

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. RIMARKSHNI 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

Dates of Hearing : 13th 14th 15th 16th 17th 23rd and 24th August, 2018

Date of Summing Up: 29th August, 2018

SUMMING UP

Madam Assessors and Gentleman Assessor,

- [1] It is now my duty to sum up to you. In summing up the case I will direct you on matters of law which you must accept and act upon. You must apply the law that I direct you on in this case. On the facts however, it is for you to decide what facts to accept and what facts to reject. In other words, you are the judges of fact.
- [2] If, in the course of this summing up, I express my opinion on the facts, or if I appear to do so, it is entirely a matter for you whether you accept what I say or form your own opinions.
- [3] Counsel have made submissions to you at the end of the trial about how you should find the facts of the case. That is their right as Counsel. But you are not bound by their submissions. If what they have said appeals to your own sense of judgment, then you may accept them. You must decide what really happened in this case as reasonable members of the community.
- [4] You will not be asked to give reasons for your opinions but merely your opinions themselves. Your opinions need not be unanimous although it would be desirable if you could agree on them. Your opinions are not binding on me but they will carry great weight with me when I come to deliver my judgment.
- [5] On the question of proof, I must direct you as a matter of law, that the prosecution bears the burden of proving the Accused's guilt of each accused. That burden remains throughout the trial upon the prosecution and never shifts. There is no obligation upon the accused persons to prove their innocence. Under

our system of criminal justice, an accused person is presumed innocent until he or she is proven guilty.

- [6] The standard of proof in a criminal case is one of proof beyond reasonable doubt. This means that you must be satisfied so that you feel sure of the guilt of the accused person before you can express an opinion that he or she is guilty on each count. If you have any reasonable doubt about the guilt of any of the accused, you must express an opinion that he or she is not guilty. You may only express an opinion of guilt if you are satisfied so that you are sure that he or she committed the offences alleged in the information.

- [7] Your deliberations must be based solely and exclusively upon the evidence which you have heard in this court and upon nothing else. You must disregard anything you may have heard or read about the case outside this court. Your duty is to apply the law to the evidence you have heard and draw reasonable inferences from facts proved by evidence.

- [8] In assessing evidence, you are at liberty to accept the whole of the witness's evidence or part of it and reject the other part or reject the whole.

- [9] In deciding on the credibility of any witness, you should take into account not only what you heard but what you saw. You must take into account the manner in which the witness gave evidence. Was he/she evasive? How did he/she stand up to cross examination? You are to ask yourselves, was the witness honest and reliable.

- [10] Proof can be established only through evidence. Evidence can be from direct evidence that is the evidence of a person who saw heard and felt the offence being committed.

- [11] The Prosecution relies on circumstantial evidence to prove that the accused persons had the guilty knowledge and that there is no other reasonable explanation than that they had that knowledge. The law on circumstantial evidence is that if, on considering a series of pieces of evidence, you are satisfied beyond reasonable doubt that the only reasonable inference to be drawn is the guilt of the accused, and there is no other reasonable explanation for the circumstances which is inconsistent with the accused's' innocence, then you may convict the accused of the offence charged.
- [12] Documentary evidence is also important in a case. Documentary evidence is the evidence presented in the form of a document. In this case, caution interview and bank statements are examples, if you believe that such records were made.
- [13] 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. 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.

[14] To prove the offence of Money Laundering 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.

[15] The offence of Money Laundering is not predicated on proof of the commission of a serious offence or foreign serious offence. In this case the prosecution says that each accused was engaged in transactions involving stolen money. However, the Prosecution has no burden to prove the offence of Theft or Receiving Stolen Money to prove the offence of Money Laundering.

[16] You would note that the 1st Accused is charged with four counts of Money Laundering. Please remember that you should consider each count separately. You must not assume that the accused is guilty of the other count just because you find him guilty of one count. You must be satisfied that the Prosecution has proved all the elements of each count separately.

[17] There are also three accused charged in this case. The law recognizes that more than one person may be tried together in one trial. In view of these allegations it is convenient to deal with their cases together in one trial. However, they are still entitled to have their charges considered separately. I direct you that you must consider the case against each accused separately. In doing this you must

carefully distinguish between the evidence against one accused and the evidence against the other. You must not, for instance, supplement the evidence against one accused by taking into account evidence referable only to another.

- [18] Police interviewing officers read caution statement of each accused. The caution interview of a particular accused can only be used in the case relating to him or her and not evidence against the others. As a matter of law, nothing in that caution interview can be regarded as evidence against other accused persons. You will see that some parts of those caution interviews have been shaded. You are not to speculate as to what is hidden in those shaded parts.
- [19] However when an accused person chooses to give evidence, his or her testimony becomes evidence in the case and you are at liberty to consider the evidence given by an accused against each accused.
- [20] I now direct you as to how you should approach caution statement evidence. The 1st and the 2nd Accused say that caution statements were obtained by police officers using illegal means or using various unfair practices such as threats, assaults and promises and therefore, they should not be relied upon as true statements. Witnesses for Prosecution on the other hand denied assaulting, threatening or having used any kind of unfair practices or promises to obtain answers.
- [21] It is for you to assess what weight should be given to answers given by the accused in their respective caution statements. If you are not sure, for whatever reason, that admissions made by an accused are true, you must disregard them. If, on the other hand, you are sure that they are true, you may rely on them.

- [22] Accused persons in their respective caution statements while admitting their involvement in transactions, deny having had any knowledge that the money was derived or realized directly or indirectly from some form of unlawful activity. You may think that their denials do not have the same weight that you may attach to admissions in their caution statements. However, it is your duty to consider the caution statement as a whole and other evidence led in trial in deciding where the truth lies. If you are not sure, for whatever reason, that admissions made by the accused are true, you must disregard them. If, on the other hand, you are sure that they are true, you may rely on them.
- [23] In testing the consistency and credibility of a witness you should see whether the witness is telling a story on the same lines without variations and contradictions. You must however, be satisfied whether such contradiction is material and significant so as to affect the credibility or whether it is only in relation to some insignificant or peripheral matter.
- [24] You must remember that merely because there is a difference, a variation or a contradiction or an omission in the evidence on a particular point or points that would not make witness a liar. You must consider overall evidence of the witness, the demeanor, the way he/she faced the questions etc. in deciding on a witness's credibility.
- [25] I will now remind you of the Prosecution and Defence cases. It is fairly a long trial with some interruptions. It would not be practical for me to go through the evidence of every witness in detail. I will summarize the salient features. If I do not mention a particular witness, or a particular piece of evidence or a particular submission of counsel that does not mean it is unimportant. You should consider and evaluate all the evidence and all the submissions in coming to your decision in this case.

