

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 125 OF 2007S

STATE

VS

MONIKA MONITA ARORA

Counsels : Mr. P. Bulamainivalu and Ms. R. Drau for the State
Mr. D. and P. Sharma for the Accused
Hearings : 22nd to 24th, 28th to 30th November and 5th to 7th December, 2011
Summing Up : 12th December, 2011
Judgment : 14th December, 2011

J U D G M E N T

1. Following a trial lasting approximately 9 days, the three assessors have returned with unanimous verdicts of not guilty as charged for Monika Monita Arora, on the "money laundering" charge (count No. 1), and "corrupt practices" charge (count no. 2) in the information.
2. Count No. 1 involved an allegation that between 9th December 2005 and 11th May 2007, at Nabua in the Central Division, the accused and others laundered money by disposing of \$472,466.47, being proceeds of crimes, for her and others benefit, which she ought reasonably to know, was derived indirectly, from the falsification of Vinod Patel Company's books of account. Count No. 2 involved an allegation that, on 13th May 2007, at the Sports City Plaza in Laucala in the Central

Division, she corruptly offered \$10,000 cash to Navin Sen, a Vinod Patel Company accountant, to induce him to stop investigating the cashing of suspicious Vinod Patel cheques.

3. Obviously, the three assessors did not accept the prosecution's version of events, on the two counts, and thus found the accused not guilty as charged on the two counts.
4. The authority at this stage of the proceeding is sections 237(1), (2) and (4) of the Criminal Procedure Decree 2009, which reads as follows:

"...237.—(1) When the case for the prosecution and the defence is closed, the judge shall sum up and shall then require each of the assessors to state their opinion orally, and shall record each opinion.
(2) The judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.
(4) When the judge does not agree with the majority opinion of the assessors, the judge shall give reasons for differing with the majority opinion, which shall be—
(a) written down; and
(b) pronounced in open court".

5. Similar provisions in previous "Criminal Procedure Codes" for Fiji, have being canvassed before, by the superior courts. For example, in **Ram Dulare, Chandar Bhan and Permal Naidu v Reginam** [1956 – 57] Fiji Law Report, Vol. 5, page 1, the Court of Appeal said the following:

"...It is clear that the legislature has given a trial Judge the widest powers to accept or reject the opinions of assessors sitting with him. These powers are discretionary. From the terms of the judgment, the learned trial Judge made it quite clear why he came to his decision in this case and why it was that he was unable to accept the opinion of the assessors.

In our opinion learned counsel for the appellants is confusing the functions of the assessors with those of a Jury in a trial. In the case of the King v. Joseph 1948, Appeal Cases 215 the Privy Council pointed out that the assessors have no power to try or to convict and their duty is to offer opinions which might help the trial Judge. The responsibility of arriving at a decision and of giving judgment

in a trial by the Supreme Court sitting with assessors is that of the trial judge and the trial judge alone and in the terms of the Criminal Procedure Code, section 308, he is not bound to follow the opinion of the assessors..."

6. The above view was again re-asserted by the Fiji Court of Appeal in Sakiusa Rokonabete v The State, Criminal Appeal No. AAU 0048 of 2005, when it said:
"...In Fiji, the assessors are not the sole judges of fact. The judge is the sole judge of fact in respect of guilt and the assessors are there only to offer their opinions based on their views of the facts..."
7. Given the above authorities, the three assessors' findings in this case are merely "their opinions based on their views of the facts" of the case. They have no power to try and convict the accused. Their duty was to offer their opinions which might assist the trial judge. The trial judge has the power to accept or reject their opinions. The trial judge is the sole judge of the facts, and it is his responsibility to decide the guilt or otherwise of the accused, based on the evidence.
8. I have reviewed the evidence called in this trial, and I have directed myself in accordance with the summing up I gave the assessors on 12th December 2011. The assessors have given their opinions on the same date. Their opinions were that the accused was not guilty as charged, on the two counts. Given the authorities mentioned in paragraphs 4 to 6 hereof, as the trial judge, I reject the unanimous opinions of the three assessors. My reasons are as follows.
9. In my view, the most important finding in this case, was the evidence given by the ANZ Bank tellers, who gave evidence in court, during the trial. These tellers were Elenoa Sikivou (PW15); Anare Sovu (PW16); Kaveeta Kripal (PW17); James Kumar (PW18); Tanya Koi (PW19); Ranjeeta Maharaj (PW20); Ritesh Rattan (PW21), Farina Bi (PW22) and Nazmeen Latif (PW23). I accept the list of the invoices, payment vouchers and Vinod Patel cheques, provided by Mr. Kumar Shankar, as Prosecution Exhibit No. 37. In my view, I accept what the above ANZ Bank tellers said, and I accept them as credible witnesses. Even the defence, while addressing the court after the summing up when it came to re-direction, said the cashing of the Vinod

Patel cheques was not a big issue for them. They accepted that the accused cashed some of the cheques mentioned in Prosecution Exhibit No. 37.

