons.
- 3.2** Later in 2012 due to an unknown reason, the case has been transferred to Ba MC and has been re-registered again under **Criminal Case No: 404 of 2012** and.
- 3.3** In October 2017, as per directives of the Chief Magistrate, this case has been transferred to Nadi MC and the case has been registered under **Criminal Case No: 1190 of 2017** in Nadi MC.
- 3.4** On the 19th November 2019, the police prosecuting officer, Corporal Bola has informed court that the 2nd accused in this case has deceased and tendered to court a copy of his Death Certificate.
- 3.5** Thereafter, on the same day the Trial commenced before me, regarding the 1st count, which is the only charge against the 1st Accused.
- 3.6** At the trial the prosecution has called the following witnesses.
 - i.) Chandra Lok**
 - ii.) Subramani Naicker**
- 3.7** Thereafter when the prosecution closed its case, the accused opted to give evidence, but he did not wish to call any other witnesses to give evidence on his behalf.
- 3.8** Subsequently, the trial concluded and the prosecution informed court that they would rely only upon the evidence placed before court at the trial. Only the defence has filed closing submissions.

THE LAW

- 4.1** The accused in this case is charged for **Forgery** contrary to Section 336(3) (g) of the Penal Code, Cap 17.

4.2 Section 336(3)(g) of the Penal Code, Cap 17 provides that:

Forgery of any document or copy of a document used or intended to be used in evidence in any court of record, or any document which is made evidence by law, if committed with intent to defraud or deceive, is a felony, and punishable with imprisonment for seven years.

4.4 Section 57 of the Crimes Act states that;

1. *The prosecution bears a legal burden of proving every element of an offence relevant to the guilt of the person charged.*
2. *The prosecution also bears a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.*

4.5 Section 58(1) states that “*A legal burden of proof on the prosecution must be discharged beyond reasonable doubt*”.

4.6 Accordingly, the elements that need to be proven by the prosecution to prove the charge of **Forgery** under Section 336 (3) (g) of the Penal Code against the accused in this case are that;

- a.) The accused in this case has **forged** any document or copy of a document used or intended to be used **in evidence in any court** of record, or any document which is made evidence by law
- b.) The accused has committed the forgery with intent to defraud or deceive

4.7 Forgery is defined in **Section 332 of the Penal code** as the making of a false document in order that it may be used as genuine.

EVALUATION OF EVIDENCE

5 Admissions

Defence Counsel has stated in the written submissions that the accused does not dispute the following facts:

- a. That the accused and PW1 are brothers.
- b. That there was a Sale and Purchase Agreement dated 11th January 2001 between Chandar Lok (PW1) and PW2.
- c. That the Sale and Purchas Agreement was in relation to lease No. 44656 a piece of land which formally belonged to the late father of the accused and PW1.
- d. That ownership over the said land after the demise of the accused and PW1's father was a cause of a series of civil litigation.
- e. That the land was transferred to PW1 on 10th of June 1994 when their father was still alive.

Prosecution's Evidence

- 6.1** I now consider the evidence of the Prosecution to see whether the allegation against this accused has been proven beyond reasonable doubt.
- 6.2** **PW1 Chandra Lok**, who is the brother of the accused, stated to court that his father has sold him the land in question in the year 1994.
- 6.3** After the said transfer he has not attended to the land for 10 years and when he needed a copy of the Lease and obtained one from the Registrar of Titles he has noticed some errors. According to him, he has managed to correct the errors through the High court and thereafter, he has started planting Sugar Cane in the land.
- 6.4** Around this time, this witness who was living in Lautoka has noticed that some people have been building houses on the land when he visited it and upon inquiry has got to know that his brother Bal Ram had sold portions of the land to those people.

- 6.5 Bal Ram has told the witness that the houses built on the land would be only temporary, when he pointed out that no houses can be built on this land which is a Cane Contract land.
- 6.6 This witness has managed to collect some documents that looked like Sale and Purchase Agreements from one Subramani Naicker and one Hari Narayan, two persons that have built houses on his land, and he claimed that the signature that appeared on those documents were not his signature but a ‘forged’ one.
- 6.7 The Lease Agreement bearing No. 44656 was tendered to court through this witness marked as **Pr.Ex1** and the Sale and Purchase Agreement of Subramani Naicker dated 11/01/2001 was tendered to court marked as **Pr.Ex2**.
- 6.8 Although there has been lengthy cross examination, the only important fact that seems to be exposed from it is that PW1’s claim that the accused has forged his signature on **Pr.Ex2** is based solely on what Subramani Naicker (PW2) has told him about Bal Ram signing the document on his behalf.
- 7.1 The said Subramani Naicker is an extremely important witness to prove the Prosecution’s case and he has been called to give evidence as PW2.
- 7.2 He has stated to court that he has communicated with Chandra Lok (PW1) twice about buying the land, once over the phone and the second time when he had come home.
- 7.3 According to him PW1 has instructed him to prepare the Sale and Purchase Agreement in regards to the transaction, which he has prepared with the assistance of a Councillor named Anand Babla.
- 7.4 He further stated that PW1 has instructed him to give the money and the documents including the Sale and Purchase Agreement to Bal Ram.

