

**IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 101 - 2014

STATE

-v-

RAJNESH CHAND

For Prosecution : Sgt. Priya P. [Police Prosecution]
For Defendant : Ms. Henao G. [LAC]
Date of Trial : 9th March 2020 and 20th March 2020
Date of Judgment : 1st February, 2022

JUDGMENT

BACKGROUND

1. The defendant denies the allegation reflected in the following amended charge [amended on the 11th of February 2020] which was preferred by the prosecution:

REPRESENTATIVE COUNT

Statement of Offence

OBTAINING FINANCIAL ADVANTAGE BY DECEPTION: Contrary to section 318 of the **Crimes Act of 2009.**

Particulars of Offence

RAJNESH CHAND between 22nd of February, 2013 to 22nd February, 2014 at Tavua in the Western Division by deception dishonestly obtains \$5,800 with the intention of permanently depriving **LALIT CHAND.**

2. The defendant first appeared on the 1st of July 2014 under police custody. He was released on bail and time was given to the prosecution to serve full disclosures to the defendant.

3. At the time, the defendant was charged with ten counts of obtaining financial advantage by deception contrary to section 318 of the Crimes Act 2009.
4. After disclosures were served and after securing the services of the Legal Aid Commission, the defendant pleaded not guilty to all ten counts on the 29th of September 2014.
5. There was an indication that the defendant would be challenging the admissibility of his interview with the police and time was given to the defence to file their *voir dire* challenge and for the prosecution to provide further disclosures both of which were subsequently done.
6. The *voir dire* hearing and trial could not be held early due to various reasons such as the court having an older matter to deal with, the police prosecution also sought time to consider whether the matter was to be withdrawn and the unavailability of counsel for the defendant.
7. The prosecution subsequently indicated that they will still pursue the case and will not withdraw.
8. On the 5th of November 2019, the prosecution indicated that they will not rely on the police interview of the defendant.
9. On the 11th of November 2020, leave was granted to the prosecution to file an amended charge, reflecting the representative count which is outlined in the first page of this decision and the basis upon which the defendant is tried.
10. The defendant pleaded not guilty to this amended or representative charge.
11. During the trial, the prosecution called seven witnesses.
12. After the prosecution closed their case, I found that there was a case to answer.
13. After advising the defendant of his options, the defendant gave evidence himself and called another witness.
14. I summarise the oral evidence of the prosecution and defence witnesses below:

PW1

- 15.** Prosecution witness 1 [PW1] is Mr. Lalit Chand, 36 years old, shop keeper, residing at Tavua.
- 16.** He refers to the defendant as Raju and has known the defendant since 2012.
- 17.** The defendant used to work at a pharmacy in town.
- 18.** That pharmacy is located close to or one shop away from PW1's shop or business.
- 19.** PW1 says that he gave the defendant approximately \$9,000 to \$10,000 'little by little' or in different phases.
- 20.** On the 25th of January 2013, PW1 gave the defendant \$800.
- 21.** On the second occasion, he gave the defendant \$400.
- 22.** On the third occasion, PW1 deposited \$500 into the defendant's account.
- 23.** The last payment PW1 made to the defendant was on the 10th of April 2014 with an amount of \$200.
- 24.** Sometimes PW1 would give the money directly to the defendant or PW1 would give the money to another person in-order that it is passed to the defendant.
- 25.** These other third persons namely are Binesh Chand, Aleen, Pranil and Vikashni.
- 26.** PW1 said that the defendant told him not to come to the pharmacy with the money and that is why PW1 gave the monies to these other third persons.
- 27.** PW1 said that he gave these monies to the defendant as he was informed by the defendant that Sneh's son was sick.
- 28.** Sneh is a lady who was working with the defendant at the pharmacy.
- 29.** PW1 says that there is no relationship between him and Sneh.
- 30.** PW1 did not speak to Sneh.
- 31.** PW1 said that the defendant told him not to talk to Sneh as Sneh will get emotional about her sick child.

32. PW1 said that the defendant told him that Sneh had a van and when the van is sold, Sneh will pay back the money.
33. PW1 would speak with the defendant directly or on the phone. The defendant's mobile number is 9346691.
34. PW1 has deleted some of the text messages and one of the message was about Sneh's son.
35. The defendant would tell PW1 that the money has reached Sneh.
36. PW1 has never asked Sneh whether she has received the money.
37. The last time the defendant asked for money, the defendant told PW1 that it was for the funeral for Sneh's son.
38. PW1 asked a taxi driver named Para about the funeral to which the taxi driver enquired with PW1 as to who told him that.
39. Para normally drives Sneh and the defendant in his taxi.
40. Para called the defendant but the defendant disconnected the call.
41. Another call was made and this time PW1 spoke to the defendant and the defendant told PW1 that 'you are an idiot' and disconnected the call.
42. Later, Para the taxi driver called PW1 to come to a supermarket.
43. PW1 went there and he saw that Sneh, the defendant and Para were there.
44. PW1 said that he 'asked them and showed them the text message' and said that he will report the matter to police.
45. When cross-examined, PW1 said that he has seen the defendant earlier but started talking to the defendant in 2012.
46. Sometimes PW1 would go to the pharmacy and speak with Sneh.
47. PW1 accepts that his relationship with the defendant was good.
48. PW1 accepts that his father passed away in 2013.