Case for the Prosecution

PW 1 Epeli Tuiwainoco Racule

- [26] In the year 2011, Epeli was based at the Operation Risk Unit in Westpac, Suva, handling internal and external investigations and Money Laundering cases in his capacity as the Senior Operation Risk Officer.
- [27] On **29th of July, he got a search warrant (PEX1)** from CID Headquarters in Suva, asking for accounts information of Laurel Vaurasi and Shekina Law. He provided certified copies of the bank account statements since their accounts had been hacked and unauthorized transactions or transfers to a few account had been done. The bank noticed the said unauthorized transactions **somewhere in July, 2011** and the customer Laurel Vaurasi was notified over the phone about them and later in writing.
- [28] This particular account of Shekina Law was a Trust Account. It can only issue cheques to their clients. Online transfers using internet banking are not permitted. When the bank noticed online transfers from the Shekinah Law Trust Account to some other accounts, a suspicion arose.
- [29] The bank was able to locate where the unauthorized transfers had ended up. The witness tendered the bank statement for the Shekinah Law Trust Account (PEX2) and pointed out all suspicious transactions. The witness identified all suspicious transactions and managed to contact all the customers including Danford into whose accounts the monies had gone.

- [30] Eight transfers, \$1,500.00 each, worth \$12,000.00 in total, had been made to one Avenai Danford's account between 15th of July and 21st of July 2011. He contacted Avenai Danford and informed about unauthorized transactions. He could not recall exactly when he contacted Danford. He was interested only in recovering the funds. Danford mentioned that he transmitted part of the funds offshore to an unknown destination. He could sense that Danford understood the nature of unauthorized transactions when he said that there was no money left with him to pay the bank. Danford, couldn't reveal over the phone how he received the money he transmitted offshore.
- [31] The witness tendered in evidence the bank statement of Danford (PEX3) to point out the unauthorized transactions from 15th to 21st where the money in Shekina Law account was transferred to Danford's account. Witness said that prior to that money started going into the account of Danford it was an overdrawn account as at 14th of July, 2011. Witness further said that when the first transfer to Danford's bank account was done the narration of the transaction read as 'rent'.
- [32] After this money came into Danford's account, a sum of \$1,000.00 (\$500.00 each) had been withdrawn on the same day on two occasions from an ATM in Lautoka City Mall. He explained in detail the other transactions (both remittances and withdrawals) that followed. He confirmed that on the 18th July alone, there had been six different withdrawals from different places in Lautoka. Witness said that a sum of \$12,000.00 credited into Danford's account from the 14th to the 21st was a result of unauthorized transactions. Only a sum of \$7.58 was left in Danford's account as at 21st of July, 2011 after all the withdrawals. Witness said that the money had been withdrawn using the ATM card issued to Danford. Witness said that the ATM card and PIN number are issued to the customer and all the withdrawals done using that card are deemed to have been done by the customer.

- [33] The witness tendered the correspondence that took place on, 21st and 22nd July, 2011 between the Westpac Bank and Shekina Law (PEX 4) and said that the bank was aware of those suspicious transactions from 21st July, 2011. He said that Danford was informed later during the month of July 2011 before the bank received the search warrant.
- [34] The witness issued bank statements of Salesi Toa Finau (PEX 5) on a request from Police. A sum of \$890.00 was transferred in another unauthorized transaction to Avitesh Chand's account (statement of which is PEX 6) on the 1st of August, 2011.
- [35] There were two other unauthorized transfers on the 1st of August, 2011, of \$500.00 and \$145.00 from Alvish Amol Kumar's account (statement of which is PEX 7) into the account of Avitesh Anil Chand's account. From Salesi Finau's daughter Lolini Tale Finau (PEX 8)'s account, a sum of \$145.00 had been transferred to Avitesh Chand's account on the 1st of August, 2011. All three unauthorized transfers made into Avitesh Chand's account bore the narration 'rent'.
- [36] Witness said that he spoke to all the customers including Avitesh Chand into whose accounts the unauthorized payments had been made on line. Avitesh's account was opened in May, 2011 and it had only \$2.79 cents on the last day of July, 2011, when it received funds from unauthorized transfers. Soon after these transfers, there had been two withdrawals on the 1st of August, 2011.
- [37] Under cross examination, by Mr. Anthony, the witness said that he could not confirm that transactions were part of an online scam that had an international component.

[38] Under Cross Examination by Ms. Vulimainadave, the witness said he contacted Danford sometimes after 21st of July 2011 but could not remember the exact date. He called up on the phone number of Danford that had been provided to the bank and asked him as to where the stolen money was. Witness denied that Danford had informed him that one of his friends had been using his (access) card. Danford only informed him that the funds were transferred offshore and there was no money left in his account.

[39] The witness confirmed that he had recorded two statements, one on 2nd August and the other one on 3rd August, 2011. He admitted that, in his statement to police dated 3rd August, 2011, he did not mention about the conversation he had with Danford.

PW 2 ASP Serupepeli Neiko

[40] Back in 2011, Neiko was attached to the Cyber Crime Investigation Unit of the CID as an inspector of Police. On 2nd August, 2011, he travelled down to the Lautoka Police Station to assist in an investigation with regard to an alleged internet banking fraud at Westpac Lautoka branch and arrived at Lautoka after 8.00 pm. with Sgt. Epi Veimosoi, Sgt Abhinesh Chand, Corporal Nilesh Kumar and driver Paula Katoni.

[41] On the 03rd of August, 2011, he conducted the interview on Danford at the *bure* in the presence of witnessing officer, Sgt. Abhinesh Chand. He met the other suspect Rahul Naidu also in the same afternoon before the commencement of the interview.

[42] Before or during the interview, Danford was not assaulted, threatened or given a false promise or inducement to admit to the allegation. Danford was cautioned

and given all his rights, meals and breaks. He was given an opportunity to speak to his father. Danford did not complain of anything before, during or even after he was released from custody on the 4th. The witness read the record of interview of Danford in evidence which he tendered as PEX 9. Danford's bank account statement (PEX 3) was shown to him during the interview.

- [43] The interview resumed again on the 29th of October 2012, almost after one year. The delay was due to other pending investigations in regards to complaints received from other victims. After the interview, Danford was released. No complaint was received from Danford or his family that he was threatened or given a promise to obtain admissions. Danford was charged in 2013.
- [44] The witness also participated in the search conducted at Rahul's residence at Rifle Range on the 3rd day of August 2011. No officer assaulted or threatened Rahul during the search operation. No complaint to that effect was received even after his release. Rahul was also charged in 2013.
- [45] Under Cross-examination by Mr Anthony, the witness admitted that Rahul cooperated with police during investigation and all necessary documents were handed over to them voluntarily. He said that all the documents uplifted were listed in a search list and denied that he was shown emails Rahul had allegedly received from Western Union office overseas in the form of a survey and that was the reason for the slow progress of the investigation.
- [46] Under cross-examination by Ms Vulimainadave, the witness denied that when Danford was being taken to the *bure* he uttered threatening words. He also denied that Danford was afraid and crying. He further denied having promised Danford that if he admitted the allegation nothing will happen and he will be released.

