

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 59 OF 2013

STATE

V

- 1. RAHUL RAJAN NAIDU**
- 2. AVENAI R. DANFORD**
- 3. RIMAKSHNI RANIGAL**

Counsel:	Mr Alvin Singh	for the State
	Mr Mark Anthony	for the 1st Accused
	Ms Keli Vulimainadave	for the 2nd Accused
	Mr Ikbal Khan, Ms S Khan &	
	Mr Ronil Kumar	for the 3rd Accused

Date of Summing Up: 29 August, 2018

Date of Judgment : 04 September, 2018

JUDGMENT

1. The 1st accused is charged with 4 counts of Money Laundering. The 2nd and the 3rd accused each charged with one count of Money Laundering. They were tried before three Assessors. The Information reads as follows:

COUNT 1

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

RAHUL RAJAN NAIDU, between the 14th day of July, 2011 and the 21st day of July, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$12,000.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

COUNT 2

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

RAHUL RAJAN NAIDU, on the 1st day of August, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$890.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

COUNT 3

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

RAHUL RAJAN NAIDU, on the 1st day of August, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$500.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

COUNT 4

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

RAHUL RAJAN NAIDU, on the 1st day of August, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$145.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

COUNT 5

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

AVENAI RANAMALO DANFORD, between the 14th day of July, 2011 and the 21st day of August, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$12,000.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

COUNT 6

Statement of Offence

MONEY LAUNDERING: Contrary to Section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act, 1997 as amended by Proceeds of Crime (Amendment) Act 7 of 2005 and Proceeds of Crime (Amendment) Decree 61 of 2012.

Particulars of Offence

RIMAKSHNI RANIGAL, between the 14th day of July, 2011 and the 1st day of August, 2011 at Lautoka in the Western Division, engaged directly or indirectly in transactions involving \$6,500.00 FJD that were the proceeds of crime knowing or ought to have reasonably known that the money is derived from some form of criminal activity.

2. After a long deliberation of three hours, the assessors unanimously found the 1st accused guilty on the first four counts of Money Laundering as charged. In their majority opinion, assessors also found the 3rd accused guilty on sixth count of Money laundering as charged. The 2nd accused was found not guilty on the fifth count by the assessors in their majority opinion.

3. I adjourned to deliberate on my judgment. Having reviewed my own summing up and evidence led in trial, I have decided to accept the opinions of assessors in respect of 1st and 3rd accused but to reject their majority opinion of 'not guilty' in respect of the 2nd accused. I proceed to give my reasons as follows:

4. Altogether, Prosecution called 12 witnesses and tendered 14 documents to prove this case. At the close of the Prosecution case, only the first accused elected to give evidence while the 2nd and 3rd accused exercised their right to remain silent.
5. To prove the offence of Money Laundering in this case the Prosecution must prove that,
 - (i) The accused person;
 - (ii) Engaged in a transaction either directly or indirectly;
 - (iii) Involving proceeds of crime, (in this case stolen money) and;
 - (iv) Accused knew, or ought reasonably to have known that the money was derived or realized directly or indirectly from some form of unlawful activity.
6. There is no dispute about the identification of each accused person. In regards to the second element, namely that the accused directly or indirectly engaged in a transaction involving proceeds of crime, there is also no dispute that each accused person was engaged directly or indirectly in different transactions in sending money overseas.
7. To prove the fact that the money that had come into the bank accounts of Avenai Danford (2nd accused) and Avitesh Chand was proceeds of crime, the Prosecution called the principal of Shekinah Law, Elvis Anmol and the banker Racule of Westpac Bank. None of the accused disputes that the money received into bank accounts of Danford and Avitesh was stolen property. Therefore, it is established that the transactions involved proceeds of crime.

