

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. 024 OF 2010

STATE

vs

- 1. ANAND KUMAR PRASAD f/n Alfred Shiri Prasad**
- 2. REENAL PRANEEL CHANDRA f/n Rajendra Chandra**
- 3. REENAL RAJNEIL CHANDRA f/n Rajendra Chandra**
- 4. DEO NARAYAN SINGH f/n Ram Brij Singh**
- 5. SHIRLEY SANGEETA CHAND f/n Alfred S. Prasad**
- 6. ATISHMA KIRTI SINGH f/n Nirranjan Singh**

Ms N. Tikoisuva and Mr. W. Pillay for the State

1st and 4th Accused in Person

2nd Accused absent

Mr. H.A. Shah for 3rd and 6th Accused

Mr. I. Khan for the 5th Accused

Date of Mitigation : 15 April 2011

Date of Sentence : 19 April 2011

SENTENCE
[Forgery and Fraud]

[1] On the 14th day of April 2011, these six accused were all convicted of conspiracy to defraud along with other counts of forgery, uttering, obtaining on forged documents and money laundering. A copy of the counts they faced is annexed hereto.

- [2] Turtle Island Resort is a luxury island resort catering to wealthy tourists in the centre of the Yasawa group. The tourists on arrival are welcomed to Paradise, but sadly events on the island were the road to hell for these six accused. The island was bought and developed by Mr. Richard Evanson who still remains as the owner/manager, but unfortunately is in declining health.
- [3] Mr. Evanson told the Court that finding himself without an accountant in May 2006, he asked his banker, the 5th accused for a personal recommendation. He trusted the 5th accused because she had given him good banking service over the years with one of our largest banking groups. She, that is PW-5, recommended her brother, the first accused to the job and he was subsequently hired. Mr. Evanson says that he seemed to be performing his duties well but came to know at a later stage that from very early on in his employment he was forging documents and cheques. His audit showed that he forged a total of 84 cheques amounting to a sum of \$840,000. On 46 of those cheques he wrote his own name as payee and on others he wrote the names of family members and friends. Because Mr. Evanson trusted his staff so much, he never scrutinized cheques for less than \$10,000. In that way the first

accused was able to write so many cheques for slightly less than \$10,000, forge Evanson's signature and bank them to two different accounts in his name and into the accounts of his friends the 2nd and 3rd accused.

[4] In some instances, the first accused would change the name of the payee on a cheque for a sum over \$10,000, sometimes even adding figures to the sum written, then forge the initials of Evanson near the alteration. Many of these cheques were made payable to the 4th accused's company "Shahill and Shohill Grocery and Machinery Repairs Ltd". The 4th accused used to work with the first accused on Turtle Island and he and his wife (the 6th accused) ran a small grocery/liquor store and the 4th accused did piecemeal vehicle repair.

[5] Throughout this time the 5th accused, the 1st accused's sister worked in the bank, with every capability of facilitating the processing of the cheques, although there is no evidence that she did that. There was evidence however that she was involved personally in uplifting stop orders on cheques that Mr. Evanson's Company (SPOR Fiji Ltd) had earlier stopped and there was no authority for her to do that. In addition to that she was

instrumental in processing a forged fax that was sent to the bank to remit the sum of \$36,000 to Shahill and Shohill. She happened to be “on the spot” when the fax arrived and made sure that it was actioned without delay. As soon as it was processed and after the 5th accused made a phone call, the monies were uplifted.

Count One – Conspiracy to Defraud

[6] All six of you have been convicted of conspiracy to defraud SPOR Fiji Ltd (trading as Turtle Island Resort) between 1st April 2006 and 31st December 2007 by intentionally causing a loss to that company of \$936, 957.09 by causing the payment of that money to themselves.

[7] As this Court said in **State v Takiveikata** – HAC 009/2008S:

“By its very nature, a sentence for a conspiracy charge cannot favour or disfavor any particular conspirator. They are “in it together” and will be punished together. The Court can nevertheless make adjustments to the sentences to reflect the roles of ringleaders, organizers, facilitators or gullible dupes.”

- [8] The maximum penalty for this offence is a term of seven years. Sentences passed in Fiji in the past have been in the region of eighteen months to three years.

In **Vinod Prasad** – AAU 10 of 1986, a term of three years was held to be appropriate for a mastermind who obtained large sums of money by cashing fraudulent charges:

In **Tulsi Ram** – AAU 14 of 1984 an 18 month sentence for a conspiracy to break into a house was not disturbed; and

In **Isikeli Kini** – AAU 0041/02S a one year sentence on a chief officer who conspired to defraud the Housing Corporation was upheld.