PW 3 D/Inspector Epi Veimosoi

- [47] In 2011, Epi was based at the Cyber Crime Investigations Unit in Suva. He went down to Lautoka Police Station to conduct an investigation into fraudulent online transactions. He met two suspects prior to the commencement of the interview at the *bure*.
- [48] On the 3rd of August, 2011, he commenced the interview of Rahul Rajan. The witnessing officer was Sgt. Nilesh Kumar. Interview was continued onto the following day. The interview was suspended to conduct a search at suspect's residence on a search warrant and resumed late on the 4th as they went for a search at Rahul's Nadi office. Rahul was released after the interview on the 4th. Before or during the interview, or during the search, Rahul was never assaulted, threatened or given any promise to admit to the allegations. Rahul was cautioned and all his rights were afforded. No complaint was received before, during or after the interview that the suspect was ill-treated or assaulted. The caution interview of Rahul (PEX10) was read and tendered in evidence together with the search warrant (PEX11).
- [49] In 2012, the witness was on study leave and on the 29th of October, 2012, the interview of Rahul was recommenced before the witnessing officer DC Nilesh Kumar. During the search at Rahul's Nadi office, 'To Send Money' forms (PEX12) were voluntarily handed over to them by Rahul. The witness also formally charged the 3rd accused Ranigal.
- [50] Under Cross-examination by Mr Anthony, the witness admitted that he had not recorded that Rahul was physically fit to answer to the interview. Witness said that Rahul never requested a medical examination. He denied slapping, threatening or assaulting Rahul during the interview or transportation. He admitted that Rahul cooperated with police during the search and had informed

of a Western Union survey that was carried out online. The witness said that the interview was suspended to investigate the matter further and admitted that they failed to investigate into overseas component of the scam.

[51] Under Cross-examination by Ms Vulimainadave the witness said that he could not recall if Neiko had spoken to Danford threateningly.

[52] Under cross-examination by Mr Kumar the witness admitted conducting the formal charge of Ranigal at Lautoka Police Station on the 6th of January, 2013. He admitted that the amount stated in the charge that 3rd accused allegedly facilitated to send overseas is \$9,640.00. He also admitted that the amount mentioned in the information is \$6,500.00.

PW 4 Laurel Vaurasi

[53] Ms. Vaurasi a lawyer by profession runs Shekina Law firm. This law firm had a trust account back in 2011 with Westpac bank. It had online banking facility.

[54] On the 20th or 21st of July 2011, she was notified of some unauthorized fund transfers from their Westpac trust account to certain individual's bank accounts. When she accessed the account online she found that the beneficiaries of those transactions were not clients of the firm. She had given the password only to the office manager and her husband, who looked after the accounts.

[55] When shown, the witness recognized the Shekinah Law Trust Account bank statements (PEX2) for the period from January to July 2011. She pointed out all the unauthorized transactions from 5th to 21st July 2011 where the payments had been made to Isalei Matini, Sachinda Latchman, and to Avenai Danford.

- [56] The witness said that the account had a balance of \$54,776.45 and after the last unauthorized payment on the 21st, only a sum of \$38,276.45 was left in the account. When she discovered these unauthorized transfers, she called the Bank Manager on 21st July, 2011 and alerted him and also wrote to the bank two letters (PEX4). She said that she did not notice any unauthorized transfers after 21st of July 2011. The witness confirmed that Avenai Danford was never a client of her office. She further said that the full amount was reimbursed by Westpac Bank.
- [57] Under Cross-examination by Ms. Vulimainadave the witness said that the bank had not informed her about the person who had moved the funds from her account.

PW 4 Shoeb Nur Ali

- [58] In 2011, Shoeb was employed by Fiji Meats Limited as the Pay Master. He said that Rahul Rajan Naidu was a friend of him from his school days. On 14th of July, 2011, he got a call from Rahul and asked if he had a Westpac bank account. When he answered in the affirmative, Rahul asked whether he had any money in the account. When he said 'yes', Rahul wanted him to find Westpac account holders who are not using their accounts. Rahul had told him that he wanted Westpac accounts because his brother wanted to send money from abroad. He thought of his friend Avenai Danford and asked Rahul if he could check with Danford. When he checked with Danford, he agreed to give his account to Rahul. Danford gave his account number to him and he gave the same to Rahul over the phone. On the same day, Rahul told the witness to call Westpac and check if the money had come in. He had a lot of contacts in the bank and just cross-checked with his friend Raj at Westpac to see if Danford's account had been credited. The banker confirmed on the same day that Danford's account had been credited with \$1,500.00 and it had received funds. Then he informed Rahul about this. Rahul wanted him to tell Danford to withdraw \$1,000.00 from the bank and send

it to his internet shop at Nadi. Danford followed his instructions and dropped it off to Rahul on the same day.

[59] In the evening of 14th all of them (Danford, Rahul and the witness) gathered at Rahul's place. Rahul told them that the money was not sent by his brother, but by one of his facebook friends who had asked him to work for them in a global money link service company. Witness said that Rahul had lied to him in the first place (that the money was sent by his brother) because those guys from the overseas company had told Rahul not to tell anyone. Rahul bought alcohol, food and chaser and threw a drinking party because he was getting paid in commissions. Rahul also said that if he worked well, he'll have a permanent job here since they were planning to open a branch in Fiji. They had also promised a greener pasture. Witness emphasized that Rahul didn't pay for his services but only for the drinks and meals.

[60] One or two days later, Rahul called him several times on phone because he needed IDs to send money abroad. Rahul said that he needed ID's to send money through Western Union to the same people who had promised him a job. Rahul told him to fax ID's directly to Western Union in Nadi. He followed Rahul's instructions and filled in the form he received from Western Union and, after signing, faxed it back with a copy of his ID attached to it. It was his first time he was sending money through Western Union. A few days later Rahul again asked for a few IDs for the same purpose. He then asked his colleagues at Fiji Meats if they could help him by sending their IDs. The witness said that on nearly 5 different occasions he asked his colleagues to fax their ID's to Western Union at Nadi because Rahul wanted to send money abroad.

[61] The witness found the transactions getting frequent and unusual. Using his contacts at Westpac, he queried with the bank regarding the money that was coming in to Danford's account. The bank confirmed that it was a normal electronic transfer, so he just moved on.

