

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION
CRIMINAL CASE NO. HAC 061 OF 2017S

STATE
vs
AIDONG ZHANG

Counsels : **Mr. A. Singh and Mr. S. Shiraz for State**
Mr. I. Khan, Mr. D. Toganivalu and Mr. S. Gosaiy for Accused
Hearings : **10, 15, 17, 22 to 26, 29 to 31 July, 1, 2, 5 to 9 and 13 August 2019.**
Summing Up : **15 August, 2019.**
Judgment : **16 August, 2019.**

JUDGMENT

1. The accused was charged with the following information:

"First Count

Statement of Offence

OBTAINING PROPERTY BY DECEPTION: *Contrary to section 317 (1) of the Crimes Act of 2009.*

Particulars of Offence

AIDONG ZHANG between the 1st day of June 2014 and the 30th day of September 2014 at Suva, in the Central Division, by deception that a property at 148 Waimanu Road was being purchased for \$5,500,000.00, dishonestly obtained \$1,240,740.74 belonging to Yong Chen with the intention of permanently depriving the said Yong Chen of the \$1,240,740.74.

"Second Count

Statement of Offence

MONEY LAUNDERING: Contrary to section 69 (2) (a) and (3) (a) of the Proceeds of Crime Act 1997.

Particulars of Offence

AIDONG ZHANG between the 3rd day of September 2014 and the 5th day of January 2016 at Suva, in the Central Division, engaged directly or indirectly in transactions involving ANZ Bank Account 11779946 to the total sum of \$1,240,740.74 that are the proceeds of crime knowing or ought reasonably to have known that the money was derived directly or indirectly from some form of unlawful activity".

2. On 15 July 2019, the information was put to the accused, in the presence of his counsels. He pleaded not guilty to the counts. In other words, he denied the allegations against him. The matter then proceeded to trial before myself and three assessors for a total of 18 days. I delivered my Summing Up to the assessors yesterday, and they are unanimously of the opinion that the accused was guilty as charged on both counts. I adjourned to today to deliver my judgment. Written below is my judgment.
3. The three assessors had obviously accepted the prosecution's witnesses' evidence and their version of events. By doing so, they appeared to have rejected the accused's denials.
4. I had reviewed the evidence called in the trial, and I had directed myself in accordance with the Summing Up I delivered to the assessors yesterday. The assessors' opinion was not perverse. It was open to them to reach such conclusion on the evidence.
5. Assessors are there to assist the trial judge come to a decision on whether or not the accused was guilty as charged. Assessors represent the public, and their views must be treated with respect.
6. The case for the prosecution was based largely on the direct evidence of the complainant, Mr. Yong Chen (PW1), a Chinese investor from China. He said, he was introduced to the accused (DW1) by a Mr. Shi Yuhu (SY), on his first visit to Fiji, in May 2012. PW1 said, SY

was a good friend of his since 2002, and he vouched for DW1 as a good person, a good businessman and that he had the ability to make a \$10 million profit per year.

7. As a result of the above, PW1, his wife PW2, their daughter Ms. Chen Linlin, SY and DW1 met in Xiamen City, China on 21 June 2014. A “Joint Operation Agreement” (JOA) resulted from this meeting. The parties agreed to start a business in Fiji, investing in real estate, import and exporting, including tourism. They agreed they would set up a company in Fiji, to be called Bairain Group (Fiji) Limited (BGL). PW1’s family would have 80% share of the company, while SY and DW1 would have 10% share each. The company would have a capital of FJ\$6 million dollars. DW1 was entrusted by the parties to register BGL in Fiji, and purchase, on behalf of BGL, some properties.
8. After the meeting, DW1 returned to Fiji. He was originally from China, but had settled in Fiji since 1991 and became a Fiji citizen in 1998. In August 2014, DW1 found 148 Waimanu Road property up for sale. He later rang PW1 in China and advised him for BGL to purchase the property. He advised PW1 that the purchase price was 5.5 million Fijian dollars, and a 1.5 million Fijian dollars deposit was required. However, behind PW1’s back, when dealing with the real estate agents selling the property, the purchase price was 3.3 million Fijian dollars and \$330,000.00 deposit. DW1 was deceiving PW1 on the above.
9. DW1 later rang PW1 and advised that it was a good investment. PW1 later told him to sign the sale and purchase agreement. DW1 did so, and advised PW1 to send in his family’s share of the 1.5 million deposit, that is, \$1,240,740.74. DW1 told PW1, the balance of the same would be paid by SY and himself. Because BGL was not incorporated, PW1 and DW1 agreed that the money should be sent to DW1’s company’s ANZ Bank Account No. 11779946. The company was Ostanding Fiji Limited (OFL). PW1 sent the above money to the above account on 3 September 2014. BGL was incorporated on 14 October 2014. BGL opened an ANZ Bank Account No. 12137828 on 11 November 2014. DW1 asked PW1 to send in the balance of the purchase price for 148 Waimanu Road property. On 18 November 2014, PW1 deposited \$4,037,620.65 into BGL’s above ANZ Bank Account.

10. PW1 totally trusted DW1 in his dealing on the 148 Waimanu Road property deal. Settlement of the property was completed on 4 December 2014. In early 2015, it was brought to PW1's notice that DW1 had been misrepresenting to him the real purchase price and deposit for the property since August 2014 to settlement on 4 December 2014. After visiting Neel Shivam Lawyers in March 2015, PW1 later found out the correct purchase price for 148 Waimanu Road property was 3.3 million Fijian dollars and the correct deposit was \$330,000.00. After much thought, PW1 decided to report the matter to police in January 2016. During police investigation, it was discovered that DW1 had not used the \$1,240,740.74 PW1 sent him on 3 September 2014, as a deposit for 148 Waimanu Road property. DW1 used the same on himself and his family.
11. The circumstantial evidence summarized from paragraphs 38 to 52 of my summing up, also supported Mr. Yong Chen's version of events. As a result of the above, I find the prosecution's witnesses' evidence credible and I accept them accordingly. Between the complainant's version of events on the two allegations and the accused's version of events on the same, I accept Mr. Yong Chen's evidence and version of events. In my view, Mr. Yong Chen was a credible witness, and his version of events were supported by the numerous documentary evidence.
12. As a result of the above, I accept the three assessors' unanimous guilty opinion on count no. 1 and 2 in the information, and I find the accused guilty as charged on both counts. I convict him accordingly on those counts.




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JUDGE

Solicitor for the State : Office of the Director of Public Prosecution, Suva.
Solicitor for the Accused : Iqbal Khan & Associates, Barristers & Solicitors, Lautoka.