- [9] Clearly a conspiracy of this magnitude cannot be appropriately punished with a sentence of 12 to 18 months. The legislature has seen fit in the new Crimes Decree to increase the penalty for conspiracy to defraud to ten years, possibly reflecting the increasing prevalence of the offence. This however is of no consequence to this sentence. The count was laid, as it should have been pursuant to the Penal Code and it must be sentenced using the maximum provided in that code.

- [10] It was said in **R v Clark** 1998 2 Cr. App. R (S) 95, that save in very exceptional circumstances, where a person in a position of trust, for example an accountant, a solicitor, a bank employee or a postman has abused that trusted and privileged position to defraud his partners, employers or the general public of sizeable sums of money, immediate imprisonment is inevitable unless there are exceptional circumstances or the amount of money involved is very small. The amount defrauded is an important factor and the Court then went on to lay down suggested bands of sums involved in corresponding suggesting terms of imprisonment. Those bands however were in the context of a ten year maximum that pertains in England and Wales and are therefore not appropriate to a conviction under the Fiji Penal Code. They may well come into use if a conviction arises under the Crimes Decree.
- [11] Fiji being much more economically inferior to England may well have its own strata of penalties for conspiracy to defraud under the Penal Code. Taking the maximum penalty as seven years, then around six or seven years should be reserved for amounts defrauded of \$1,000,000 or more.

An appropriate scale for Fiji under the Penal Code is:

Less than \$50,000	-	up to two years imprisonment
50,000 to \$300,000	-	two to three years
300,000 to \$500,000	-	between three to five years
500,000 to \$1,000,000	-	five to six years
1,000,000	-	seven years maximum

[12] This being a systematically and cynically planned fraud involving sums of over \$900,000 the starting point for all of the conspirators will be set at four years.

[13] I bear in mind the following factors:

- None of the accused expressed any remorse, apart from a brief statement from the fourth accused that he was “ashamed”;
- the fraud was undertaken over a long period of time, that is 21 months.
- the forgeries became more brazen as the fraud progressed.

- the evidence shows proceeds being used on land and luxury vehicles.
- a total of 84 cheques were forged.

[14] The first accused is quite obviously the main player in this conspiracy. It was he who had the cheque book and it was he who knew that cheques for less than \$10,000 would not be scrutinized. It was he who arranged with his friends to open accounts or to use existing accounts as a conduit for these cheques and it was he who altered payees names and increased the sums payable as he became more competent and confident. For these aggravating features I add a further two years to his sentence making a total of six years. He has absented himself for the major part of the trial and was not present to mitigate. The Court, in looking for mitigation finds none. He does not even have the benefit of a clear record. He has eight previous convictions for similar offences.

The first accused is sentenced to a term of six years imprisonment to commence on the day that he is re-apprehended. He will serve a minimum term of five years before being eligible for parole.

The second and third accused are brothers, and are friends of the first accused. They each facilitated the fraud by providing their bank accounts for the first accused to use to deposit the forged cheques. An examination of each account shows the deposit of these cheques followed by systematic cash withdrawals. The third accused in giving evidence said that he just “gave” his account and ATM card to the first accused and knew nothing about the deposits and withdrawals. The assessors obviously didn’t believe him and in any event there must have been some agreement within the conspiracy period for his account to have been opened and then given away in that fashion. The second accused has been absent from proceedings from well before the trial started and therefore there was no evidence from him. Nor was he able to mitigate. He does however have a clear record and he will receive credit for that.

[15] Mr. Shah in mitigation for the 3rd accused tells me that he is 27 years old and married with a young child. He was unemployed before arrest. He tells me that he was too gullible and trusting of the 1st accused who was his friend and that he wants to rehabilitate himself into the community.

[16] However it is the community, and especially the business community, that have to be protected from persons willing to engage in fraudulent activities and entering into plans to facilitate such activity. The second and third accused fall fairly and squarely within that need to protect the community, no matter how gullible they are or how “used” they feel. There is no evidence that either one benefitted from this fraud. That is not to say that they did in fact benefit – we just have no evidence on it and they must receive credit for that.

[17] From the starting point of four years, I deduct one year for each accused’s clean record and I deduct a further year to reflect their comparatively minor roles (which includes the lack of evidence of gain).

The second and third accused will each serve a term of two years imprisonment for the conspiracy and neither will be eligible for parole until he has served 18 months of that sentence. The term of imprisonment for the second accused will commence on the date he is re-apprehended.

