

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAA 020/2009

SAMUEL RAM
Appellant

vs.

THE STATE
Respondent

Counsel: Appellant in Person
Mr. Fotofili for the State

Hearing: 24th July 2009
Judgment: 31st July 2009

JUDGMENT

1. In Nausori Criminal Case No. 491/08, the Learned Resident Magistrate sentenced the appellant to 2 years imprisonment, concurrent to a similar sentence he gave the appellant, in Criminal Case No. 487/08. The sentence was to be consecutive to his present prison sentence. He appealed against conviction and sentence.
2. In Criminal Case No. 491/08, the offence were as follows:

FIRST COUNT

CONVERSION: contrary to Section 279(1)(c) of the Penal Code, Cap 17.

Particulars of Offence

SAMUEL RAM s/o Sita Ram between 28th day of July, 2004 and 10th day of September, 2004 at Sydney Street, Nausori in the Central Division, having being entrusted with \$675.00 in cash by DANIEL RAJESH SINGH s/o Brij Mohan Singh for visa application fees for his parents to Australia, converted the same to his own use and benefit.

ALTERNATIVE COUNT

OBTAINING MONEY BY FALSE PRETENCES: contrary to Section 309(a) of the Penal Code, Cap 17.

Particulars of Offence

SAMUEL RAM s/o Sita Ram, between 28day of July, 2004 and 10th day of September, 2004 at Sydney Street, Nausori in the Central Division, with intent to defraud, obtained \$675.00 in cash from DANIEL RAJESH SINGH s/o Brij Mohan Singh by falsely pretending that he will use the money to apply for the migration visa for the said DANIEL RAJESH SINGH s/o Brij Mohan Singh's parents to Australia, such representation being false and he converted the money to his own use and benefit.

3. In Criminal Case No. 487/08, the offence were as follows:

FIRST COUNT

CONVERSION: contrary to Section 279(1)(c) of the Penal Code, Cap 17.

Particulars of Offence

SAMUEL RAM s/o Sita Ram, between 23rd day of July 2004 and 11th day of August, 2004 at Verrier Road, Nausori in the Central Division, having being entrusted with \$1,705.00 in cash by SHIU NARAYAN s/o Shiu Ram for visa application fees for him and his family to Australia, converted the same to his own use and benefit.

ALTERNATIVE COUNT

OBTAINING MONEY BY FALSE PRETENCES: contrary to Section 309(a) of the Penal Code, Cap. 17.

Particulars of Offence

SAMUEL RAM s/o Sita Ram, between 23rd day of July, 2004 and 11th day of August, 2004 at Verrier Road, Nausori in the Central Division, with intent to defraud, obtained \$1,705.00 in cash from SHIU NARAYAN s/o Shiu Ram by falsely pretending that he will use the money to apply for the migration visa for the said SHIU NARAYAN s/o Shiu Ram and his family to Australia, such representation being false and he converted the money to his own use and benefit.

4. The appellant's grounds of appeal on conviction were based on 3 grounds:
 - (i) The Learned Resident Magistrate did not inform him of his right to Counsel;
 - (ii) He was earlier discharged by the prosecution on the present charges;

- (iii) He pleaded guilty because the Learned Resident Magistrate advised him that, a plea bargain could be done with the prosecution office.
5. Although the appellant advanced 4 grounds of appeal on sentence, they could be distilled into one, that is, the sentence was harsh and excessive.
 6. In Criminal Case No. 491/08, the facts were that, between 28th July 2004 and 10th September 2004, the appellant held himself out as a travel agent, in the Nausori area. He managed to convince the complainant to part with his \$675, as fees for arranging an Australian travel visa, for his parents. Promises were given by the appellant to the complainant, but nothing happened. He converted the \$675 for his own use.
 7. In Criminal Case No. 487/08, the facts were that, between 23rd July 2004 to 11th August 2004, the appellant, again held himself out to be a travel agent, in Nausori. He managed to convince the complainant, to part with his \$1,705, to arrange an Australian travel visa for him, and his family. Numerous promises were made by the appellant to the complainant, but nothing eventuated. He converted the \$1,705 for own use.
 8. I have carefully perused the court record, and the parties written submissions. I have also listened carefully to their verbal submission.
 9. On the appellant's complaint, that the Learned Resident Magistrate didn't explain his right to Counsel to him before his plea was taken,

this was confirmed by the court record. The appellant's right to counsel was not put to him before his plea was taken. There are numerous Superior Court decisions on the point that, before a plea is taken, the Learned Resident Magistrate must explain the accused's right to Counsel to him/her, before his/her plea is accepted. Her Ladyship Justice Shameem, has expounded on the point, in **Suresh Singh & Others v The State**, Criminal Appeal No. 079 of 2000.

10. However, in this case, the failure of the Learned Resident Magistrate to explain to the appellant, his right to Counsel, is not fatal to the State. This is a man with 80 previous convictions of like offences, and thus he is not a stranger to the criminal justice system. He well understood the 17th December 2008 proceeding in the Nausori Magistrate Court, accepted the conversion charge, pleaded guilty, and admitted the facts. On that basis, the Court convicted him as charged. This ground fails.
11. On the second ground, the appellant complained that he shouldn't be re-charged, as he was previously discharged in the Nausori Magistrate Court, on similar charges. State Counsel submitted that he was previously discharged under Section 201(2)(b)(ii) of the Criminal Procedure Code. It is well settled that, a discharge under Section 201(2)(b)(ii) of the Criminal Procedure Code, is no bar to the prosecution to re-charging the accused, on the same facts on the same charge, or other charges. This ground therefore does not avail the appellant.
12. The appellant's third complaint was that, he alleged the Learned Resident Magistrate advised him that, a plea bargain could be done with the prosecution, and thereafter he pleaded guilty. Nothing in the

court record confirmed the appellant's contention. If anything, the court record showed, the charge was read and explained to the appellant. He told the Court he understood the charge. He then pleaded guilty. The facts was read to him by the prosecutor, and he admitted the same. As a result of that, the Court convicted him as charged. This ground also fails.

13. On his sentence, the appellant, in writing said, his sentence was harsh and excessive. But during the hearing of his appeal, he abandoned his appeal on sentence, on the ground that he was sure he will succeed in his appeal against conviction. He has not succeeded in his appeal against conviction. In any event, I will consider his appeal against sentence, in the interest of fair play to him.
14. The maximum sentence for conversion, contrary to Section 279(1) (c) of the Penal Code, Chapter 17, is 7 years imprisonment. The tariff for these types of offences, has being laid down by Justice Shameem in **State v Bole** [2005] FJHC 470, as a sentence between 18 months and 3½ years imprisonment. The appellant's sentence was 2 years imprisonment for each file, concurrent to each other. This was well within the tariff abovementioned. He was very fortunate, in that, the Learned Resident Magistrate, didn't make the sentence consecutive to each other, given his past. In my view, an appeal against sentence, was without merit.
15. In summary, the appeal against conviction and sentence are dismissed.

Salesi Temo
ACTING JUDGE

At Suva
31st July 2009