

IN THE MAGISTRATES' COURT OF FIJI

AT SUVA

Criminal Case No: 348/2014

STATE

V

NATASHA NILMA SINGH

Counsel : Ms.D.Kumar for the State

Ms.Ratu(LAC) for the Accused

Date of Judgment : 30th of September 2016

JUDGMENT

1. The accused is charged with one count of **Possession of Property of Being Proceeds of Crime contrary** to section 70(1) and (2) of the Proceeds of the Crimes Act. The particulars of the offence are *“NATASHA NILMA SINGH on the 7th day of December 2012 at Suva in the Central Division received money amounting to \$72,128.74 that may reasonably be suspected of being proceeds of crime”*.
2. The accused pleaded not guilty wherefore this proceeded for hearing. Before the hearing the parties agreed for following facts pursuant to section 135 of the Criminal Procedure Decree which means these facts are proved.

BACKGROUND

1. The accused person Natasha Nilma Singh was 20 years old in 2013. She resided at Lot 70 Biau Drive, Cunningham, Stage 2, Nasinu. She lived with her mother Indra Devi Singh aged 43 years who was unemployed at the time.
2. In the year 2012 Indra Devi Singh got in an online romantic relationship with Steven Ham whom the accused and Indra Devi Singh had never met.

3. Natasha Nilma Singh was a Fiji National University student in the year 2012 and had internet access at home and at FNU.
4. Natasha Nilma Singh managed her mother's Facebook account and communicated with Steven Ham on a regular basis.
5. Natasha Nilma Singh referred Steven Ham her Dad, Step-father and father.
6. Natasha Nilma Singh had a boyfriend by the name of NileshRinal Kumar

INCIDENT

7. On 12 November 2012 the accused received FJD \$4495.81 in her ANZ bank account number 11104543 from Mark E. Patnaude in Australian dollars.
8. On the date mentioned above, the accused made cash withdrawal of \$4495 from account mentioned above.

The bank statement of the accused showing the transfer and withdrawal mentioned in paragraph 5 and 6 above is tendered as a prosecution exhibit.

9. Pursuant to section 134 of the Criminal Procedure Decree 2009, the statement of NileshRinal Kumar dated 11 April 2013 is tendered as prosecution exhibit.
10. From 13 November 2012 to 19 December 2012 Natasha Nilma Singh sent monies from her ANZ bank account to different receivers in South Africa through money transfer agencies in Suva.
11. Annexed and marked as PE1 is a table of transactions of transfers and withdrawal referred to in paragraph 5 above.
12. On 7/12/12 the accused person withdrew \$10,000 cash.
13. On the same day [7/12/12] the accused person transferred \$40,000 in her mother's ANZ Bank account number 11524397.

The bank statement for the month of December 2012 of the accused and her mother Indra Singh is tendered as prosecution exhibit.

14. On the same day [7/12/12] the accused person sent FJD \$500 through Western Union Exchange and Finance Fiji with MTCN 1316809220. The sending fee was FJD \$45, totalling to \$FJD545.

The amount was sent to OlanrewajuLameed in South Africa.

The Exchange and Finance Fiji receipt with MTCN 1316809220 is tendered as prosecution exhibit.

15. On the same day [7/12/12] the accused person's mother, sent FJD \$500 through Western Union Exchange and Finance Fiji with MTCN 9676572895. The sending fee was \$45, totalling to \$545.

The amount was sent to SodiqOlanrewaju.

The Exchange and Finance Fiji receipt with MTCN 9676572895 is tendered as prosecution exhibit.

16. On 8 December 2012 the accused person sent FJD \$500 through Lotus Foreign Exchange with MTCN 32386902. The sending fee was FJD\$35, totalling to FJD \$535.

The money was sent to SodiqOlanrewaqui in South Africa.

The Lotus Foreign Exchange receipt with MTCN 32386902 is tendered as prosecution exhibit.

17. On 8 December 2012 the accused person's mother sent FJD \$500 through Lotus Foreign Exchange with MTCN 74018610. The sending fee was FJD\$35, totalling to FJD\$535.

The money was sent to OlanrewajuLameed in South Africa.

The Lotus Foreign Exchange receipt with MTCN 74018610 tendered as prosecution exhibit.

18. On 8 December 2012 the accused person sent FJD \$500 through UAE Exchange with MTCN 86655959. The sending fee was FJD\$35, totalling to FJD \$535.

The Lotus Foreign Exchange receipt with MTCN 86655959 tendered as prosecution exhibit.

19. On 8 December 2012 the accused person's mother sent FJD \$500 through UAE Exchange with MTCN 71206218. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to SodiqOlanrewaju in South Africa.

The UAE Exchange receipt with MTCN 71206218 tendered as prosecution exhibit.