Fourth Accused

[18] The fourth accused worked at Turtle Island as a mechanic and came to know the 1st accused at that time. The fourth accused played a rather major role in this conspiracy by providing his business bank account for the 1st accused to use. A lot of the cheques that were altered were made payable to “Shahill and Shohill Grocery and Machinery Repairs Ltd”, which was the account that the fourth accused and his wife (the sixth accused) used in the running of a small shop and repair yard they had in Sigatoka. The fourth accused had cheques deposited into 2 personal accounts in addition. He was also, by his company account, the recipient of funds transferred by way of a forged fax sent to the 5th accused’s bank. He later was “rewarded” with the gift of a vehicle.

[19] The fourth accused, who was unrepresented told me in mitigation that he is 42 years old, with 2 children aged 8 and 9 and he is the only breadwinner for the family. He showed remorse and said that he has lost his business, his money and the vehicle. He has a clear record and expressed shock that the first accused could bring him down as he has.

[20] From his starting point, I add one year to reflect his greater role in this conspiracy and deduct one year for his show of remorse and his clear record. The 4th accused will serve four years for the conspiracy and will not be eligible for parole until he has served 3 years of that term.

[21] The fifth accused is the sister of the first accused and she appears to have played a very large role in this conspiracy. From the very beginning she betrayed the trust of her bank employer and of one of its biggest clients by recommending her brother to Mr. Evanson as a suitable person to be the Turtle Island accountant. S he must have known that her brother had convictions for forgery, larceny and obtaining money on forged documents; all convictions that he spent time in prison for. She was instrumental in manipulating bank records so that some of the forged cheques could be processed, by making unauthorized entries into the bank's records. S he gave conflicting answers in an investigatory interview with the bank's auditors about cash deposits into her account. She exceeded her authority at the bank by authorizing a transfer of \$36,000 mandated by a forged fax from Turtle Island – pressing a teller over whom she had no authority to process the transfer.

Without her at the bank, much of the defrauded monies would not have been transferred. For these seriously aggravating features I add two years for her starting point, bringing her sentence up to six years.

[22] Mr. I. Khan has filed extensive and helpful written submissions on behalf of the 5th accused. He tells me that she is 32 and married with two children. She has a Diploma in Banking and worked in the bank for nine years. She is caring for the child of a deceased sibling and she engages in charity work for the religious body she belongs to. In fact the Bank Management have given evidence that before these irregularities came to light she was highly regarded and destined for promotion to the high echelons of the banking world. She has no previous convictions. I bear all of this mitigatory material in mind. I accept that there is no evidence that this accused received any of the forged cheques into her account. Mr. Khan asks that a non-custodial sentence be imposed.

[23] The fifth accused cannot escape the fact that her actions in facilitating these fraudulent activities were an absolute breach of trust placed in her both by her employer and by Mr. Evanson who was one of her “prime” customers. For that reason alone a non-

custodial sentence cannot be contemplated despite the fact that she is a first offender. Playing a leading role in a \$900,000 fraud, whilst breaching the trust placed in her by her banking employer must attract a prison term of some degree.

[24] In **R v Barrick** 81 Cr. App. R (s) 78 the Court said:

“The type of case with which we are concerned is where a person in a position of trust has used his trusted position to defraud his partners or clients or employers. He will usually, as in this case, be a person of hitherto impeccable character. It is practically certain, again as in this case that he will never offend again and, in the nature of things, he will never again and in his life be able to secure similar employment with all that means in the shape of disgrace for himself and hardship for himself and also his family”

And later (at pages 81 and 82):

“In general a term of immediate imprisonment is inevitable, save in very exceptional circumstances or where the amount of money obtained is small. Despite the great punishment that offenders of this sort bring upon themselves, the Court should nevertheless pass a sufficient substantial term of imprisonment to mark publicly gravity of the offence.”

[25] The major factor in the fifth accused’s favour is her clear record, and the high regard she was held in by her employers, until she breached their trust. With regard to

those features, as well as the fact that there is no evidence that she received any of the stolen cheques into her account I deduct 18 months from her sentence, meaning that she will serve a total term of four and a half years imprisonment for the conspiracy. She will serve a minimum of three years before being eligible for parole.

[26] The sixth accused played a relatively minor role in the conspiracy. She undertook a lot of financial transactions after the period of the conspiracy expired but I can have no regard to that. The sixth accused is the wife of the fourth accused. She ran the day to day business of the grocery/liquor store in Sigatoka and she must have been privy to the credits going into the Shahill and Shohill business account; even though she was obviously under the influence of the 4th accused in this regard. It was towards the end of the conspiracy period that the funds generated by the forged Turtle Island fax were received into their business account.

[27] Mr. Shah submits on her behalf that she is 26 years old with two young children. Apart from managing the 4th accused's grocery/liquor and repair business, she is a housewife. She has a clear record and there is no evidence that she personally benefited during the period of the conspiracy. She is educated to Form 6

level and the offence is totally out of character. She is never likely to reoffend. Mr. Shah submits that she was an “innocent victim” and played no active role in perpetuating the conspiracy. He urges leniency for the sake of the children who are about to be deprived of both parents.