49. PW1 denies that he asked for money from the defendant to finance the funeral.
50. PW1 denies receiving \$8,000 from the defendant.
51. PW1 denied saying that he will pay back that money when the defendant threatened to take him to police.
52. PW1 denied paying back money to the defendant in small amounts of \$20 or \$30.
53. PW1 said that he heard that Sneh's son had cancer.
54. PW1 was on talking terms with Sneh but there was no special relationship.

PW2

55. PW2 is Mr. Aneel A. Prasad, 24 years, market vendor, residing at Tavua.
56. He knows PW1 Lalit and the defendant or Raju as he works at a pharmacy.
57. On the 21st of December 2013, PW2 was at the market in town.
58. PW2 was on his way to the pharmacy where the defendant works and agreed to have PW1 or Lalit give him some money to take to the defendant.
59. Lalit gave him \$500 (in \$100 denominations) to give to the defendant.
60. The money was in a brown paper bag.
61. PW2 gave the money to the defendant inside the pharmacy.
62. PW2 cannot recall whether anyone else was inside the pharmacy at the time.
63. In cross-examination, PW2 said that the defendant counted the money in front of him.
64. Lalit did not tell PW2 what the money was for.

PW3

65. PW3 is Ms. Vikashni Chand, 37 years, businesswoman, residing at Tavua.
66. She runs a restaurant in town.
67. She knows the defendant as Raju who is also a customer.
68. On the 22nd of February 2014 PW3 was in her restaurant when the defendant called her and said that a friend is bringing a parcel for her to pick up.
69. Later a person named Lalit came and gave PW3 the money.
70. PW3 counted the money and could see it was \$400.
71. Lalit did not tell her what the money was for.
72. That was the first time PW3 spoke to Lalit.
73. The defendant later came and took the money.
74. When cross-examined, PW3 said that the defendant has come a few times to her shop to order food.
75. Lalit only explained that the money was for the defendant.

PW4

76. PW4 is Mr. Binesh Chand, 42 years old, market vendor, residing at Tavua.
77. He has been a market vendor for a 'long time'.
78. PW4 cannot remember exactly but describes that 'a while back', Lalit gave him \$1,000 in a brown packet and Lalit told PW4 to give it to Raju.
79. PW4 knows that there was \$1,000 as he counted the money.
80. Lalit did not tell PW4 the reason why the money was to be given.
81. PW4 knows Lalit as they are from the same area and Lalit runs a shop in town.

82. Raju is the defendant and he was in the pharmacy.
83. PW4 gave the money to the defendant.
84. In cross-examination, PW4 explained that he had known Lalit for a long time and they are good friends.
85. The \$1,000 was in a brown packet or grog packet.
86. PW4 knows that the defendant works in the pharmacy.
87. PW4 has met the defendant a lot of times.
88. The pharmacy is just beside the market.
89. When the defence counsel pressed him that he did not give the money or have never met the defendant, PW4 maintained that he had given the defendant the \$1,000

PW5

90. PW5 is Mr. Praneel Singh, 37 years old, market vendor, residing at Tavua.
91. He has been a market vendor for about 22 or 23 years.
92. On the 13th of February 2014 at about 3pm, he was at the market.
93. That is when Lalit gave him \$500.
94. He knows Lalit as he does business with Lalit.
95. PW5 counted the money in front of Lalit.
96. PW5 then gave that money to Raju who works at the pharmacy.
97. PW5 used to buy medicine from the pharmacy.
98. On the 10th of April 2014 at 3pm PW5 was at the market when Lalit came and this time Lalit gave PW5 \$200.

99. PW5 put the \$200 in a white paper bag and gave it to Raju at the pharmacy.
100. On both occasions, PW5 did not ask Lalit or Raju about the money.
101. When cross-examined and when pressed by counsel for the defendant, PW5 maintained that he gave the package or money to the defendant.