20. On 12 December 2012 on the accused person's request, Kriti Singh sent FJD \$500 through Lotus Foreign Exchange with MTCN 98532608. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to AlaoTajudeenAbolore in South Africa.

The Lotus Foreign Exchange receipt with MTCN 98532608 tendered as prosecution exhibit.

21. On 12 December 2012 on the accused person's request, Kriti Singh sent FJD \$500 through Western Union Fexco with MTCN 9262717642. The sending fee was FJD \$45, totalling to FJD \$545.

22. On 12 December 2012 on the accused person's request, Deepa Anjali Singh sent FJD \$500 through Lotus Foreign Exchange with MTCN 30075430. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to Sodiq Pedro in South Africa.

The Lotus Foreign Exchange receipt with MTCN 30075430 tendered as prosecution exhibit.

23. On 13 December 2012 on the accused person sent FJD \$500 through Money Gram MHCC with MTCN 83593687. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to SodiqOlanrewaju in South Africa.

The Money Gram MHCC receipt with MTCN 83593687 tendered as prosecution exhibit.

24. On 13 December 2012, on the accused person requested Kriti Singh to send FJD \$500 through Money Gram MHCC with MTCN 23430681. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to OlanrewajuLameed in South Africa.

The Money Gram MHCC receipt with MTCN 23430681 tendered as prosecution exhibit.

25. On 18 December 2012, on the accused person requested Kriti Singh to send FJD \$500 through Western Union Fexco with MTCN 1951047458. The sending fee was FJD \$45, totalling to FJD \$545.

The money was sent to JimohOlalekan in South Africa.

The Western Union Fexco receipt with MTCN 1951047458 tendered as prosecution exhibit.

26. On 18 December 2012, on the accused person requested PriyaPritika Prasad to send FJD \$480 through Western Union Fexco with MTCN 6992302237. The sending fee was FJD \$45, totalling to FJD \$535.

The money was sent to FajimiOluwagbemiga in South Africa.

The Western Union Fexco receipt with MTCN 6992302237 tendered as prosecution exhibit.

27. On 19 December 2012, on the accused person requested SihanaNilwafa Hussain to send FJD \$500 through Lotus Foreign Exchange with MTCN 65902457. The sending fee was FJD \$35, totalling to FJD \$535.

The money was sent to JimohOlalekan in South Africa.

The Lotus Foreign Exchange receipt with MTCN 65902457 tendered as prosecution exhibit.

ELECTRONIC COMMUNICATIONS BY THE ACCUSED PERSON

28. The accused person had contact person namely Steven Ham by email address natashanilmasingh@yahoo.com and by her Facebook account 'Natasha Singh' and her mother's Facebook 'Indra Singh'.

29. Between the month of April and May 2012 Indra Singh befriended Steven Ham on Facebook and began an online relationship.

30. Shortly after Steven Ham would email the accused person and her mother instructions to send the money to another person in South Africa and provide details of the recipients.

The record of Indra Singh's Facebook messages with Steven Ham is tendered as prosecution exhibit.

The email exchange record of the accused and Steven Ham for the address natashanilmasingh@yahoo.com is tendered as prosecution exhibit.

The record of the accused person's Facebook messages with Steven Ham is tendered as prosecution exhibit.

CAUTION INTERVIEW

31. The accused person was interviewed under caution at the CID Headquarters by Detective Constable 3298 Nilesh Kumar on 11 February 2013 which was witnessed by Woman Detective Constable Mereisi.

32. The record of interview is tendered as prosecution exhibit.

3. For the hearing the Prosecution called 02 witnesses.
4. PW1 (Narendra Kumar) was working in ANZ Bank for 38 years and was the manager for quality assurance at that time. He was assisting in investigations; He also interviewed customers about issues after collecting all the information and in this case interviewed the accused on 10/12/2012. There were funds coming to her account and also some transactions recalled which raised the alert with the bank. The bank found huge amount in her account and froze that. There was nearly \$80,000.00 credited to her account from Australia. There were two transactions to her account from Wilson HB Ltd in Australia. The 2nd transaction was recalled. The bank felt the transactions were not legitimate and took action to freeze the account. PW1 informed the accused that these were suspicious transactions and he would report about them to the police and Financial Intelligence Unit (FIU). The accused said these were for some purchases from abroad and money was sent by her step father. She has utilized \$10,000.00 and sent to her step father. She said also money was for purchase of house in Fiji and estate distribution. She transferred \$40,000.00 to her mother's account. PW1 told the accused that the money maybe from fraud. But she did not believe it and wanted to withdraw the money. When PW1 said he was going to report to police the accused agreed and left. PW1 did not see her after that.
5. Under cross-examination the witness said the accused mentioning meeting the father through FB and she was not involved in a scam. Under re-examination the witness said the funds were for purchase of house and building material and the accused stopped sending money only after she was stopped from accessing the funds.
6. PW2 (Sgt Nilesh Kumar) , who was instructed to conduct the investigation by ASP Seru of transferring of \$72,000.00 from Australia to the accused account through a scam . He