- [62] When shown, the witness recognized the forms that were faxed to his company from Western Union on Rahul's instructions. Witness read names of his colleagues whom he had identified to help Rahul. The witness tendered 'To Send Money Forms' they had faxed to Western Union as PEX 13. Naomi Seru, the receptionist of Fiji Meats was the one who faxed all the forms to the female recipient at Western Union.
- [63] He found the transactions odd and when queried, Rahul did show him the chats on facebook with the people who had approached him and the messages they had emailed to him about the employment opportunity. One day Danford called and said that there was something wrong with the money and that he needed to go to the bank and surrender his card back.
- [64] Under Cross-examination by Mr Anthony, the witness agreed that he gave the police a statement on the 4th of August 2011, when he and all of his colleagues were taken to the police station for investigations. He admitted seeing the chats Rahul had with his Facebook friends and the survey forms and information they had shared with Rahul about a better employment opportunity and a chance of going abroad. He saw Rahul giving all the information to police at the *bure*. Witness said that when Danford had informed that this money was wrong, he got scared but he didn't tell Rahul about this because he was taken to the police station for investigation.
- [65] Under Cross-examination by Ms Vulimainadave, the witness said that he introduced Danford to Rahul because Danford was not working and therefore his Westpac account did not have money in it and also it was not being used. Danford gave his account number to the witness when Danford was told that Rahul needed that detail for his brother to send money from Australia. That is what Rahul had told him. Once he received the account number, he then contacted Rahul and gave him Danford's account details. Witness denied that he

had told police that he had only assumed that the money was from Rahul's brother who lived in Australia. He said that, on Rahul's request, he checked Danford's account only once with his friend Raj at the bank. When the transactions became frequent, Danford became curious and Danford himself went with him to the bank to cross check if those transactions were okay. Bank officer said that it was just a normal electronic transfer and some sort of 'rent stuff'. According to the banker, 'Rent' was the narration mentioned for those transactions. Later on, the bank had called Danford and informed that the money he received was stolen money from other accounts. Witness denied telling police that he received about \$400.00 from Rahul on different occasions as he was assisting him in providing IDs for him to send money overseas.

- [66] Under cross-examination by Mr Kumar, the witness said that all his colleagues used valid ID's and signed the forms before sending them to Western Union.
- [67] Under re-examination, the witness said that he didn't enquire with Rahul about the 'rent narration' after the inquiry with the bank.

PW 5 Alvis Anmol Kumar

- [68] Witness Kumar said that in 2011 he had two bank accounts with Westpac, one of which had online banking facility and access card. He used to check his balance on line once or twice a week. On 1st of August 2011, he noticed something wrong with the balances in his savings account at Westpac as some funds were missing. Only he had the password. He went to the bank and informed that \$500.00 FJD had gone missing from his account. He then went to Nadi Police Station and lodged a report. When PEX7 was shown, the witness recognised his bank statement and the unauthorized transfer of \$500.00 made to Avitesh Chand's account on 1/8/11.

PW 6 Adi Laisa Lalakobau

- [69] In the year 2011 witness was employed at Fiji Meats Ltd as a Sales Clerk. Shoeb Ali was the pay clerk. Naomi Seru, Vineet Nair and Marian were with her at the sales section.
- [70] She was approached by Vineet Nair. Vineet was sent by Shoeb Ali. Vineet asked for her FNPF card. He gave her FNPF card because she thought it was being used for pay deduction. It was photocopied and returned. A few ladies in front office all gave their cards to Vineet to be photocopied. On 4/8/11 they all, Marian, Akosita, Naome, Shoeb and Vineet were taken down to the Lautoka Police Station for questioning. A police officer showed some forms used to send money overseas and he asked her whether it was her signature against her name. She said 'no'. She recognized PEX 13 as the form shown to her by police. When it was shown she denied that it is her signature although her name appeared in the form and said that she did not even know the Nigerian person mentioned therein. She also denied that she had gone to Nadi Town on 17th of July 2011 at around 8.00 pm to send money.

PW 7 Marian Bernadette Naruma

- [71] In the year 2011, she was employed at Fiji Meats. She said that she gave her ID to Pay Master Shoeb Ali sometimes in July 2011. Shoeb said that his friend needed to send \$500.00 through Western Union and so she just gave her ID to help him. Shoeb photocopied it and gave it back and then shortly after that he gave her a Western Union fax form to sign. When PEX 13 was shown to the witness she recognized Western Union 'To Send Money' form she had signed. A month later, the CID officers questioned her. She said that she did not physically go to Western Union to send money.

PW 8 Ravinesh Mani

- [72] Mani is the General Manager for City Forex Foreign Exchange Company. Back in 2011, he was the Operations and Compliance Manager looking after all five branches to ensure that procedures and guidelines of Reserve Bank of Fiji (RBF) are followed by all Front Line Officers (FLO) when money transfers are made.
- [73] Reema Ranigal was looking after the Nadi FDB Building Branch for Western Union back in 2011. All FLO are given compliance training and awareness about guidelines of the RBF at the Head Office first. Reema Ranigal went through this training when she joined City Forex back in 2010.
- [74] Western Union can send money to 500,000 locations all over the world within 3 minutes. Witness described the procedure to be followed when sending money. The sender must go to the nearest Western Union Branch and fill up a To Send Money form, and produce his or her ID to the Front Line Officers or Tellers. FLO then does the checkup with Head Office as to the limit. The branch where the transaction is conducted then processes it after taking prior approval from Reserve Bank of Fiji if the amount exceeds \$500.00. A person can send only \$500.00 per year.
- [75] Once the transaction is processed, Money Transfer Control No. and a receipt to confirm the transaction are generated by the system of Western Union. The receipt is issued to the customer. Witness confirmed that PEX 13 is the form to be filled when sending money through Western Union and PEX 12 is the receipt to be issued to confirm the transaction.
- [76] Back in 2011, a third party cannot send money using somebody else's ID. Sender needs to be physically present to send money. He or she is required to produce a

valid ID card. All tellers including Ranigal were well aware that there is no third party sending for Western Union.

- [77] The witness was shown number of such receipts issued to the sender (PEX 12). According to the 1st receipt, the sender is Rahul Naidu and the recipient is one Zen of Nigeria. The transaction was processed on 15th July 2011. It was processed by operator ID 109. That operator ID No. belonged to Reema Ranigal. Collection currency is Fijian Dollar amount is \$455.00, sender charge is \$45.00, and the collected from sender is \$500.00. Witness read the warning at the back of the receipt "Be careful when a stranger asks you to send money" The customer had signed the receipt. It means that he was physically present at premises. He recognized teller Reema's signature on the form.
- [78] According to the second receipt, the Sender is Rajnani Naidu. Amount in total is \$500.00, sent from the same branch on 16/7/11. Recipient is a Nigerian. ID used is passport. Teller was Reema. Ranjaneel Naidu had not been present because she had not signed.
- [79] According to the third receipt, sender is Babu Naidu, sent \$500.00 in total from the same branch on 16/7/11. Recipient is a Nigerian. ID used is National Identification card. Teller is Reema. There was no customer signature.
- [80] According to the fourth receipt, Sender is Evelyn Danford. ID used is FNPF card. Sender's signature is not present. Recipient is Nigerian, sent \$500.00 in total from the same branch on 15/7/11. Teller is Reema.
- [81] According to the fifth receipt, sender is Vineet Nair. Sender has not signed. There is no ID, sent \$500.00 from the same branch on 18/7/11. Teller is Reema.