PW6

102. PW6 is Ms. Sneha Lata, 44 years, pharmacy assistant, residing at Ba.
103. In 2014 she was working at a pharmacy.
104. She worked with the defendant or Raju.
105. In April 2014, she remembers that the defendant phone kept ringing.
106. The defendant said 'I don't know what's wrong with my phone, I can't receive any call'.
107. The defendant also said that the taxi driver 'Parveen Singh' is calling but the defendant cannot understand what the taxi driver is saying.
108. PW6 knows the taxi driver being referred to as the driver used to drive them around in his taxi for about 4 to 5 years.
109. PW6 asked the defendant whether there was anything wrong?
110. On the same day the phone for the defendant kept ringing, at around 2pm, Lalit came into the shop.
111. Lalit came into the shop and pointed at PW6 and the defendant and said 'you and you, you have eaten my \$20,000'.
112. PW6 replied 'what \$20,000?'.
113. Lalit also said that he will report to the police.
114. At 5pm, the taxi driver Parveen picked PW6 and the defendant from the pharmacy.

115. Parveen said that Lalit had come to see him earlier.
116. Then Lalit came.
117. Lalit, Parveen, the defendant and PW6 all went near to the Tavua district school and that is where PW6 asked Lalit to tell her 'the story'.
118. Lalit said 'you have been texting me in the night I have got proof of your message on my phone'.
119. PW6 asked Lalit to show her the text message as she wanted to know what he was fussing about but Lalit did not show the message.
120. PW6 told Lalit that she is with her husband and she cannot 'do that message'.
121. After sometime, Lalit showed a phone to Parveen who called a number and the phone was ringing inside the defendant's bag.
122. The defendant was putting his hand inside the bag and PW6 says that maybe the defendant was trying to turn off the call.
123. Then the defendant accepted in front of all of them that he has been texting Lalit.
124. The defendant said 'I have done this, I am very sorry I will not do this again'.
125. The defendant never told PW6 at any time, what he had been doing.
126. PW6 has never asked for money from Lalit.
127. PW6 accepts that she has 2 sons.
128. None of them have had any serious health condition in 2013 and 2014.
129. PW6 went to the police station the following day to see whether any report was made by Lalit but PW6 found out that none was filed.
130. When cross-examined, PW6 said that the defendant has worked at the pharmacy for 5 years too.
131. Lalit's shop is about 2 shops away.

132. As a customer, Lalit would come and talk at the pharmacy.
133. PW6 normally works at the back of the pharmacy and the defendant works in front.
134. PW6 has not seen anyone come inside the shop to give anything to the defendant.
135. PW6 does not know Lalit personally.
136. Lalit has not asked for the return of any money that he had given.
137. Lalit came into the pharmacy and accused PW6 of taking \$20,000.
138. Lalit did not show her any text message although she asked.
139. The defendant was not using his normal phone. Another phone was ringing.
140. When the defendant admitted, the defendant said that he admitted texting Lalit.
141. PW6 did not see the text message.

PW7

142. PW7 is Mr. Praveen Singh, 50 years old, taxi driver, residing at Ba.
143. He has been a taxi driver for 26 years.
144. He knows Lalit, Sneh and Raju as he has driven them before.
145. Raju is the defendant.
146. In the month of April 2014 at around 1pm, PW7 was in town.
147. Lalit came to him and asked about Sneh's son's funeral.
148. PW7 told Lalit that Sneh's son has not died.
149. At the 'same time' PW7 called Raju about 2 to 3 times but Raju did not answer.
150. In the afternoon Lalit accompanied PW7 when PW7 went to pick Sneh and Raju.
151. They all met at the end of town.

152. They talked and Lalit said that in the night he called from a number.
153. PW7 took the number [PW7 does not recall that number] and he dialled the number.
154. At the time, Raju was seated in the front passenger seat of the vehicle when a phone inside his bag rang.
155. PW7 was standing 2 meters away.
156. PW7 told Raju to take out the phone and PW7 showed the phone to Lalit.
157. Raju said 'sorry' and Lalit and Raju started arguing.
158. In cross-examination, PW7 said that he was not shown any text message by Lalit but Lalit said that text messages were coming in at night.
159. It is possible that Lalit had Raju's number before that date.
160. The defendant said 'sorry' in front of everyone.

DW1

161. Defence witness 1 [DW1] is the defendant Mr. Rajinesh Chand, 36 years old, pharmacy assistant, residing at Ba.
162. The defendant has been a pharmacy assistant for 14 years.
163. In 2013 the defendant was working at a pharmacy in town. He has been working there since 2009. He was based at Tavua for 7 years.
164. The pharmacy in town is facing the town market.
165. Lalit Chand is a good friend of his.
166. The defendant knows Lalit and his family's background and they talk when Lalit comes to the pharmacy.