- 7.5 On the 11th January 2001, this witness has placed his signature on the Sale and Purchase Agreement in the presence of Bal Ram and the Councillor Anand Babla, who prepared it.
- 7.6 He was specific that Chandra Lok's signature was not placed on the document in his presence and that thereafter he took the said document to Bal Ram (Accused) as he and Chandra Lok (PW1) were real brothers that lived together.
- 7.7 When he has handed over the document to the accused, he has taken it to the brother for signing and later he has returned it to him saying that Chandra Lok has signed it. Since those brothers are related to the witness he had no suspicion whatsoever about how things have taken place.
- 7.8 The cross examination of this witness is important as it has brought to light the following facts;
- a) The witness aged 78 years has known the accused and PW1 since they were 10-11 years old. They are related to each other and used to play soccer and go fishing together.
 - b) In the beginning he had the understanding that the land belonged to Chandra Lok but later has found out that the land was shared among the brothers.
 - c) **He has personally met Chandra Lok (PW1) before the agreement was made and he was the one who had told the witness to give the money and the agreement to Bal Ram.**
 - d) This witness has placed his signature on the document in the presence of the Councillor and Bal Ram. Thereafter he has taken the document home.
 - e) Later he has gone to Bal Ram's house and has handed over the document to him so that he could go and get Chandra Lok's signature.

- f) After signing the Sales and Purchase Agreement, Chandra Lok has visited many times and he has allowed the witness to stay and build his house on the land.
- g) However, later PW1 has come and collected the agreements from everybody stating that he did not sign them and thereafter he has served the occupants with notices.
- h) This witness has not seen the accused signing the agreement and he has not told Chandra Lok that Bal Ram had signed it, because he did not know who signed it.

7.9 After re-examination when the witness stated that he did not see Bal Ram giving the documents to Chandra Lok, court asked few questions for the purpose of clarifying some ambiguities.

7.10 It was revealed therein that after placing his signature on the Agreement, this witness has taken it home without giving it to Bal Ram who was present there, because he was waiting for Chandra Lok and thereafter, since Chandra Lok wanted him to give the document to Bal Ram, he had to take it to Bal Ram.

8.1 When Prosecution closed its case the accused has been informed of the available options and he has chosen to give evidence under oath.

8.2 The accused stressed that his brother Chandra Lok has **falsely** accused him of forging his signature on the Sales and Purchase Agreement with Subramani.

8.3 The said Sales and Purchase Agreement was made in the year 2001 (he could not remember the exact date) and on that day he has been sitting in Councillor Anand Babla's office, with Mr. Anand Babla, his clerk and Subramani present.

- 8.4** The area of land relevant to this agreement belonged to his share of land according to his father, Ballaiya's last will. The said last will was tendered to court marked as **Def. Ex1**.
- 8.5** Before his father passed away he had even made temporary boundaries on the land and had shared the land amongst all the brothers as per the Last will.
- 8.6** Although the accused has been given a portion of his father's land according to the last will, it has never been transferred to his name after the father died. Chandra Lok has been telling the siblings that the title was under his name and that the others had to follow his directions.
- 8.7** Since the title of the land was under his brother's name and Subramani wanted to buy his portion of land, the accused has had a discussion with Chandra Lok and Subramani at his house. At this conversation that took place prior to the Sales and Purchase Agreement was made, Chandra Lok has consented to the accused giving his portion to Subramani as they were related.
- 8.8** At the time when the agreement was signed Chandra Lok has been a big business man who was operating a heavy machinery business and he has told that he was really busy and could not make it to Anand Babla's office that day.
- 8.9** Therefore, only Subramani has signed the agreement at Anand Babla's office and thereafter the accused has gone home. Upon requests of Chandra Lok, about 3 weeks later, the accused has taken the agreement to Chandra Lok to sign it and he has signed it at their elder sister's house in Lautoka.
- 8.10** In addition to the accused, their sister Savithri and the brother-in-law Sundarason Velu, both of whom are now residing in Canada, have been present and have witnessed PW1 signing the document, ,