- [82] According to the sixth receipt, sender is Naomi Seru. No signature from the sender. No ID from the sender, sent \$500.00 in total from the same branch on 18/7/11. Teller is Reema.
- [83] According to the seventh receipt, sender is Maryanne. No customer signature. No ID, sent \$500.00 in total to Nigeria from the same branch on 18/7/11. Reema is the teller.
- [84] According to the eighth receipt, the sender is Adi Lalako. ID is FNPF number, sent \$500.00 in total to Nigeria from the same branch on 18/7/11. Reema is the teller. No customer signature.
- [85] According to the ninth receipt, sender is Praneel Archari. No ID mentioned, sent \$500.00 in total to Nigeria from the same branch on 21/7/11. Teller is Reema.
- [86] According to tenth receipt, sender is Unaisi. No signature of the sender, sent \$500.00 in total to Nigeria on 18/7/11 from the same branch. Reema is the teller.
- [87] According to the eleventh receipt, the sender is Sandeep Chand. No signature of the sender. No ID, sent \$500.00 in total to Nigeria on 21.7.11. Reema is the teller.
- [88] According to twelfth receipt, Salendar Nair is the sender. No ID, sent \$500.00 in total to Nigeria on 28.7.11. Reema is the teller.
- [89] According to the thirteenth receipt, Bobby Naicker is the sender. No signature of the sender. No ID, sent \$500.00 in total to Nigeria on 18.7.11. Teller is Reema.

- [90] The witness said that Rimakshni Ranigal had not followed the proper procedure when she failed to verify the identities of most of the senders by not putting their ID numbers and the sender not having signed the form and the sender being not physically present at the branch.
- [91] Witness said that in 2011 they had retrieved a copy of each transaction in the system checked by the admin team quarterly or monthly. However they could not find those irregularities until the CID guys visited the Suva office.
- [92] Under Cross-examination by Ms Vulimainadave the witness said that even without an ID and signature of the sender the teller can process a transaction however the sender should be on the counter to sign the form. By looking at the form where Avenai Danford's name is printed, the witness said that the sender was not present because his signature is not on the form.
- [93] Under Cross-examination by Mr Kumar the witness said that the identity of the sender is verified at branch and not at the Head Office. Witness admitted that RBF and Western Union procedures or emails sent to the branches were not tendered in evidence. He denied that he had allowed Reema to go ahead with third party transfers on numerous occasions. Witness admitted that Reema was a nice worker and awarded a certificate in appreciation for Excellent Customer Service in November 2011.
- [94] Witness said under re-examination that when he appreciated Reema on 21/9/12 he was not aware of this allegation against her.

PW 9 Bhawikha Naidu

- [95] Bhawikha is married to Rahul, the first accused. Rahul took her ID sometimes in 2011 saying that he had an offer to work in overseas and had to fill some survey forms to do the assessment. When she was shown PEX 12 she denied having used her ID in 2011 to send money overseas. She said Rahul sent money overseas through Western Union using her ID as part of the survey. She said Rahul got a job offer from Nigeria through an email. She did not know whose money he was sending. Rahul did not send his own money.
- [96] Under Cross examination by Mr. Mark Anthony the witness admitted that she had sighted the survey forms and the job description of the employment. She said the survey was in relation to foreign exchange.

PW 10 Naomi Seru

- [97] When she was working for Fiji Meats Ltd in 2011 she gave her wages card to Paymaster Shoeb Ali. She said she did not send money overseas in the year 2011.

PW11 DC Nilesh Kumar

- [98] Back in the year 2011 DC Nilesh was based at the Cyber Crime Investigations Unit in Suva. He was appointed the Investigating Officer when the complainant was received from Laurel Vaurasi of Shekinah Law.

- [99] On 3rd of August 2011, he went down to Lautoka Police Station with ASP Seru Neiko, Inspector Epi Veimosoi, Inspector Avinesh to assist an investigation whereby two suspects were arrested in relation to internet banking fraud.
- [100] He met the two suspects Rahul Rajan and Avenai Danford, at the Lautoka Police Station bure. They appeared normal. He was instructed to be the witnessing officer for the caution interview of Rahul Rajan which was conducted by Inspector Epi Veimosoi on 3rd August 2011 at the bure. ASP Seru Neiko conducted the interview of Avenai Danford with Inspector Avinesh in the same bure. Before, during or after the interview Rahul did not complain about anything. Rahul was not assaulted, threatened or forced by any police officer to admit the allegation during the caution interview or search. Rahul was given all his rights, adequate breaks and meals. The interview was suspended around 4.00 pm.to conduct search at the residence of Rahul Rajan.
- [101] At the residence, only two IDs that were used to remit the money were taken. A statement was recorded from Rahul's mother Ranjini (PEX 14) on the 4th of August, 2011 was read and tendered in evidence with consent because she was bedridden.
- [102] Ranjini had told police that she had never given her passport to anybody to be used as an ID to send money overseas and had never signed any money sender form. Sometimes in early July 2011 she had given her sister's son Abhitesh's account number to Rahul because he told that he was getting some money at Westpac bank.
- [103] On the next day, the 4th of August, 2011, they conducted a search at Rahul's shop. Rahul cooperated and voluntarily gave them some money sending forms (PEX 12) and some survey forms. Rahul was escorted back to Lautoka Police Station, and his caution interview was recommenced. When it was concluded,

Rahul was released. No complaint was received from Rahul of anything after the release.

[104] On 29/10/12, at Lautoka Police Station bure, he took over the interview as Inspector Epi Veimosoi was on study leave. PC Paul Katoni witnessed the interview. Delay was due to three separate complaints received at Suva, Lautoka and Nadi and there were documents to be verified, bank statements were to be analyzed and there were only four officers in the investigation team to deal with numerous cases.

[105] Witness read the caution interview he conducted. Rahul was released from police custody after the interview on 29th October 2012. Rahul or his family never complained against him or any other officer for any assaults or threats against Rahul during the time he was being interviewed and investigated. Rahul was charged sometimes in January 2013. The witness also interviewed Ranigal and witnessed her charge and also that of Danford.

[106] Ranigal was interviewed on 30th October 2012 after Rahul's interview was completed. It was witnessed by her father, Prasad. The witness then read the caution interview of the 3rd accused in evidence.

[107] Under cross-examination by Mr Anthony, the witness admitted that Shoeb was also taken in for questioning regarding this case and his statement was recorded on 4/8/11.