167. The defendant has known Lalit for about 7 years and has known him before 2013.
168. Lalit is a businessman and his shop is next to the pharmacy.
169. Sneh Lata and another person worked with the defendant at the pharmacy in town.
170. Lalit would come and talk with the defendant and Sneh.
171. The defendant denied that he received any money from Lalit for Sneh.
172. The defendant said that Lalit 'took' his money and when the defendant asked for it back, Lalit said that he will report it to police.
173. The defendant explained that Lalit asked for money as Lalit's father was sick and also wanted money to pay for land.
174. The defendant gave Lalit \$8,000 but the defendant does not have anything in writing.
175. The defendant said that he borrowed from his brother in law.
176. The defendant gave the \$8,000 to Lalit in front of a person named Vikashni.
177. Lalit did not pay back the full sum. Lalit maybe paid the defendant back only \$1,000 in \$100 and \$50 denominations.
178. The defendant denied sending any message to Sneh or to Lalit.
179. The defendant denied confessing to them that he sent the message.
180. The defendant does not know the witnesses who gave evidence for the prosecution who said that they gave him money, except for one Alvin or Alveen [PW2].
181. Lalit gave the \$1,000 directly to the defendant.
182. The defendant says that Lalit would not have given him the money unless Lalit owed him money.
183. In cross-examination, the defendant says that Vikashni is overseas and he said that he gave police that name.

184. The defendant maintained that he knows Lalit very well.
185. Even though Lalit was a businessman, Lalit had run short of money and wanted to pay for land too.
186. Lalit's father had heart problems and they came to the pharmacy.
187. No written agreement was made for Lalit to borrow \$8,000 from the defendant.
188. The defendant said that one should have been made but they were friends and Lalit said that he will return the money once his land was sold.
189. The defendant is aware that the Legal Aid Commission service is free but Lalit told him not to go anywhere.
190. The defendant said that he could have filed a civil claim but Lalit filed a police report.
191. The defendant says that he filed a report with police in 2014 but police told him 'to wait for the case'.
192. The defendant says that Lalit 'forced' him to borrow money.
193. The defendant did not tell his brother in law the reason he was borrowing the money.
194. The defendant did not report to police about Lalit forcing him as Lalit gave him some money.
195. The defendant denied that he pretended to be Sneh or pretended that Sneh's son was sick while taking money from Lalit.
196. The defendant denied that the phone rang inside his bag.
197. The defendant said that he has only one phone.
198. In re-examination, the defendant explained that when Lalit forced him, the defendant meant that Lalit kept telling the defendant to give the money.

DW2

- 199.** DW2 is Mr. Jiten Pratap, 50 years old, farmer, residing at Ba.
- 200.** The defendant is his brother in law or DW2 is married to the defendant's sister.
- 201.** DW2 has known the defendant since 1996.
- 202.** DW2 states that in 2013 the defendant asked him for money and help.
- 203.** DW2 is a vegetable and livestock farmer and he had money with him.
- 204.** He gave \$8,000 to the defendant in one instance.
- 205.** DW2 agrees that \$8,000 is a lot of money.
- 206.** It was not the first time he has given money to the defendant.
- 207.** The defendant was to pay back the money in instalments.
- 208.** The defendant was able to repay DW2 the money in full.

- 209.** When cross-examined, DW2 said that he did not need to withdraw the money from the bank in-order to give it to the defendant. DW2 had the money with him at home from the sale of livestock.
- 210.** It was the largest amount the defendant asked as the defendant used to ask for \$1,000 to \$3,000.
- 211.** The defendant was working at a pharmacy.
- 212.** There was no written agreement for the defendant borrowing the \$8,000.
- 213.** DW2 denied that he is telling lies to save the defendant.

BURDEN AND STANDARD OF PROOF

214. I remind myself that the defendant is presumed innocent until proven guilty [section 14 (2) (a) of the **2013 Constitution**; **Woolmington v DPP** [1935] A.C 462].
215. The prosecution carries the burden of rebutting this presumption.
216. The prosecution can rebut the presumption of innocence, when the prosecution prove their case beyond a reasonable doubt or make the court sure that the defendant committed the offence [section 58 (1) of the **Crimes Act 2009**].
217. The defendant has elected to give evidence and has also called another witness.
218. Even if I reject the evidence for the defence, that does not necessarily mean that the prosecution has proven their case.