10. In my view, the ANZ tellers had nothing to gain from this case, nor have they any interest in the outcome of this case. They said what they saw, at the material times, when the accused came to cash the Vinod Patel Company's cheques, that were itemized in Prosecution Exhibit No. 37. All the ANZ Bank tellers knew the accused as an employee of Vinod Patel Company, and some of them knew she was the secretary to the company's Managing Director, Mr. Umakant Patel. I accept the tellers' evidence that the accused encashed the relevant company cheques, and took out the cash from the bank. I therefore find, as a matter of fact that, the accused, at the times mentioned in Prosecution Exhibit No. 37, encashed the relevant company cheques mentioned therein, and took a total of \$472,466.47 out of ANZ Bank, from 6th January 2006 to 11th May 2007 – a period of approximately 1 year 5 months.
11. What happened to the above money? The evidence on this issue, differed between the parties. According to the accused, she gave the whole amount to Mr. Kumar Shankar (PW3) and Umakant Patel, who was her boss at the time, and the Managing Director of Vinod Patel Company. Mr. Umakant Patel was not called as a witness, and thus we could not hear from him. Mr. Kumar Shankar appeared to deny the accused's contention, and as Chief Financial Controller of the company then, said, the accused had not repaid the majority of what she took out of ANZ. According to Mr. Shankar, he found out the alleged fraud by the accused on 12th May 2007, when he was perusing the company's bank statements. He discovered that Cheque Serial No. 1, in Prosecution Exhibit No. 37, was encashed for \$15,172.30, the previous day ie. 11th May 2007. He directed Mr. Navin Sen (PW4) to investigate the matter, as it was unusual for such amount to be cashed. He directed Mr. Sen to trace the relevant invoices and payment vouchers.
12. Mr. Shankar said, they found some irregularities in the above cheque, and the supporting invoice and payment voucher. The payee in the payment voucher was

Carpenters Shipping, yet the payee in the cheque was Pravin Patel. According to Mr. Shankar, someone was falsifying the records. Mr. Shankar said, on the same day ie. 12th May 2007, the accused came to his office and admitted she cashed the above cheque, and she would refund the \$15,172.30 on Monday, if they stop their investigation into the suspicious cheque. The defence's version was different from the above. The accused said, she returned the cash to Mr. Shankar, as soon as she cashed the cheque on 11th May 2007.

13. According to Mr. Shankar, he asked the accused how she could encash the cheque 37010, as it was payable to Carpenters Shipping. He said, she replied she has encashed the cheque. Farina Bi (PW22), ANZ Bank teller, in her evidence, confirmed that the accused cashed the cheque. Mr. Shankar, said the accused did not tell him how she used the money. She merely told him she was in possession of the money. According to Mr. Shankar, the accused returned the \$15,172.30 cash to him on Monday 14 May 2007. Mr. Shankar said, he continued the investigation into the suspicious cheques, and later found more irregular cash withdrawals with irregular supporting invoices and payment vouchers. According to Mr. Shankar, he drew up the list as itemized in Prosecution Exhibit No. 37.
14. According to Mr. Shankar, the accused's husband called to meet them on 15th May, 2007. They told him that the accused was, at that time, allegedly involved in the cashing of \$240,000 worth of company cheques. According to Mr. Shankar, the accused's husband paid \$26,100 as part-payment of the \$240,000. He used the accused's ATM cards to do the above. According to the accused, Vinod Patel stole the \$26,100 and that she gave no authority to her husband to make the payment; but she also admitted, she had not reported the matter to police as of today. Mr. Shankar said, out of the \$472,466.47 taken by the accused, only \$41,272.38 had been paid; first, the \$15,172.30 from cheque No. 37010, and second, the \$26,100 from the accused ATM accounts. According to Mr. Shankar, the accused still had to pay \$431,194.09, of the money she took from ANZ, on behalf of Vinod Patel Company Ltd.