[108] He also admitted that Rahul cooperated with investigation and apart from the money sent forms, Rahul had given survey forms voluntarily. All documents were handed over to Lautoka Police for compilation and to be exhibited. Emails

and facebook chats were sighted by Inspector Epi Veimosoi but no hard copies were given to him.

[109] Witness agreed that by the time the accused was charged, there was no statement given by him or disclosed. He agreed that investigators could not establish the origin of email or Facebook accounts.

[110] Under cross-examination by Mr Kumar the witness agreed that the 3rd accused was questioned sometimes in August of 2011 and verbally cautioned and released. Before going to Ranigal, his investigation team went to the Head Office of Western Union and informed Ravinesh Mani about the investigation and allegation.

[111] Under re-examination by Mr Singh, the witness said that when they visited City Forex Head office, the investigation was in the preliminary stages.

[112] That was the case for the Prosecution.

[113] When the Prosecution had closed its case, you heard me explain to the Accused persons their rights in defence that they could remain silent and say that the Prosecution had not proved the case beyond reasonable doubt; they could give evidence and be subjected to cross examination and call witnesses on their behalf.

[114] You are aware that the 1st Accused elected to give evidence under oath although he had nothing to prove in this case. By electing to give evidence, he assumes no onus of proof. That remains on the Prosecution throughout. He is under no obligation to prove his innocence. His evidence must be considered along with

all the other evidence and you can attach such weight to it as you think appropriate.

[115] 2nd and 3rd Accused elected to exercise their right to remain silent. That is their right. You should not assume that they remained silent because they are guilty. They have nothing to prove in this case.

Case for the Defence

DW1 Rahul Naidu

[116] 1st accused said that on 1st August 2011, he went to the Westpac Bank in Lautoka to enquire about money sent from overseas to an account of one of his friends. He was asked by a teller to see the Manager. When he was waiting, police officers came and arrested him and took him to the Lautoka Police Station.

[117] Jasmin Olich of Global Link Money Services based in the UK offered him an online job. The offer came through emails, calls and facebook chats and he was given the survey form to evaluate customers who are sending and receiving money through Western Union. The survey was to evaluate the services of Western Union in Fiji as to how far the money can be sent to African countries. He had to fill in the survey forms and send them back. He was supposed to withdraw the money they were sending from overseas from Westpac Bank and send the money back to them through Western Union after deducting his commission. Global Link Money Services promised him a job overseas if he was successful in his survey. He accepted the offer. He was strictly advised not reveal this survey to anybody because they were evaluating the services of the Western Union.

- [118] As soon as he accepted the job, they asked about his bank account details in the same afternoon. When he indicated that he had his account with BSP, they wanted a Westpac Account. He then called his friend Shoeb and asked him if he could use his (Shoeb's) account as he was expecting someone to transfer money to Westpac Bank. Shoeb gave account details of his friend Danford. Then he sent those details to the Jasmin Olich who advised him to wait for a few minutes and check if the money is there in the account. Then he called Shoeb to check if the money had come. Shoeb, having contacted Danford, confirmed that \$1,500.00 had come. When this was conveyed to Jasmin, she advised him to take the commission and send the rest of the money back to them through Western Union. Avenai and Shoeb brought the money over to Nadi.
- [119] Danford and Shoeb were curious about where the money had come from. Then he showed them the survey forms and the chats he had with Jasmine.
- [120] Upon his arrest, police questioned him about few accounts in Westpac and whereabouts of the money. When he said he did not know, the police locked him up. Police officers from Suva came during night and kept on asking about the money. He was worried and frightened. On the next day, he was taken to the *bure* and further questioned. When he denied any knowledge, he was slapped and when he was being escorted to his house for the search he was again assaulted by Seru Neiko.
- [121] He gave to police all documents and overseas contact details of his employer voluntarily. The police wanted him to take a call his employer overseas and ask where the money was coming from. He did call and inquired about the origin of money. That person refused to disclose the source and asked him to leave the work if he was not interested. He gave some more documents and details of contacts and printed facebook chats voluntarily to police when they took him to the shop at Nadi. In the afternoon he was released after cautioning him not to have any contacts with Jasmin. In 2012 he was summoned again for questioning.

- [122] Rahul said that he became suspicious when Danford and Shoeb were not responding to his calls for 4 or 5 days before he was arrested and went to the bank to find out about accounts of Danford and Avitesh. He became aware that the money he received was tainted only when he met Danford at the Lautoka Police Station. Danford told that he received a call from the bank a week ago and got afraid that is why he did not contact.
- [123] Rahul said that he sent \$500.00 by himself first and sought assistance from Danford and Shoeb to send more money abroad. They gave their IDs and filled the forms knowing that he was employed by Global Link Service.
- [124] Rahul said that he and Danford planned to put Shoeb apart because Shoeb wanted to be part of this business with the intention of collecting more commission than him
- [125] He believed that the money was coming from a legitimate source when he was employed by Global Link Service and also when Shoeb and Avenai were assured by Westpac that money was legal.
- [126] Under cross-examination by Mr Singh, Rahul said that he met Danford for the first time when he brought the money to his Nadi shop. He admitted that he also worked at City Forex for a month or two as a driver. He denied having been taught about how to send money overseas during that period. He admitted that he got in contact with Rimakshni when he worked with City Forex and that he maintained the contact even after leaving City Forex. He admitted opening the internet shop in 2011 and having a basic IT knowledge.
- [127] Rahul admitted that he selected bank accounts of Danford and his cousin Avitesh because they satisfied the condition of his employer that the account

should not be in use and should not have any other money. He was not aware why they wanted only Westpac accounts when the survey was intended to evaluate Western Union.

- [128] Rahul said that all important documents that show that he was offered a job including the appointment letter were seized and his facebook and email accounts were deactivated by police officers. He told his counsel about the seizure of these important documents.
- [129] He admitted that opening a bank account with Westpac would have been easier but he did not open a Westpac bank account for himself and opted to use someone else's, mostly of stranger's accounts. He was only told to withdraw the amount that person was sending to the bank and to take \$200.00 and send the rest back to the same person.
- [130] He admitted lying to Shoeb because he had to comply with his employer's condition. He admitted however that he disclosed all details to Shoeb and Danford because he wanted to use their accounts. Jasmin and Lucia told him that they were from UK. He did not suspect why they wanted to have money transferred to Nigeria because he knew that the survey was intended to evaluate the quality of money transfers to Africa. He admitted that he was in contact with his overseas employers for 3 weeks before the first money was deposited but he did want to open an account with Westpac because they were okay with using somebody else's account.
- [131] He admitted that he used only one Western Union branch in Nadi for his survey and all transfers were facilitated by Rimarkshni.