REPRESENTATIVE COUNT

219. The prosecution has preferred a representative count against the defendant.
220. A representative count or rolled up count is permissible pursuant to section 70(2) of the **Criminal Procedure Act 2009**.
221. The enactment of section 70 in the *Criminal Procedure Act 2009* can be attributed to the High Court decision of Shameem J in **Koro v The State** [2002] FJHC 161; HAA0048J.2002L (2 October 2002) which was decided under the repealed *Criminal Procedure Code Cap 21*.
222. The Hon. Shameem J. when describing the legal tradition in the past, had this to say:

Where the prosecution is confronted with evidence of a long history of offending, it has, traditionally, been faced with several options. One has been to "pick the best" and to proceed with two or three counts instead of laying multiple counts. Another has been the procedure under section 216 of the Criminal Procedure Code. Under the provisions of that section, a court may, on convicting a person, with the consent of the defendant and the prosecutor, take other untried offences "of a like character" into account, in sentencing. The defendant must have consented to this procedure in writing in accordance with the prescribed form scheduled to the Code. Another option is to lay multiple counts over a long period of time, specifying details of particular incidents of offending. These options have

been unhelpful where the offending has taken place over a long period of time, and where separate acts of offending are indistinguishable from each other. This problem is very common in cases of sexual offences, where witnesses are unable to say with any certainty, when separate offences were committed, and on how many occasions.

223. After combing overseas authority, the learned Judge held:

Having considered these decisions from courts around the Commonwealth, it appears that there is a need to balance two possibly competing principles. One is that the prosecution should not be prevented from prosecuting repeat offenders simply because witnesses (understandably) cannot particularise specific incidents and cannot say more than that the offending continued over a lengthy period of time. The other principle is that an accused person must not be tried on the basis of charges which are ambiguous and render the preparation of a defence difficult or even impossible because of lack of particularity. The balancing of these principles must depend on the evidence led in a particular case, and the wording of particular charges. However, as a matter of practice, it seems good sense to adopt the New Zealand procedure of specimen charges where the incidents of offending are indistinguishable from each other, and where it is open to the court to convict as long as it is satisfied beyond reasonable doubt that the accused, on at least one occasion, in the period alleged, committed the act alleged. As to whether a count in a particular case contains "such particulars as may be necessary for giving reasonable information as to the nature of the offence alleged" as is required by section 119 of the Criminal Procedure Code, that is a question to be considered and ruled upon, on the basis of the circumstances of each case. Further, it is open to the court to require the prosecution in any case, to state which incident in particular, is referred to in the charge. A good practice might be to refer to the count as a specimen or representative count, as is the practice in New Zealand.

224. To emphasise, one of the consequence of a specimen or representative or rolled up count therefore is that it reduces the number of counts and the prosecution only needs to prove that the defendant committed one of those offences within the timeline described.

ELEMENTS OF THE OFFENCE

225. The representative count alleges that the defendant committed the offence of obtaining financial advantage by deception.

226. The elements of the offence all of which the prosecution must prove beyond a reasonable doubt are:

- i. **The defendant;**
- ii. **By deception;**
- iii. **Dishonestly;**
- iv. **Obtains;**
- v. **Financial advantage;**
- vi. **From another person.**

227. Section 316 of the Act describes deception to mean:

... an intentional or reckless deception, whether by words or other conduct and whether as to fact or as to law, includes –

- (a) a deception as to the intentions of the person using the deception or any other person; and*
- (b) conduct by a person that causes a computer, a machine or an electronic device to make a response that the person is not authorised to cause it to do.*

228. Deceive can also mean when a person induces another to believe a thing to be true or false [**Chute v State** [2016] FJHC 1114; HAA015.2016 (8 December 2016)].

229. Intention in relation to a conduct means that the person means to engage in that conduct [section 19(1) of the **Crimes Act 2009**].

230. Reckless in relation to a circumstance means that the person is aware of a substantial risk that the circumstance exists or will exist and the person having regard to the circumstance known to him or her, unjustifiably took the risk [section 21(1) of the **Crimes Act 2009**].

231. Conduct means an act or omission to perform an act or a state of affairs [section 15(2)(a) of the **Crimes Act 2009**].

232. Dishonest means dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people [section 290 of the **Crimes Act 2009**].

233. Dishonest can mean disposition to lie, cheat or defraud, untrustworthiness, lacking honesty, deception or betray [**Mani v State** [2020] FJHC 773; HAA8.2020 (16 September 2020)].

