

IN THE HIGH COURT OF FIJI

AT LAUTOKA

IN THE WESTERN DIVISION

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO.: HAA 33 OF 2016

BETWEEN:

STATE

APPELLANT

AND:

WAISAKE RATOTO RAVUTUBANANITU

RESPONDENT

Counsel:

Ms. L. Latu for Appellant

Mr. Iqbal Khan for Respondent

Date of Hearing:

14<sup>th</sup> March, 2017

Date of Judgment:

11<sup>th</sup> April 2017

## JUDGMENT

### INTRODUCTION

1. The Respondent was charged with one count of Larceny contrary to Sections 295 and 262 of the Penal Code, Cap 17 in the Magistrates Court at Tavua.

2. On the 11<sup>th</sup> day of February 2014 the Respondent stood trial after pleading not guilty to the said charge. At the end of the Prosecution case, Resident Magistrate ruled that there is a case to answer and the Respondent was put to his Defence on the 11<sup>th</sup> of April 2016.
3. After the Defence case the Respondent, through his counsel, filed a closing submissions and on the 4<sup>th</sup> of July 2016, the learned Magistrate delivered his Judgment discharging the Respondent on the basis that the charge was defective and declared the entire proceedings a nullity.
4. Being dissatisfied with the Judgment of the learned Magistrate, the State (Respondent) filed this Appeal within time on the 28<sup>th</sup> of July 2016 with following grounds:
  - I. *That the learned Magistrate erred in law in ruling that the Prosecution had charged the Respondent for an offence that no longer existed in law; and*
  - II. *That the learned Magistrate erred in law discharging the Respondent on the basis that the Charge is defective and considered the entire proceeding a nullity.*

GROUND (i)

**Magistrate erred in ruling that Respondent has been charged for an offence that no longer existed in law**

5. In paragraphs 5 to 7 of the Judgment the learned Magistrate made its observation and ruled that the Respondent was charged for an offence that no longer existed in law. He found that the offence with which the Respondent was charged had allegedly been committed on 24<sup>th</sup> December, 2009 and the Penal Code under which the charge was framed was no longer in operation at that time. He further observed that, the current Crimes Decree 2009 came into force on 5<sup>th</sup> November, 2009 repealing the Penal Code.
6. The State submitted that the Crimes Decree No. 44 of 2009 came into effect on the **1<sup>st</sup> of February 2010**, so any offending after the said date must be charged under the Crimes Decree. For this case, the Respondent allegedly had been charged for committing Larceny on the **24<sup>th</sup> of December 2009**. The date of offending falls within the period in which the old Penal Code, Cap 17 was still effective.
7. Transitional provision of the Crimes Decree provides as follows:

*Section 393 (1)- for all purposes associated with the application of section 392, the Penal Code shall still apply to any offence committed against the Penal Code prior to the commencement of this Decree, and for the purposes of*

*the proceedings relating to such offences the Penal Code shall be deemed to be still in force.*

8. Counsel for Respondent does not dispute that the Crimes Decree 2009 came into force on the 1<sup>st</sup> day February 2010. Hence the learned Magistrate erred in law and in facts when he stated that the accused was charged for an offence that no longer existed in law.
9. I allow this ground.

**GROUND (ii) –**

**Discharging the Respondent on the basis that the charge is defective and considering entire proceeding a nullity**

10. In *Deo v State* [2011] FJHC 372; HAA010.2011 (6 July 2011), the High Court sitting as the Appellant Court observed the following:

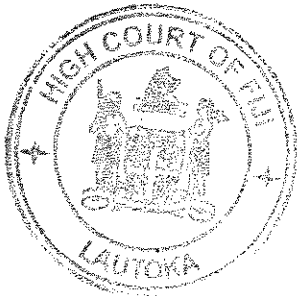
*“23. Considering decided cases in Fiji and other similar jurisdiction it is clear that the Accused should be given reasonable details of the charge against him. In simple term the Accused should clearly identify and understand the charges leveled against him. There should not be any ambiguity in the details of charges against him. This Court is of the view if the Accused is given the name of the offence (if provided by the law) or the relevant section is sufficient. Providing more details will be helpful to the Accused but it is not mandatory.*


11. In Shekar & Shankar v State Criminal Appeal No. AAU0056 of 2004, the Court of Appeal made the following observations about the purpose of a charge:

*“The purpose of the charge is to ensure that the accused person knows the offence with which he is being charged. Whilst the particulars should be as informative as is reasonably practicable, it is not necessary slavishly to follow the Section in the Act.”*

12. The charge dated 30<sup>th</sup> August 2010 clearly articulates the offence with which the Respondent is charged. The charge provides the Statement of Offence and Particulars of the Offence and they were clear enough to understand the charge. Charge is neither wrong nor irregular. It fulfills the requirements noted in Deo (supra) and Skipper v R [1979] FJCA.
13. The learned Magistrate had heard the prosecution case and ruled that there was a case to answer. Then the Defence called evidence in defence. At no point did the learned Magistrate point out any defect in the charge. This proposition that the charge was defective was first brought up by the Defence Counsel in his submission. The learned Magistrate just agreed with the same proposition and dismissed the case.
14. There is no legal basis for the finding of the learned Magistrate. Therefore, I set aside the Judgment dated 4<sup>th</sup> July, 2016 entered by the learned Magistrate at Tavua.

15. Since the the learned Magistrate had the opportunity to hear the evidence of both parties, there is no point in ordering a retrial. I direct the learned Magistrate at Tavua to enter the Judgment according to law.
16. I direct the Deputy Registrar of the High Court to send the case record back to the Magistrate's Court at Tavua forthwith. Respondent is warned to appear in the Magistrates Court at Tauva on 25<sup>th</sup> April, 2017.



  
Aruna Aluthge  
Judge

At Lautoka

11<sup>th</sup> April, 2017

**Solicitors: Office of the Director of Public Prosecution for Appellant  
Iqbal Kahn Associates for Respondent**