- [132] He said that did not pay a commission to Danford for the first transaction but drank together. Later on he gave commission to Danford. He later admitted that Danford after the 1st withdrawal came to Nadi with \$1,000.00 and \$100.00 was given to Danford as a commission. Rahul said that all staffs are trained in the teller job to replace if one staff is absent.
- [133] He admitted sending \$500.00 through Western Union to a person in Nigeria on the 15th of July 2011 and that on the same day he used his mother Ranjini's passport to send money overseas without her knowledge. He also admitted that he sent money to a Nigerian on the 16th July, 2011 using his wife Bhawikha's ID without her knowledge. He admitted that Ranigal was the teller who facilitated these transactions. He said that according to instructions given by superiors, money can be sent without sender being present.
- [134] He admitted that he was aware that the money which was deposited into Danford's account was classified as 'rent'. When Danford and Shoeb queried about this he asked them to check with bank if everything was okay. The bank staff had confirmed that nothing wrong with the account.
- [135] He admitted that 'To Send Money' (PEX13) forms were faxed on his instructions to Fiji Meat Staff for their signatures because Rimarkshni said that money could not be sent unless the senders had put their signatures. He said that it is not compulsory to sign PEX 12 forms. He admitted that both his wife and mother did not sign any forms, were not physically present and not aware of those money transfers. He said that Danford was physically present with him when he sent money although his signature was not there.
- [136] Rahul admitted that after 21st of July, 2011, he dropped Danford and requested his cousin Avitesh to facilitate transactions. He denied that this sudden shift

happened when he came to know that Danford was called by the bank, stating that the money was stolen.

[137] Rahul admitted that Avitesh received \$1,535.00 to his account on 1st August, 2011 and from that, \$1000.00 was withdrawn and \$980.00 was given to him on the same day. He said he couldn't send this money overseas because he was arrested. He admitted saying to police that he did not have any money.

[138] Rahul denied having any knowledge prior to 1st of August 2011 that there is something wrong with money. Explaining the admission in his interview at "*Q.198 that Danford received a call from the bank about after 4 days from the last money received in his account which was around 25th July, 2011*", Rahul said that Danford told this at the police station. Rahul said that he did not inform Avitesh the origin of that money that was to be deposited into his account. Rahul said that he realized later that the documents including his appointment letter that were seized from his shop were important to his defence and told his counsel about it. Although his counsel requested those documents, the prosecution failed to disclose them. He admitted that he did not make a formal complaint against Neiko for assaulting him or that he did not receive visible injuries or go for a medical examination.

[139] Rahul admitted that he used only the Clay Street branch of Western Union because he knew Ranigal and that he informed her that he was sending money to Nigeria to buy computers. He admitted that the fact that emails, chats and appointment letter were given to police was not mentioned in his caution interview.

[140] Under cross-examination by Ms Vulimainadave Rahul said that Danford queried about the origin of money only after the first transaction. He admitted lying to Danford when he said that money was being sent by his brother. He admitted

that he was the first person to know if money had been transferred to Danford's account and that Danford followed his instructions sent through Shoeb to withdraw money.

[141] Rahul denied withdrawing money from Danford's account although at one time Danford had given the access card and PIN number to him. He denied informing Danford that money was coming from a friend at Western Union overseas. He admitted that after discovering the 3 transactions on the 18th of July 2011 Danford and Shoeb had gone and enquired with Westpac about the origin of the money. He strictly denied that Danford or Westpac had informed him about dirty money until he came to the police station.

[142] Under cross examination by Mr. Khan, Rahul said that tellers at Western Union would never ask customers about the source of income and so long as the customer had a valid ID and a form signed by him the transaction is processed if the amount does not exceed \$500.00 per year. He admitted that he never gave a commission to Rimakshni. She is his former colleague and she just helped him in processing the transactions, and in return, he gave her lunch or refreshments. He admitted telling her that he was buying computers from Nigeria.

[143] Under re-examination, Rahul said that he had cash with him and he voluntarily gave all the cash to the police officer but could not confirm that it was \$890.00.

That is the case for the Defence.

Analysis

- [144] Ladies and gentleman Assessors, this case is simply about an online scam. There are four victims in this online scam. The first victim is Laurel Vaurasi the Principal of Shekina Law; the second victim is Sailasa; the third victim is Alvish and the fourth victim is the Westpac bank. The first three victims had online banking facility with Westpac Bank and money that was stolen from their Westpac Bank accounts was transferred online into the accounts of some other persons and withdrawn and later transferred to Nigeria via Western Union.
- [145] Altogether, 12 witnesses were called and 14 documents were tendered by the State to prove this case. Ladies and gentleman assessors if you find the witnesses called by the prosecution are reliable and their evidence believable, then you have to be satisfied beyond a reasonable doubt that each element of the offence of Money Laundering has been proved in respect of each accused.
- [146] I have already explained to you the elements of the offence. 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.
- [147] To prove that the monies that had come into the accounts of Danford and Avitesh Chand were stolen property, the prosecution called the principal of Shekina Law, Elvis Anmol and the banker Racule of Westpac Bank. None of the accused disputes that the money that came into the accounts of Danford and Avitesh was stolen property. Therefore, it is established that the moneys received in to these two accounts are proceeds of crime.

[148] Prosecution says that the first accused was the principal perpetrator as the money mule who coordinated the whole operation in sending money overseas; the 2nd accused was the recipient of the stolen money and that he assisted the first accused in sending the money overseas; the 3rd accused had breached policies and protocols of Western Union and, on the request of the first accused, she had facilitated 3rd party transfers to send money overseas.

[149] The only dispute in this case is with regard to the last element that the accused knew or ought reasonably to have known that the money was derived or realized directly or indirectly from some form of unlawful activity. This is the mental element of the offence of the offence.

[150] Prosecution argues that on the basis of the facts proved in evidence, each accused ought to have reasonably known that the money was tainted with illegality. To come to a conclusion as to their knowledge, the law requires you to use an objective test. Therefore, please look at the facts objectively to test whether the accused as reasonable persons ought to have known that the money was tainted with illegality when they were engaged in those transactions.

[151] All three accused persons 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. Only the first accused elected to give evidence under oath and maintained the same denial in Court. It is for you to decide the credibility of the 1st accused and his denial as to his knowledge.

[152] Other two accused exercised their right to remain silent. Therefore there is no direct evidence for you to conclude that the accused had the requisite guilty knowledge that the money was derived or realized directly or indirectly from some form of unlawful activity.

[153] In the absence of direct evidence, we don't know what was there in each accused's mind. Under these circumstances, the Prosecution relies on circumstantial evidence and invites you to draw certain inferences from proved facts and their conduct as to the knowledge of each accused. Please remember the inferences you draw must be reasonable in the circumstances and based on proved facts. You have to put each piece of evidence together to form the opinion whether each accused knew that money they were dealing with was tainted with illegality.