234. Obtaining includes obtaining for another person and inducing a third person to do something that results in another person obtaining [section 288 of the Crimes Act 2009].
235. Financial relates to finance which can be the management of large amounts of money or the monetary resources and affairs of a person for example [Concise Oxford English Dictionary, 12th eds, 2011 at page 532].
236. Advantage is a condition or circumstance that puts one in a favourable position, benefit or profit or make unfair use of for one's own benefit [Concise Oxford English Dictionary, 12th eds, 2011 at page 18].
237. A mere breach of a future promise does not necessarily mean that the offence is complete [Mani v State (Supra)].
238. It is inevitable in many cases that there would be circumstantial evidence.
239. I remind myself that circumstantial evidence can be powerful evidence but it must be considered with care in-order to avoid speculation. The circumstantial evidence must be consistent with the defendant having committed the act or the guilt of the defendant but that also the facts must negative any other reasonable conclusion that may exonerate the defendant. At the end of the day, the court must be satisfied beyond a reasonable doubt of the defendant's guilt [Varasiko Tuwai v. The State Criminal Appeal Number CAV 13 of 2015 (26th August 2016) at paragraph 51 to 53.
240. There is an alleged 'admission' by the defendant purportedly made when the parties met in town.
241. The Fiji Court of Appeal Case of Ganga Ram and Shiu Charan v Reginam Criminal Appeal No. 46 of 1983 (13th July 1984) is the precedent authority in Fiji in relation to the admissibility of 'alleged confessional statements'.
242. The Court of Appeal at page 7 and 8 laid down the criteria for admissibility as follows:

*...**First**, it must be established affirmatively by the Crown beyond a reasonable doubt that the statements were voluntary in the sense that they were not procured by improper practices such as the use of force, threats of prejudice or inducement by offer of some advantage – what has been picturesquely described as the “the flattery of hope or the tyranny of fear”. Ibrahim v. R. (1914) AC 599. DPP v. Ping Lin (1976) AC 574. **Secondly** even if such voluntariness is established there is also need to consider whether the more general*

ground of unfairness exists in the way in which the police behaved, perhaps by breach of the Judges Rules falling short of overbearing the will, by trickery or by unfair treatment. Regina v. Sang (1980) Ac 402, 436 @ C-E. This is a matter of overriding discretion and one cannot specifically categorize the matters which might be taken into account.

243. In addition to the 2 grounds above, an alleged confessional statement can still be ruled inadmissible if there is a breach of a constitutional right.
244. Typically the criteria above would be applied to alleged confessions made to persons in authority such as police during the interrogation of a suspect and which in our jurisdiction is usually manifested in a police caution interview and or charge statement which are recommendations made in the Judges Rules of 9th January 1967 Cap 13.
245. There are instances when alleged confessions can be made to non-state or government personnel or entities.
246. The case of State v Anand Kumar and 5 others Criminal Case No. HAC 42 of 2010 (31st of March 2011) involved one of the defendants having been interviewed by senior officers in a banking institution in the presence of a representative from the banking employees union. That defendant challenged the admissibility of the record of interview. That defendant was also a senior officer at the banking institution. The record of that defendant's interview was admitted into evidence by the trial Judge having found that the interview was conducted fairly and without oppression to the defendant.
247. There are certain pre-trial orders that can be made by the Court and this has been codified in the Criminal Procedure Act 2009. It reads:
- 290. — (1) Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to —*
- ... (d) a challenge to the use of any report or other evidence that may unfairly prejudice the defence case;
- ... (3) *Upon hearing any application under this section the court may make any necessary order to protect the rights of any party to the proceedings, or to facilitate a fair and timely hearing of the proceedings to which the application relates.*
248. Although there has been no application made by the defence to rule on the admissibility of any alleged confession purportedly made by the defendant Mr. Rajnesh Chand in their

meeting in town sometime in April 2014, I am aware that I could always rule this purported admission inadmissible at this stage of judgment or make other orders to protect the rights of any party pursuant to section 290(3) of the Criminal Procedure Act 2009.

249. The above are some of the principles I have borne in mind while assessing this case.

ANALYSIS

250. It would be helpful if I first summarise the undisputed facts and or elements in this case and which I found to be proven beyond a reasonable doubt. These stem from the evidence of the defendant and the prosecution witnesses.
251. It is undisputed and I find it proven beyond a reasonable doubt that PW1 Lalit, PW6 Ms Lata or Ms Sneh, PW7 Mr. Singh or Praveen [taxi driver] and the defendant or Raju are acquainted with each other and they knew each other by or before February 2014.
252. PW7 Praveen usually drives the defendant and PW6 Ms Lata in his taxi.
253. Ms Lata and the defendant worked together at a pharmacy in town in 2014.
254. Lalit ran a business close to the pharmacy.
255. Lalit has spoken to Ms Lata before when Lalit went to the pharmacy.
256. It is uncontroverted and I find it proven beyond a reasonable doubt that PW2 Aneel was given \$500 by Lalit on the 21st of December 2013. PW2 was not told what the money was for. He gave the money in \$100 denominations and in a brown paper bag to the defendant who was at the pharmacy.
257. I also find it uncontroverted and proven beyond a reasonable doubt that PW1 Lalit, PW6 Ms Lata or Ms Sneh, PW7 Mr. Singh or Praveen [taxi driver] and the defendant or Raju sometime in April 2014 all met up at the end of town.
258. At this juncture, I will assess PW1 or Lalit's evidence first.
259. Having been satisfied that there was a 'meet up' at the end of town, it is an obvious omission that PW1 did not refer to the meet up in his oral evidence. The meet up stems from the evidence of PW6 Ms Lata, PW7 Praveen and DW1 the defendant.

