

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an appeal under section
246(1) of the Criminal Procedure Act
2009.

PAULA MUAYARA

Appellant

CASE NO: HAA. 24 of 2017
[MC Navua, Crim. Case No. 275 of 2012]

Vs.

STATE

Respondent

Counsel : Ms. S. Lal for Appellant
Ms. S. Navia for Respondent

Hearing on : 25 September 2017

Judgment on : 20 April 2018

JUDGMENT

1. The appellant was convicted by the magistrate court for the following offence and was sentenced on 12/05/17 for an imprisonment term of 13 months and 02 weeks;

Statement of Offence

RECEIVING STOLEN PROPERTY: contrary to section 306 (1) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

FILIMONI SAUMAKI and **PAULA MUAYARA**, on the 3rd of October 2012 dishonestly received stolen property namely 1 Apple brand laptop with the charger in the approximate value of \$6,500 knowing or believing the property to be stolen.

2. The appellant and the co-accused were initially jointly charged with the offence of burglary under section 312 of the Crimes Act and of theft under section 291 of the Crimes Act. Plea was taken on the said charges on 05/10/12 and both had pleaded not guilty to the charges. On the same date the Learned Magistrate had fixed the case for hearing for 27/12/12. On 27/02/12 the hearing was re-fixed for 24/01/13 due to the complainant being overseas. It is noted in the case record that the hearing had been re-fixed on numerous occasions due to the non-availability of the complainant. A bench warrant had been issued on the appellant on 16/09/14 and the appellant had been produced in court on 27/03/17 after he surrendered.
3. The charge was amended to one count of receiving on 18/08/15. After trial both the co-accused and the appellant were convicted on 07/06/16. The co-accused was sentenced on 25/07/16. The appellant was sentenced after he surrendered, on 12/05/17.
4. The appellant had taken steps to have a document that can be regarded as a notice of appeal against the conviction dated 17/05/17 filed in the high court registry on 22/05/17.
5. Subsequently the appellant opted to retain the services of the Legal Aid Commission and a proper amended petition of appeal was filed by the Legal Aid on 07/07/17 where the following amended ground of appeal is raised;

The learned magistrate erred in law by convicting the appellant on a charge that he was not informed of and had not pleaded onto.

6. This matter was argued on 25/09/17. However, since I noted that the magistrate court record is incomplete as it did not include the ruling on the sentence imposed on the appellant and the proceedings up to 12/05/17, I had to take steps to call for the complete court record. The complete court record was accordingly served on the parties on 16/01/18 and the parties were given time to consider whether they want to file further submissions. On 26/02/18, both parties informed the court

that they will rely on the submissions they have already made.

7. It should also be noted that the appellant did not appear before this court on the last two dates. The counsel for the appellant informed this court that the appellant had been released from prison and he still wishes to proceed with this matter.
8. In this case, the appellant does not challenge the decision taken by the Learned Magistrate to proceed with the trial in his absence. His only grievance is that he was not informed of and his plea was not taken on the charge he was convicted of.
9. In the case at hand the appellant was initially charged for the offence of theft and he was convicted of the offence of receiving. Section 307 of the Crimes Act reads thus;

Alternative verdicts

307 (1) If, in a prosecution for an offence of theft or an offence against section 317, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of the offence of receiving, the court may find the defendant not guilty of the offence of theft or the section 317 offence but guilty of the offence of receiving.


(2) If, in a prosecution for an offence of receiving, the court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of the offence of theft or an offence against section 317, the court may find the defendant not guilty of the offence of receiving but guilty of the offence of theft or the offence under section 317.

10. In view of the above provisions, an accused charged for theft can be convicted of the offence of receiving even if the charge was not amended. Needless to say, in

such a situation where a court convicts an accused for the offence of receiving where the accused is in fact charged for theft, no plea would be taken on a charge of receiving prior to conviction even when the accused is tried in his presence.

11. In the circumstances, it is manifestly clear that there is no merit in the appellant's claim. It is not necessary to delve any further to deal with the issue raised by the appellant in this appeal.
12. The appeal is dismissed.




Vincent S. Perera
JUDGE

Solicitors:

Legal Aid Commission for the appellant

Office of the Director of Public Prosecutions for the respondent