8. The only dispute in this case is with regards to the last element namely that each accused knew or ought reasonably to have known that the money was derived or realized directly or indirectly from some form of unlawful activity.
9. All three accused in their respective caution interviews had denied that they had any knowledge that the money was derived or realized directly or indirectly from some form of unlawful activity. The first accused elected to give evidence under oath and adduced evidence to support his denial as to his guilty knowledge. Other two accused exercised their right to silence.
10. There is no direct evidence to conclude that the accused had the necessary guilty knowledge that the money was derived or realized directly or indirectly from some form of unlawful activity. In the absence of direct evidence, Prosecution relies on circumstantial evidence and invited the assessors to draw reasonable inferences, on the basis of the facts proved in evidence, that each accused knew or ought to have reasonably known that the money was tainted with illegality.
11. In my summing up I directed the assessors to look at the evidence objectively and test whether each accused as a reasonable person ought to have known that the money was tainted with illegality when they were engaged in those transactions.
12. The 1st accused claims that he believed that he was carrying out legitimate transactions as part of a survey on behalf of his employer who is based in the UK as to the efficiency or viability of Western Union operations in Fiji in sending money to the African region.
13. The assessors rejected this claim. I am certain that they are justified in coming to that conclusion on the evidence led in trial.

14. There were no documents to establish that the 1st accused was offered a job or that he was working as an employee or carrying out a survey for a company based in UK. 1st accused said that all the important documents to his defence including the job appointment letter, survey forms, emails and Facebook chats in printed form were seized by police officers during the search conducted in his house and shop and the Prosecution failed to disclose them in court.
15. There are several reasons to reject this claim. Firstly, if such documents in fact existed and were seized by police, and if they were really important to his defence, his counsel had ample opportunity to make a proper application to court in a timely fashion asking the same to be disclosed well before trial. This case went down for years and the trial was vacated on number of occasions. No such application was made until the trial started. Although the accused said that his former counsel Mr Aman Singh had made such an application, the present counsel who eventually made the application never mentioned that his predecessor had ever made such an application or, if there had been one, the outcome of the application.
16. Secondly, the 1st accused in his caution interview had never mentioned that his job appointment letter, emails and Facebook chats were seized by police officers. At Q 173, when asked to produce the survey forms he filled, he had said that it was on his Facebook. No question was asked by his counsel as to the appointment letter, hard copies of facebook chats and survey forms when Inspector Epi Veimosoi took stand. Although one officer (DC Nilesh) admitted that some survey forms were given, he was not the officer in charge of the search and investigation. Inspector Epi Veimosoi who led the search operation denied that documents of that nature were seized.
17. Thirdly, the 1st accused admitted that all documents were stored in his computer. He admitted that his computer was not seized although he was advised to stop all communications with his employer and that his email and Facebook accounts were deactivated by police officers. He also admitted that the accounts that were

deactivated could have been reactivated but he refrained from doing so just to obey the police warning. Under these circumstances, it can be assumed that the accused had an ample opportunity to make an application to this court seeking permission to reactivate his email and Facebook accounts and tender those documents in his evidence if such documents really existed.

18. Finally, Shoeb Ali, who was associated with the 1st accused in transferring money overseas failed to satisfy this court that he was telling the truth when he said that he was shown all those documents by the 1st accused. Shoeb is a friend of the 1st accused from his school days. He admitted that he was treated with alcohol and food by the 1st accused for the services rendered. Shoeb contradicted his own statement to police when he said that he was never given commissions by the 1st accused. In this context, it is not safe to accept Shoeb's evidence in this regard.
19. For these reasons, assessors are justified in rejecting the evidence of the 1st accused that he had some important documents in his possession to support his version that he was doing a survey that he knew was legitimate.
20. The 1st accused said that he was advised by his employer to use only Westpac Bank accounts to do the survey. If the intended purpose was to evaluate the services of Western Union in Fiji, there is no logic in demanding only Westpac Bank accounts to send money to Fiji from abroad.
21. The 1st accused admitted that he did not open a bank account with Westpac although it was a condition of his job. He used Westpac accounts of others to receive money although he was the main beneficiary of the survey. He admitted that it would have been easier for him to open an account with Westpac. He had ample time to open an account for himself because the dialog with his employer began three weeks prior to the 1st transaction. In his explanation, the 1st accused said that his employer was okay with him using somebody else's bank account. This explanation is not consistent with the instructions he had received from his

employer that he must never divulge any information of this survey to anybody. It has to be accepted that it is nearly impossible to obtain somebody else's bank account without informing its likely purpose. The 1st accused himself admits this reality; that is why he had to divulge all the information to Danford whose account he had used.