15. Mr. Navin Sen (PW4) also gave evidence for the State. He was employed as an accountant, by Vinod Patel, at the time, and he was head of the accounts payment department. It was his role to authorize all the payments from the company. There were 7 staff under him, and he was answerable to Kumar Shankar. In the course of his investigating the suspicious cheques, he was shown the invoices, payment vouchers and cheques, itemized in Prosecution Exhibit No. 37. He said, there were numerous irregularities in the invoices, vouchers and cheques. He said, none of the documents and cheques were approved by him or his department. He said, it appeared someone was falsifying the company documents. Abdul Gaffar (PW6), Heena Bilimoria (PW7), Rajnita sharma (PW8), Veeral Patel (PW9) and Mohammed Hassan (PW10) – all employees of Vinod Patel, at the time, confirmed that the abovementioned invoices, payment vouchers and cheques were falsified. Jitendra Patel (PW5) said, all his purported signatures in the above cheques were forged by someone.
16. On 13th May 2007, Mr. Navin Sen said, the accused rang him and asked to meet him at Sports City Plaza, in Laucala. According to Mr. Sen, they met in the accused's car, registration No. EM 291, and she asked him to help her out. Mr. Sen said, the accused admitted to him that she cashed cheque No. 37010, and she had the cash with her. Mr. Sen said, she offered him \$10,000 cash, in \$50 bills, to stop him investigating the suspicious cheques. Mr. Sen said, he refused the offer, and reported the matter to Mr. Shankar later. The accused, on the other hand, denied Mr. Sen's allegation. She said, she was at home, at the time, celebrating mother's day.
17. Arvindra Udit (PW11) of Carpenters Shipping; Satesh Sharma (PW12) of Neptune Shipping; Edward Lockington (PW13) of Pacific Agencies and Eric Leong (PW14) of Shipping Services all said, that they did not receive any cheques from Vinod Patel, although they were listed as some of the payees in the payment vouchers, itemized in Prosecution Exhibit No. 37.

18. I have taken note of the accused's position regarding the State's two allegations ie. count No. 1 and 2. She appeared not to dispute cashing the relevant cheques itemized in Prosecution Exhibit No. 37. She appeared not to dispute that she received the total \$472,466.47 when she encashed the above cheques, over a period of approximately 1 year 5 months. But her answer to the two allegations (ie. count No. 1 and 2) was that she gave all the money to Kumar Shankar (PW3) and Umakant Patel. Mr. Kumar Shankar, as Chief Financial Controller of Vinod Patel Company Ltd, at the time, denied the money was given back to the company. He appeared to deny the accused's assertion that, the money was returned to him or anyone else. The case will have to be decided on the credibility of the witnesses for the State, and that of the accused.
19. I find Mr. Kumar Shankar, Mr. Navin Sen and other witnesses for the State to be credible witnesses. They were forthright in their answers, and were not evasive or argumentative, during cross-examination. The original invoices, payment vouchers and cheques the State presented as evidence, including the sworn evidence of the other State witnesses, did show that someone was falsifying company records and books of account, to support the cheques that were presented to ANZ Bank Centrepoint, to obtain the \$472,466.47. The accused encashed the cheques, and obtained the above money. She came alone to cash the cheques, while the other Vinod Patel Company staff who do the banking, came as a group. Was the lonely trips to the bank to encash the cheques designed to hide what she was doing from the other company employees? If she said, she gave all the money to Kumar Shankar and Umakant Patel, why didn't she tell the police when they started the investigation? If she did this, as is logical with right minded people, it would divert police attention to Mr. Shankar and Mr. Patel, and save her the embarrassment and heartache over the last 4 years. Why hide her answers until trial date, although the burden of proof is on the State? Being upright with the police, given her answers to what she did with the money after encashing the cheques, would give her more credibility.

20. I have taken a cold hard objective look at both parties' evidence and witnesses, in order to discover the truth. I find that the State witnesses were credible, and I accept their evidence. I find the accused was not a credible witness, given the above. I reject her denials. I find as a matter of fact that, between 9th December 2005 and 11th May 2007, at Nabua in the Central Division, the accused and others, disposed of \$472,466.47, being proceeds of crime, for her and others benefit, and she ought to reasonably know that the money, was derived indirectly from the falsification of the Vinod Patel Company's book of account (count No. 1). I also find, as a matter of fact that, the accused, on 13th May 2007, at the Sports City Plaza at Laucala, corruptly offered \$10,000 cash to Navin Sen, to induce him to stop investigating the cashing of suspicious Vinod Patel Company cheques.
21. Given the above, I find that the prosecution had proven their case against the accused beyond reasonable doubt, on count No. 1 and 2, and I find the accused guilty as charged, on both counts. I convict the accused on those counts, accordingly.



A stylized, handwritten signature in black ink, consisting of a large loop at the top and a long, sweeping tail that curves back towards the left.

Salesi Temo
JUDGE

Solicitors for the State : Office of Director of Public Prosecution, Suva.
Solicitors for Accused : R. Patel Lawyers, Barristers & Solicitors, Suva.