

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA077 of 2016**  
**(from Rakiraki CR 34/11)**

**ASHWIN NARAYAN**

**v**

**THE STATE**

Mr. N. Padarath for the Appellant  
Mr. J. Niudamu for the State.

Date of hearing: 19 June 2017  
Date of Judgment: 26 June 2017

**JUDGMENT**

- [1] On the 26<sup>th</sup> October 2016 in the Magistrates Court at Rakiraki, the Appellant was convicted of the following charge:

**Statement of Offence**

**DAMAGING PROPERTY** contrary to Section 369(1) of the Crimes Decree 2019(sic)

**Particulars of Offence**

**ASHWIN NARAYAN SHIVANI LATA AND KUSUM LATA**

on the 3<sup>rd</sup> day of July 2010 at Tugapatu Ra in the Western Division willfully and unlawfully damaged 1 plastic sealer valued at \$150, 1 plastic table valued at \$200, 1 stereo valued @\$250, 3 electric Lamps valued at \$20 and 1 baby walker valued at \$50 all to the total of \$670 the property of **ALESHMIN DARSHAN**.

- [2] The appellant's two co-accused were found not guilty after trial and acquitted of the charge. The appellant was sentenced to a term of imprisonment of 6 months which was then suspended for a period of three years.
- [3] The Appellant now appeals his conviction on the following grounds:
1. The learned Magistrate erred in law and in fact when he held that because the appellant was angry and frustrated proved that he was guilty beyond reasonable doubt
  2. The learned Magistrate erred in law in his application and interpretation of proof beyond reasonable doubt, and
  3. The learned Magistrate erred in law and in fact in convicting the accused when he had not identified the actual property damage and the extend (sic) of the damage.
- [4] Counsel for the Appellant summarizes his grounds by submitting that the Magistrate misdirected himself as to the standard of proof whilst drawing incorrect inferences from the evidence before him.

### **Facts**

- [5] The complainant, Aleshni, lived with her husband and son in a house in Tugapatu. On the 3<sup>rd</sup> July 2010 she was at home with her son when the appellant and a few of his family came to the house with a grievance that they had not been paid the agreed amount for the house and land. The aggrieved persons went into the house and started moving household items about. The complainant called the Police and her husband to come back to the house. When the Police arrived the appellant, his wife and sister-in-law were still inside moving items. The complainant went inside the house with the Police and her husband and she saw that many household items had been thrown untidily into one room. She noticed that in the melee a lot of the items had been damaged.

The complainant was not able to identify the damaged items at the time but provided the Police with a list of the damaged items three months later.

It was agreed that this party of intruders were representing the vendors of the property and were authorized to come to the site at any time to inspect it while purchase amounts were still outstanding. An amount of some \$52,000 was still outstanding.

- [6] The three accused gave evidence in which they each denied damaging any property but admitted that items were moved. They said that the house was messy and dirty from the start. The scene was rather chaotic with members of the raiding party arguing with each other and the complainant standing inside the house shouting at them.
- [7] In his written reasons for conviction the Magistrate quite properly set out the elements that he had to find proved to satisfy his finding. They were:
- It was these accused, who
  - Willfully and unlawfully
  - Damaged
  - The property of the complainant.
- [8] There was no doubt that the three intruders were in the house because they all admitted that in their evidence, but the doubt thereafter arises with regard to the three other elements.
- [9] Interestingly the Magistrate finds (at para 19 of his Judgment) that the complainant “never said what each individual accused were (sic) doing and the item they were carrying from one place to another”. This is because the complainant was outside and never saw what was happening inside. It was only when she did go in that she found the jumble of items in one of the rooms. There is nobody for the prosecution who is able to say who moved what.
- [10] The first accused said she didn’t touch anything. The second accused said she didn’t touch anything but her husband (the appellant) moved some items. The third accused (the Appellant) said he only moved the Television set.
- [11] There is strong circumstantial evidence that the items which the complainant says were moved were moved by these three in concert but that is as far as circumstantial evidence can go and the State did not run the case on joint enterprise.

[12] It is then that in his analysis of the evidence that the learned Magistrate says this:

*"21. From the evidence I accept that only DW3 was moving the items. If DW3 was the only one moving the items then it is only rational to accept that he moved all the items without any assistance from DW1 and DW2.*

*"22. Further taking into account that DW3 was angry and frustrated at PW1 (the complainant), there is a high possibility of DW3 moving the items with rage and not bothering to ensure that the items being placed in the room were properly and safely stored without any damage.*

*"23. When considering all the evidence I find proved beyond reasonable doubt that DW3 damaged the items mentioned in the charge when moving and storing them away in another room. He has failed to create any doubt in the prosecution case."*

[13] Unfortunately the Magistrate has raced ahead of himself with these findings. The findings in para 21 are tautologous and meaningless. "High possibility" in para 22 is far less than the requisite "beyond reasonable doubt" nor is there evidence that PW3 was angry and frustrated at PW1.

[14] By basing his conviction of PW3 (the appellant) on these false premises, the case has not been proved beyond reasonable doubt at all and the conviction is unsafe.

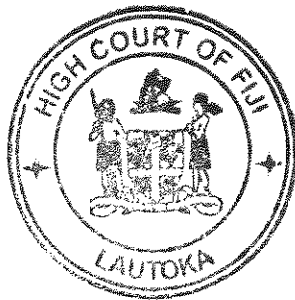
The prosecution submits that if these household goods were found to be damaged and it is shown that PW3 was responsible for moving them then the only reasonable inference from the circumstantial evidence is that PW3 is responsible for the damage.

[15] This proposition is fatally flawed however. It is **not** the only reasonable inference that can be drawn from the evidence. The goods may have been damaged before the parties intruded that day or it could be that one of the other accused damaged the goods before they were moved by PW3.

[16] Because there was no prosecution witness available to see and say what occurred in the house that day, there has to be reasonable doubt that this appellant willfully and unlawfully damaged the items in question. "Anger and frustration at PW1" does not conclusively lead to the fact that the Appellant would damage goods that he was moving.

[17] The appellant must benefit from that reasonable doubt, and consequently this Court would allow the Appeal against conviction.

[18] The conviction is quashed and the sentence set aside.



**P.K. Madigan**  
**Judge.**

**At Lautoka**  
**26 June 2017**