22. The 1st accused sought to use bank accounts of others which had no money and were not in operation. He failed to explain why only bank accounts with these characteristics could qualify for his survey whose purpose was to evaluate Western Union.
23. The purported origin of money was UK while destination was Nigeria. Money was sent to several Nigerian nationals. According to 1st accused's wife Bhawika, the job offer had come from Nigeria. The explanation given by Bhawika is not consistent with 1st accused's explanation that the survey was evaluating money transfers to Africa on behalf of his employer based in the UK.
24. The 1st accused failed to explain why he used only Clay Street Branch (where his former workmate was the teller) to conduct the survey if the survey was intended to evaluate services of Western Union in Fiji.
25. For these reasons the assessors were justified in rejecting the claim of the 1st accused that he was engaged in those transactions with the knowledge that he was conducting a legitimate survey.
26. There was ample evidence to conclude that the 1st accused was aware or he ought reasonably to have been aware that the money had been derived or realized from some form of illegal activity.

27. The 1st accused admits that he was aware that the bank had put the narration 'rent' in respect of money transfers made on his request to Danford's account by his employer. This narration was not consistent with his claim that he was evaluating Western Union operations in Fiji.
28. When suspicious transactions are brought to the notice of the bank on 21st July 2011, the bank calls Danford and informs him about unauthorized transactions. Coincidentally, from that day onwards, suspicious inward transfers into Danford's account suddenly stops. The 1st accused admits that all transfers into Danford's account were made by his employer with his knowledge and on his instructions. Knowing that something is wrong with Danford's account, the 1st accused switches to his cousin Avitesh's Westpac bank account to continue his transactions. Part of money transferred on the 1st of August 2011 is withdrawn on the same day and is given to the 1st accused.
29. In these circumstances, the only reasonable inference that can be drawn is that the sudden stoppage of inward remittances was a result of 1st accused coming to know from Danford about illegal transfers of stolen money. It is also reasonable for the assessors to conclude that the 1st accused was aware of illegal nature of the transfers when he continued his transactions with his cousin's bank account.
30. Prosecution argues that as per answers given to questions 197, 198 and 199 of his caution interview, 1st accused was aware that he was dealing with stolen money and despite that knowledge; he continued his criminal act by using his cousin's account. I reproduce below the answers given to those questions:
- Q197: Since you were giving money to Avenai, Shoeb and Rimakshni, form the money sent to you, we have reasons to believe that you knew very well that the money was originated from an illegal source? What do you have to say about this?*
- A: I never knew about that, till received a call from the bank.*

Q198: *When did Avenai receive the call from the bank?*

A: *It was after about four days from the last money received in his account which was around 25/07/2011.*

Q199: *What did Avenai tell you about the bank in regards to the call he received?*

A: *He told me that the caller from the bank asked him about receiving the money and he was also told by the caller that the money was stolen from one law firm and was illegally transferred into his account. Also told me that the bank has asked him to reimburse the amount to the bank*

31. To counter this argument, the 1st accused in his evidence said that Danford informed him about illegal transactions only when he met Danford at the Lautoka Police Station. However, in his interview, he had never told police that Danford had told him about this at the police station. Therefore, the explanation given for this contradiction by the 1st accused is not acceptable.
32. Shoeb said that he became aware of illegal transactions from Danford, he got scared but he didn't tell Rahul about this because he was taken to the police station for investigation. However, Shoeb was taken for questioning on 2nd of August, 2011. This evidence of Shoeb is highly unreliable because he was the one who had introduced Danford to the 1st accused and helped to send money abroad. The first thing he would do as a reasonable person is to inform the 1st accused.
33. The following pieces of evidence are sufficient for the assessors to suspect the conduct of the 1st accused in his dealings and come to the conclusion that he ought to have known that the money that was coming to accounts of Danford and Avitesh was derived from an illegal activity.
 - He used ID's of his mother and wife to send money overseas without their knowledge.