260. I narrow this omission by PW1 primarily to prosecution who did not address this with PW1 in his evidence and similarly none was raised about this by the defence during cross-examination.
261. There may be good reasons why the prosecution and defence did not address this with PW1 in his oral evidence, perhaps it is not reflected in his police statement or the prosecution just overlooked leading this evidence out of PW1.
262. Nevertheless, I still accept that there was a meet up as this is apparent from PW6 Ms Lata and PW7's oral evidence.
263. Having listened and observed PW1 Lalit giving evidence and assessing the case as a whole, I accept PW1's evidence but only in part.
264. I found PW1 compelling, forthright and believable when he denied that he borrowed any money from the defendant or borrowed money from the defendant to help in his father's funeral.
265. I also believe PW1 that he has been giving money to the defendant which PW1 believed was going to be passed on to PW6 Ms. Sneh.
266. PW1's account that he has been giving money to the defendant is consistent with the evidence of other prosecution witnesses, that is PW2 to PW5 whose evidence I have found no reason to reject.
267. There is no credible or reliable evidence to suggest to me that PW2 or PW5 are accomplices or in any way criminally involved. They were innocent parties in the transfer of money between Lalit to the defendant.
268. The non-specificity about the dates when the money was received and passed onto the defendant is understandable considering the events recounted by the prosecution witnesses were from 2013 and 2014.
269. The defendant too in his evidence was not specific about dates and time which is also for the same reason, understandable.
270. I have borne in mind the timeline in the particulars of the charge preferred by the prosecution and the evidence adduced by witnesses PW1 to PW5, and I am satisfied that monies were given by PW1 Lalit directly or through a third party onto the defendant between February 2013 and February 2014.

286. I believe him regarding this point.
287. However PW1 was not forthright and specific about what was contained in the text messages which he thought were from PW6 or from him to her.
288. I interpret PW1's reluctance to reveal what the text messages were about simply to embarrassment. I observed him in court and he was bashful in describing that he received text messages from whom he thought was PW6.
289. I am sure that he does not want to reveal the intimate conversation he may have had via text message.
290. PW1 did not show any text message to PW6 or PW7 when the parties met up at the end of town.
291. It appears that text messages were received even at night which PW6 denied sending to PW1 and to which PW6 added that she was with her husband.
292. I also believe PW1 that he spoke with the defendant on the phone and the defendant would tell him that the monies given were received by PW6 Ms Lata.
293. Later when PW1 learnt that the money may have not been given to PW6, I believe PW1 that he called the defendant which was essentially to confront the defendant, who in reply told PW1 that he was an idiot which I take it to mean that PW1 was gullible.
294. I have seen and observed PW6 give evidence. She struck me as a charming person.
295. When assessing the case holistically, I am convinced that there is strong circumstantial evidence that PW1 wanted a romantic relationship with PW6.
296. The frequency of the payments, the amounts paid, the proximity of the parties in town but yet there is the clandestine act of passing the money to third parties to pass on to the defendant who was to pass it to PW6, my finding that PW1 is not altruistic, the text messaging between PW1 and whom he thought was PW6 (although not specified), the timing of the texting amongst others, are some of the factors which persuade me of the romantic interest PW1 had in PW6.
297. I am sure that the monies were given by PW1 in his attempt to curry favour with PW6.
298. There has been no phone exhibited.

299. PW6 describes that the defendant's phone kept ringing sometime in April 2014 when they were in the pharmacy and the defendant remarked that his phone was not able to receive any call and that PW7 Praveen was saying things he did not understand.
300. I believe and accept PW6 description regarding this incident and the conversation with the defendant.
301. Later at 2pm that same day in April 2014, PW1 Lalit came into the pharmacy and accused them of eating his money.
302. When the parties had a meeting at the end of town and when a call was purportedly made to a number which PW1 claimed he was receiving text messages from, a phone was described by PW6 and PW7 to have rang inside the defendant's bag.
303. The parties were close to each other and the description given by PW6 and PW7 makes me sure that they are not mistaken that a phone was ringing inside the defendant's bag.
304. Further to this, I believe PW6 that the defendant around the same time said or accepted that he has been texting PW1.
305. I also believe PW7 who described that the defendant said 'sorry'.
306. This admission on its own is vague.
307. However in the context of the case and the lead up including the remark earlier by the defendant to PW1 in their conversation that PW1 was an idiot, that a phone claimed to contain the number which was used to text PW1 from was ringing inside the defendant's bag, these I find to be strong circumstantial evidence revealing the defendant's guilty state of mind.
308. I am sure that the defendant's apology was not coerced or obtained out of him by force or oppression or some breach of his constitutional right. This was a confrontation between civilians and the defendant was not required to say or do anything. He could have walked away from the confrontation.
309. There is no need for their oral evidence to be corroborated for example by having the actual phone that rang in the defendant's bag produced or exhibited although that might be helpful.
310. I see no reason to disregard the apology of the defendant and I accept and believe the evidence of the prosecution witnesses who described that the defendant has said sorry.