conducted the search in banks and money exchange centers and also corresponded with Australian Firm (Wilson HB Ltd). They said one of their client accounts was hacked and money was sent to the accused account. The company did not authorize these transactions. First there was \$42,000 transferred to Fiji and 2nd request for transfer was rejected by the bank which raised the alarm. PW2 also conducted the caution interview of the accused (PE1) . The accused said she got the approval from the reserve bank and transferred monies to South Africa and some through her boyfriend. The accused handed over some money and also her data from FB was downloaded. His impression was that the accused and her mother were desperate to move to America and these transactions happened from 07/12/2012 -19/12/2012. PW2 came on to the investigation only on 30/01/2013 and was not aware about the investigations happened before that. Under cross-examination the officer said his impression was that the accused was a victim of a cybercrime and she also assisted in the investigation.

7. The Prosecution closed their case after this and I found a case against the accused and explained her rights pursuant to section 179 of the Criminal Procedure Decree. The accused elected to give evidence.
8. The accused said in January 2013 she went to CID office and met ASP Seru and informed him about everything. The ASP directed the accused to PW2. Her mother was chatting with one Steven through FB and after 08 months the accused received to her account \$72,128.74. First he said he was coming to Fiji and money for that. Initially he said he is sending the money and later said they were from his clients. First he called and later his son called. At that time she was not aware where the money was coming from and after contacting PW1 she came to know about Wilson Company and contacted them. They advised her to transfer the money back. But PW1 refused to send the money back and asking her to refund balance \$10,000.00. After she came to know money was coming from a fraud she contacted the Wilson Company and also visited the CID HQ on 01/01/2013. Steven told her the money was for his workers and also to treat his son. She received money 2 times to the account. When she got the money first time she was asked to remit on the same date. From the second amount of \$72,000 she withdrew \$10,000 and

remitted. She was blackmailed as he was keep telling the money was for his sick son. Steven was saying his son was dying. She was remitting the money in \$500.00 installments by her and through her friends. She sent nearly \$7000.00 before she was informed the money was proceeds of crime. She and her friends not benefitted from these. After Steven stopped communication she started suspecting that he was a conman.

9. Under cross-examination the accused said she came to know Steven for 08-09 months before this incident and he was in USA whilst his son was in South Africa. He was sending the money to Fiji to send to someone else. First time she sent to various people in South Africa and Steven said his ID in South Africa was not valid. The accused knows his passport is his ID and even though it was not recognized in South Africa engaged in financial transactions with him. She had nearly 01 month to consider about his ID. On the same date he asked to transfer the money to 08 people. She was emotionally blackmailed by him. Even though the accused knew she was monitored by the bank she kept sending the money till 19/12/2012. She was not informed by the bank that money was from a fraud. Even though the son of Steven was in South Africa she did not send the money to him and transferred to other people. She knew Steven has no money in South Africa and admitted that it was unusual for a business man who was supposed to be dealing with millions of dollars without funds. Steven was telling that he would marry her mother and they would settle in USA. Keeping in contact with him was beneficial for her in long term and for her future. She was not aware that this was a scam and was also not informed by PW1. She was using some of these for groceries and was not aware Steven was in to fraudulent activities and these funds were proceeds of crime.
10. Both parties made closing address pursuant to section 181 of the Criminal Procedure Decree and I have carefully considered them also for my judgment.
11. In **Woolmington v DPP** [1935] AC 462 it was held that :

“Throughout the web of the English criminal law one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner’s guilt, subject [to the qualification involving the defence of insanity and to any statutory exception]. If at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence

given either by the prosecution or the prisoner, as to whether [the offence was committed by him], the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained” (per Viscount Sankey L.C. at pp. 481-482).

12. In State v Darshani [2006] FJHC 24; HAC0007S.2005 (26 January 2006) in the summing up his Lordship Justice Gates (as he then was) defined burden placed on the prosecution in the following manner and this is relevant for this case also.