[154] The Prosecution strongly relies on the records of caution interviews of all 3 accused that are before you.

[155] 1st accused claims that he believed that he was carrying out legitimate transactions as part of a survey on behalf of his employer based in the UK as to the efficiency and viability of Western Union operations in Fiji in sending money to African region. Prosecution advanced certain arguments and invites you to discredit the claim of the 1st accused because none of them was satisfactorily explained in his evidence. I would draw your attention to some of them. Prosecution argues that:

- There were no documents to establish that 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.
- If the intended purpose was to evaluate the services of Western Union, there was no sense or logic in demanding only Westpac Bank accounts to send money.
- Despite being a condition of his job, the 1st accused had never opened an account with Westpac although he had ample time and opportunity to do so.
- 1st accused had used bank accounts of strangers which had no money and were not in operation although he was the main beneficiary of those transactions.

- The purported origin of money was UK while destination was Nigeria.
- Money was sent to several Nigerian nationals using the same test question.
- 1st accused only used Clay Street branch where his former workmate was the teller to conduct a survey that was intended to cover entire Fiji.
- 1st accused lied to Shoeb and Danford in the first place when he said that money was being sent by his brother. He later divulged all the information pertaining to the purported survey despite the condition to the contrary.

[156] You heard what the 1st accused had to say in reply to these arguments and his explanations. You decide whether these arguments and explanations given by the 1st accused will help you to form an opinion as to the credibility of the version of the 1st accused.

[157] The Prosecution also drew your attention to following pieces of evidence and asks you to draw the inference that 1st accused knew or ought reasonably to have known that money he was dealing with was dirty or derived illegally.

- 1st accused was aware that money sent to Danford's account on his request from 14th to the 21st of July 2011 bore the narration 'rent' which was not consistent with the purported claim that he was evaluating Western Union operations in Fiji.
- 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 the reason why he wanted to use Danford's account. He had said that his brother was sending him money from abroad.
- He engaged his former workmate Rimakshni Ranigal to facilitate 3rd party money transfers through Western Union.
- He paid Danford commissions for the work he had done.
- On his request, several IDs were obtained by Shoeb from Fiji Meats employees.

- As soon as money was deposited in to the accounts of Danford and Avitesh, 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 overseas were done at Clay Street branch, Nadi, where his former workmate was the teller, using ID's of strangers and ID's of his mother and wife without their knowledge.
- From 21st July 2011, the day the suspicious transactions were brought to the notice of the bank and Shekina Law, inward transfers into Danford's account suddenly came to an end.
- When suspicious transactions were brought to the notice of the bank, the bank called Danford and informed about unauthorized transactions and demanded money lost to the bank.
- Knowing that something was wrong with Danford's account, the 1st accused used his cousin Avitesh's Westpac bank account to continue his transactions.
- Avitesh's account received a sum of \$1,535.00 from three different accounts on 1st August 2011, and from that, \$1,000.00 was withdrawn on the same day and \$980.00 was given to the 1st accused.
- 1st accused did not disclose to his cousin Avitesh the origin of money and the reason as to why he wanted to uses his cousin's bank account.

[158] Prosecution further says that as per the answers given to questions 197, 198 and 199 of his interview, 1st accused knew that he was dealing with stolen money and despite that knowledge; he continued his criminal act by using his cousin's account.

[159] In this regard, the 1st accused in his evidence said that Danford informed about this only after they were taken in for questioning by police. It is up to you decide what weight you should give to 1st accused's evidence and whether he had the required guilty knowledge.

- [160] Prosecution says that the explanations given by Rahul are unbelievable and his version is not consistent not only with his previous statement but also with his own evidence in court. You have observed his demeanor and his conduct in court. You decide if his evidence is credible and believable.
- [161] Prosecution says that 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 drew your attention to Danford's caution interview. In that, he had admitted withdrawing money from several ATM's in Nadi and Lautoka on 18th July 2011 after he was informed that money had been deposited in to his account. Danford admits receiving a commission for each transaction. When he went to the bank to inquire about those transactions, he was informed that the narration for all 3 transactions was 'rant'. The Prosecution argues that given the purported purpose of money transfers he was made aware of, the narration 'rent' was not consistent with his stated belief that he was doing legitimate transactions and therefore, he ought, as a reasonable person, to have known that he was dealing with money tainted with illegality. It is for you to determine the rationality of this argument.
- [162] Prosecution says that the third accused Money Rimakshni Ranigal facilitated all illegal transactions going out of the way and therefore she as a reasonable teller ought to have known that she was sending money derived from an illegal source.
- [163] The Prosecution says that the 3rd accused carried out third party payments on the request of 1st accused violating policy guidelines and instructions received from Western Union as stated by Ravinesh Mani. They say that 3rd accused knew that one person can send only \$500.00 in one year and despite that knowledge she facilitated the transaction of Rahul by using ID's of other people who were not physically present. They say that 3rd accused went out of her way to fax blank form (PEX 13) to Shoeb and sent money overseas without verifying the IDs or

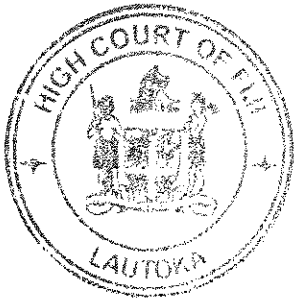
making sure that the person who is sending money is physically present and he or she has signed the forms. They say that Bhawikha Naidu and Rangini Naidu had never filled the two send money forms (PEX 13). They say that only one test question was given in every form. Prosecution is inviting you to draw inferences from her conduct as to her knowledge.

[164] The Counsel for 3rd accused argues that third party transactions are permitted and she was in compliance with the instructions she received from her superiors. He says that 1st accused was not supposed to ask about the origin of money from the customers and she just believed what Rahul had said and carried out legitimate transactions although she may have been negligent. It is for you to form your own opinion as to her knowledge.

[165] If you are satisfied that the only inference that you can draw from the facts proved in this case is that each accused knew or ought to have known that the money they were dealing with were tainted with illegality, you can find he or she guilty of money laundering. Please consider the case of each accused separately. If you have a reasonable doubt as to whether any one of them had the guilty knowledge you must find he or she not guilty.

[166] Well ladies and gentleman that is all I wish to say. Now the decision is for you to make. You will retire now and deliberate your opinions. Your possible opinions will be "guilty" or "not guilty" in respect of each count. It is desirable if three of you could all agree but that is not strictly necessary. When you are ready you may inform our clerks, so that we could reconvene, to receive your opinions.

[167] Any re-directions?



Aruna Aluthge

Judge

AT LAUTOKA

On 29th August, 2018

Solicitors: Director of Public Prosecution for State

Legal Aid Commission for 2nd Accused.

Iqbal Khan and Associates for 3rd Accused