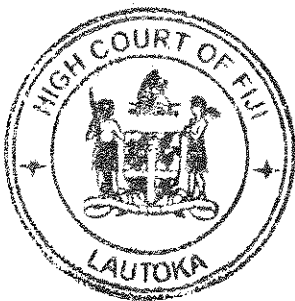
- He admitted lying to Shoeb and Danford in the first place as to why he wanted to use Danford's account.
- As a former employee of Western Union (he surpassed this fact also in the first place), he would have known that third party transfers are not allowed but he still engaged his former workmate (3rd accused) to facilitate third party money transfers.
- He paid Danford commissions for the work he had done.
- On his request, several IDs were obtained by Shoeb from Fiji Meats employees to transfer money. ID owners were kept in dark about the true purpose of the transactions and some of their signatures had been forged.
- As soon as money was deposited in to the accounts of Danford and Avitesh, quick withdrawals were made on the instructions of the 1st accused and withdrawn money was promptly transferred overseas, at times, by way of third party transfers.
- All the remittances were done at Clay Street branch, Nadi, where his former workmate was the teller. Most of those transfers had been made using ID's of strangers and, those of his mother and wife without their knowledge.


34. Prosecution says that Danford (2nd accused) also should have been aware that he was dealing with money derived from some form of illegal activity. In this regard, the Prosecution heavily relies on Danford's caution interview. In that, the 2nd accused had admitted withdrawing money from several ATM's in Nadi and Lautoka on 18th July 2011 after he was informed by the 1st accused that the money had been deposited in to his account. Danford admits receiving a commission for each transaction. He had received money from six different transactions into his account on the 18th July 2011 alone. When he went to the bank to inquire about those transactions out of curiosity, he was informed by a banker that the narration for transactions was 'rant'. Given the purported purpose of money transfers he was made aware of by the 1st accused, the narration 'rent' was not

consistent with his stated belief that he was doing legitimate transactions. The 2nd accused's denial in his caution interview as to the guilty knowledge was not supported in evidence. Therefore, the assessors are justified in rejecting the explanations and denials of the 2nd accused in his caution interview. The only reasonable inference that the assessors could have drawn was that the 2nd accused ought, as a reasonable person, to have known that he was dealing with money tainted with illegality.

35. Prosecution says that the third accused Ranigal facilitated all illegal transactions going out of the way and therefore she as a reasonable teller of Western Union ought to have known that she was sending money derived from an illegal source.
36. There is evidence that the 3rd accused carried out third party transfers on the request of the 1st accused. According to Ravinesh Mani, she had violated policy guidelines and instructions given by Western Union. She knew that one person can send only \$500.00 per year. Despite that knowledge she facilitated transactions of 1st accused by using ID's of other people who were not physically present at the branch. She had faxed blank forms (PEX 13) to Shoeb and sent money overseas without verifying the identity and the signature of the sender. She had put only one test question for all transactions although they involved several Nigerian recipients.
37. Although the 3rd accused was not supposed to ask about the origin of money from the customers, there is clear evidence for the assessors to conclude that she had knowledge that the transactions she carried out on the instructions of the 1st accused were not legitimate. Although the stated purpose of sending money was to buy computers from Nigeria, the transactions involved several Nigerian recipients and therefore, as a reasonable teller she ought to have known that the money she was sending abroad was not realized from a legitimate source.

38. The only inference that the assessors could have drawn from the facts proved in this case is that each accused either knew or ought to have known that the money they were dealing with were tainted with illegality.
39. I accept the unanimous opinion of the assessors and find the 1st accused guilty of all four counts of money laundering as charged. I also accept the majority opinions of the assessors to find the 3rd accused guilty of money laundering as charged. Rejecting the majority opinion of assessors, I find the 2nd accused guilty of money laundering as charged.
40. I convict the accused accordingly.
41. That is the judgment of this court.




Aruna Aluthge
Judge

AT LAUTOKA

On 04th September, 2018

Solicitors: Director of Public Prosecution for State
Legal Aid Commission for 2nd Accused
Iqbal Khan and Associates for 3rd Accused