"The burden of proof rests throughout the trial upon the State. In our system of justice there is a presumption of innocence in favour of an accused which is enshrined in the Constitution. The State brings the charge against the accused. Therefore it is for the State to prove the charge against the accused. Each element of the charge must be proved, but not every fact of the story. This burden never changes, never shifts to the Accused. In summary, the Accused does not have to prove anything. The prosecution must prove its case beyond reasonable doubt. That means that before you express an opinion that the Accused is guilty of the charge you must be satisfied so that you are sure of her guilt beyond reasonable doubt. The test is not doubt, or slightest doubt. The test is reasonable doubt. If you consider her innocent of the charge you must give your opinion that she is not guilty. If you entertain a reasonable doubt of guilt, you must also give your opinion that the Accused is not guilty

13. The accused is charged with one count of one count of Possession of Property of Being Proceeds of Crime contrary to section 70(1) and (2) of the Proceeds of the Crimes Act which reads :

“(1) A person who, after the commencement of this Act, receives, possesses, conceals, disposes of or brings into Fiji any money, or other property, that may reasonably be suspected of being proceeds of crime commits an offence and is liable on conviction to:
(a) if the offender is a natural person-a fine not exceeding \$12,000 or imprisonment for a term not exceeding 2 years, or both; or

(2) It is a defence under this section, if a person satisfies the Court that the person had no reasonable grounds for suspecting that the property referred to in the charge was derived or realised, directly or indirectly, from any unlawful activity. “

12. In view of the above section the prosecution has to prove beyond reasonable doubt the following elements:

- a. **The accused ;**
- b. **Received in to Fiji ;**
- c. **The money ;**
- d. **That may reasonable be suspected ;**
- e. **Of being Proceeds of crime;**

14. Further there is also a statutory defence given to an accused charged with this offence [Section 70(2) of the Act]. The defence has to satisfy this court that she has no reasonable ground to suspect that this money was derived from an unlawful activity. This has to be proved on balance of probabilities (section 61 of the Crimes Decree).

15. The learned legal aid counsel in her closing address agreed that there is no dispute that her client (the accused) got in to her account a sum of \$72,128.74 that was stolen from a company in Australia. Only issue to determine in this case is that whether the accused reasonably suspected this was from some unlawful activity.

16. According to the evidence and admitted facts, the accused got to know one Steven through the FB who started having relationship with her mother and promised to marry her. She was addressing him as father and was under the impression that after marrying she would be able to move to USA and settle there.

17. On 12/11/2012 she received in to her account FJD \$4495.81. Even though this was supposed to be for the expenses for Steven in Fiji, she was asked to transfer in to South Africa which she did after getting approval from Reserve bank. The reason for transfer is for the payments for workers in South Africa and his sick son.

18. Subject matter in this case is the accused receiving in to her account on 07/12/2012 a sum \$72,128.74 which was stolen from an Australian company. This was also asked to transfer back to South Africa for medical expenses for Steven. From these the accused withdrew

\$10,000.00 and transferred nearly \$7000.00 to South Africa. The balance she kept in her and mother's account.

19. But the accused admitted that she send these amounts to different people in South Africa and never to the Steven or his son. She also admitted that it was strange to find a business man (Steven) who was supposed be dealing millions of dollars to be without any money in abroad to pay for his workers. Further she accepted it would be strange to see Steven without valid ID and his passport not recognized in South Africa.
20. Even though the accused denied she was aware that she knew these were from some unlawful activity in my view there are so many grounds which may have allowed her to reasonably suspect that this money was from proceeds of crime.
21. According to the accused Steven was sending these monies for the expenses to be borne in Fiji for him and buying of property there, but as soon as she got them in to her account she was asked to send it to South Africa. Hence as reasonable person she should have been suspicious why Steven was sending money to her account two times within a short duration and asking on the same day to transfer the money back to South Africa instead of keeping it in her account as initially agreed.
22. Even though she said she was emotionally blackmailed to send the money based on illness of Steven's son she admitted she send that to different people. Again as a reasonable person she should have been thinking why she was sending it to different people instead of the persons (Son and Steven) who were supposed to really need that money.
23. Further she was clearly warned by PW1 that these from some unlawful activity on 10/12/2012. Hence by 10/12/2012 she was clearly aware there was some unlawful activity going on with regard to the money that she was getting in to her account. She ignored that by closing her eyes and keeps sending the money abroad until 19/12/2012. She was stopped from sending more money only when the bank stopped her having access to the money in her account.
24. Even though the accused tried desperately to show that there was no benefit from these transactions it is clear that she was keep contacting with Steven with the aim of moving to

USA. Further there was a short term benefit for her too from these funds coming to her account like using some money for her own groceries.

25. The accused admitted that she knew it was strange for the passport of Steven not to be recognized in SouthAfrica, but she kept having transactions with him. The accused is an educated person (Form 7 passed and studying in FNU at that time) and her explanation about trusting Steven even with these strange behaviors of him is not probable in my view.
26. Therefore I find that the accused as a reasonable person could have suspected this huge amount that was coming to her account from abroad was from some unlawful activity. Further the accused has failed to satisfy the defence in this case.
27. Based on the above mentioned reasons, I find the prosecution has proved beyond reasonable doubt that the accused committed this offence.
28. I find the accused guilty for this charge and convict her accordingly.
29. 28 days to appeal

Shageeth Somaratne
Resident Magistrate, Suva