- 8.11** In 2007, the accused has filed a case against the ownership of title in PW1's name and the land transfer into his name has been declared invalid. A copy of the Judgement in HBC 320/2007 is tendered to court marked as **Def. Ex2.**
- 8.12** When PW1 appealed against that decision, the court of appeal also has decided in the accused's favour. A copy of the decision of the Court of Appeal is tendered to court marked as **Def. Ex3.**
- 8.13** Their brothers living abroad have been paying all the costs for the litigation on Accused's behalf and he has left the land in 2011 due to the death threats received from PW1.
- 8.14** Accused while affirming the statement of PW2 that Chandra Lok authorised the accused to receive everything from PW2 including the Sale and Purchase Agreement and money, stated that he received \$5500 from him for the land. He further stated that PW1 allowed him to take that money due to his ill health and financial difficulties. He tendered a referral issued by the Department of Social Welfare, a medical report from Nadi Hospital and a voucher for food assistance issued by the Department of Social Welfare to prove the same marked as **Def. Ex4.**
- 8.15** He ended his examination in chief stating vehemently that his brother's allegation that he forged his brother's signature on the Sale and Purchase Agreement was a false allegation.
- 8.16** At cross-examination the accused was questioned about being involved in the making of 6 Sale and Purchase Agreements and he has admitted signing 3 of them. However, when it was suggested by the Prosecuting Officer that he has signed the Agreement with Mr. Subramani Naicker, he has replied "*Never ever*".
- 8.17** The accused has admitted that in regards to Subramani Naicker's agreement he has received benefit because Subramani has paid him.

9 Analysis of the Evidence and the Law

- 9.1 According to PW1's evidence, his claim that the accused has forged his signature on **Pr.Ex2** is solely based on what he heard from Subramani Naicker (PW2) that Bal Ram has signed the document on his behalf.
- 9.2 However, PW2 has been very clear in stating to court that he never told PW1 that the accused signed it because he did not know who signed it. He has specifically stated that he did not see the accused signing the agreement and that after taking the agreement home to wait for PW1 to sign it; he himself has later taken it back to the accused so that he could take it to PW1 for his signature.
- 9.3 Accordingly, this is an important contradiction between the two witnesses of the prosecution that affects the prosecution's case badly.
- 9.4 On the other hand, PW2's explanations of the events that had taken place at the stage of the pre-agreement discussions as well as after signing the document at Mr. Babla's office corroborate the accused's evidence on the same. This position further creates doubts on the evidence of PW1 and it seems not safe to believe his evidence.
- 9.5 Parties did not dispute that the document was signed by PW2 at Mr. Anand Babla's office, but the reason why the prosecution did not call Mr. Anand Babla or his clerk to give evidence is not clear.
- 9.6 No other evidence have been adduced by the prosecution in order to prove that;
- The accused in this case has **forged** the signature of Chandar Lok (PW1) on the Sale and Purchase Agreement with Subramani Naicker
 - The accused had the **intention to defraud or to deceive** Subramani Naicker
 - The Sale and Purchase Agreement with Subramani Naicker was a document used or intended to be used **in evidence in any court** of record, or any document which is made evidence by law

10 Conclusion

- 10.1** As per all the evidence that were placed before this court, it is clear that the accused has been involved in the making of the Sale and Purchase Agreement involving Subramani Naicker, with the consent of PW1.
- 10.2** PW2 has sufficiently explained that he has taken the agreement home after he signed it and waited for PW1 to come and sign it and that he had to later hand it over to the accused upon the instructions of PW1. He has definitely confirmed the accused's explanation of why the accused took the document from PW2.
- 10.3** According to the available evidence, the agreement has been prepared (by PW2) under PW1's name because the land has been under his name in the Lease Agreement bearing No. 44656 (**Pr.Ex1**) and PW1 has been aware of all the preparations even before the Agreement was signed by PW2 at Mr. Anand Babla's office.
- 10.4** Therefore, this court is unable to be satisfied that the prosecution has managed to prove **beyond reasonable doubt** that the accused has committed **Forgery** contrary to Section 336(3) (g) of the Penal Code, Cap 17.
- 10.5** Accordingly, I acquit the accused from the charge against him.
- 10.6** 28 days to appeal.

DATED at Nadi on this 29th day of October, 2021.

.....

Nilmini Ferdinandez
RESIDENT MAGISTRATE