311. Assessing the case holistically, the defendant being apologetic makes me sure that the defendant was admitting to using a phone to text PW1 Lalit pretending that it was from PW6 MS Lata.
312. I believe PW1 that the defendant told him that PW6's son had cancer and later told PW1 that PW6's son had passed away.
313. Although none of these was true, I believe and accept that PW1 did in fact believe this.
314. As I have found earlier, PW1's true motivation in giving money to the defendant to pass on to PW6 Ms Lata was not altruistic.
315. I am sure that the defendant understood the romantic intentions of PW1 and added the emotional manipulation or lie that PW6's son had cancer and had passed away.
316. The defendant exploited this interest in PW6 by PW1 and pretended to be PW6 texting from another phone which explains the apology and admission given by the defendant when he was confronted in town by PW1, PW6 and PW7.
317. This brings me to the defendant's evidence.
318. Although he has nothing to prove, he was woefully unconvincing as a witness.
319. For instance, the defendant said that PW1 Lalit forced him to give him the money or kept pressuring him.
320. I find this to be overly exaggerated.
321. The defendant did not strike me to be a person who is easily bullied.
322. In one breath the defendant says that he has a good relationship with PW1 Lalit but then says that his friend forced him to give him \$8,000.
323. The defendant does agree it is a relatively huge sum which I do too.
324. There is no evidence before me of any written agreement or any civil or criminal claim against PW1 regarding this unpaid monies.
325. I did not believe the defendant that he did not file any as there was a police report filed by PW1 already.

326. The defendant's denials such as denying admitting texting PW1 from another phone is rejected. He was unbelievable regarding this point.
327. I accept and believe DW2's evidence that the defendant asked him for money.
328. However, I don't accept or believe DW2 that he gave the defendant \$8,000.
329. DW1 and DW2 when giving evidence were cavalier and unconvincing in their oral evidence and I did not believe them.
330. If the defence version were to be accepted that PW1 borrowed money from the defendant, then why was there a need for the monies to be given to third parties in-order to pass it to the defendant when PW1 and the defendant are situated close in town with about 2 shops separating them?
331. The narrative supports PW1's version that the defendant did not want the money exchanged openly at the pharmacy where PW6 would know about it.
332. Although I am satisfied that \$2,400 was given to the defendant as evidenced primarily by PW2 to PW5, the law requires me to be satisfied of at least one instance.
333. The highest paid in one instance was \$1,000 as evidenced through PW4.
334. I am satisfied beyond a reasonable doubt that all of the elements of the offence charged are proven.
335. The money was given to the defendant or obtained by the defendant.
336. It was obtained by deception, that is, the defendant induced PW1 into believing that it will be given to PW6 Ms Lata which was false and the defendant continued that false narrative for example by texting PW1 pretending to be PW6 and indicating to PW1 that the money has been received by PW6 *inter alia*.
337. I accept and believe PW6 that she never received any money from PW1 directly or indirectly through the defendant.
338. This is dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people evidenced for example by his apology and admission when confronted by the parties in town and the way the money is clandestinely exchanged or received.
339. It was a financial gain and the money was obtained from PW1.

340. I do not see any defence succeeding here.

CONCLUSION

341. I find all the elements of the allegation proven by the prosecution beyond a reasonable doubt. They have discharged their burden.
342. I find the defendant guilty and convict him of the representative charge of obtaining financial advantage by deception which is an offence pursuant to section 318 of the **Crimes Act 2009**.
343. I will use \$1,000 as evidenced through PW4 as the basis when punishing the defendant regarding the representative count since \$1,000 is the highest amount that he obtained in one instance, although I am satisfied that the defendant obtained \$2,400 in total.
344. I will take further evidence or information in relation to sentence after this from the parties before I pronounce sentence.



LISIATE T.V FOTOFILI
Resident Magistrate

At TAVUA this 1st day of February, 2022