[28] I take the four year starting point and in recognition of Mr. Shah’s powerful plea of mitigation to reflect her minimal role within the conspiracy I deduct two years, meaning she will serve a term of two years for the conspiracy. I decline to stipulate a minimum term.

[29] The first accused has been convicted of eleven counts of forgery (counts 2, 5, 8, 11, 14, 16, 18, 20, 22, 24 and 26). All of the forgeries were cheques of his employer (SPOR Fiji Ltd trading as Turtle Island) except for Count 18 which charges him with forgery of the Turtle Island fax which purported to be an authority to transfer \$36,000 from SPOR Fiji to “Shahill and Shohill” (the 4th accused’s account).

[30] Forgery of cheques and of an authority to transfer is punishable by a maximum penalty of fourteen years. The tariff for forgery has always been seen as between eighteen months to three years

imprisonment depending on the circumstances of the case. It is the Court's view that this tariff having been in place for many years seriously needs to be revisited. In these lean economic times forgery, especially by those in positions of trust, is becoming far too prevalent and the forgery is usually the conduit to obtaining money or property by means of the uttering of the forged document.

[31] There is no reason now why the range for forgery should not be between 3 years and 6 years, with factors to be considered to be –

- high gain – actual or intended.
- Whether the accused a professional or non professional.
- Sophisticated offending with high degree of planning.
- Target individuals rather than institutions.
- Vulnerable victim.¹

[32] The forgeries that we have in this case can be seen to satisfying many of these factors. They were a serious breach of trust. They were handled in a sophisticated manner and become more sophisticated as time went on; there was repeated offending and

¹ These factors are taken from the UK Crown Prosecution Service Guidelines.

the victim was extremely vulnerable – a sole owner/manager of a busy luxury resort. All of these are serious aggravating features. There is nothing proffered by way of mitigation and the Court can find none. He has 8 previous similar convictions which cannot go to his credit.

[33] From the enhanced range of three to six years, I take a starting point of four years for the cheque forgeries and for the aggravating features I add two years meaning that for each of the eleven forgery counts I sentence the first accused to six years imprisonment, to be served concurrently with the conspiracy sentence of six years.

[34] The first accused also stands convicted of four uttering charges (counts 3, 6, 9 and 12). These relate to the forgeries obviously and he is sentenced to six years imprisonment for each of these offences all to be served concurrently with each other, and all to be served concurrently with the conspiracy sentence.

[35] The first accused has been convicted of four counts of obtaining money by virtue of forged documents (counts 4, 7, 10 and 13) and four counts of causing money to be paid by virtue of a forged

document (counts 15, 17, 19 and 27). These too will attract a sentence of six years each to be served concurrently with each other and concurrently with the conspiracy sentence. [I am conscious of the fact that it was said in **State v Etuate Suguturaga** – HAC 043/2009L that obtaining or causing payment offences must stand apart from forgery and uttering and therefore the sentences should be made partly consecutive. That is still an appropriate statement of sentencing policy (and it was followed by Goundar J. in **Salendra Sen Sinha** – HAC 046/2008): however the sentences that the first accused faces on this information must be kept within reasonable limits and he must at his relatively young age be able to see an end to his ordeal].

[36] The first accused has been convicted of five money laundering counts (counts 28, 29, 30, 32 and 33) in which he used his illegally gotten funds to purchase motor vehicles, either for himself or for his co-conspirators, and in one case (count 30) for the purchase of land at Nadi in the name of his mother.

[37] There is no real precedent in Fiji for the offence of money laundering an offence which carries a maximum penalty of

20 years. Were the offence to be charged alone, that is without being charged in conjunction with other offences that generate the money sought to be laundered, it is probable that the offence could attract sentences in the range of eight to twelve years, however this Court is bound by the decision of the Fiji Court of Appeal in **O’Keefe v State** (2007) AAU 0029.2007. In that case the appellant was appealing a sentence passed on him in the magistracy after the High Court had dismissed his appeal. Mr O’Keefe had entered a plea of guilty in the Magistrates Court to several counts of forgery and false pretences for which he was sentenced to concurrent terms of 2 years and then also one offence of money laundering for which he was sentenced to five years imprisonment.

The Court of Appeal said this (at paragraph 15):

“When sentencing in individual cases, the court must strike a balance between the seriousness of the offence as reflected in the maximum sentence available under the law and the seriousness of the actual acts or the person who is to be sentenced. Money laundering is clearly potentially a very serious offence. It can be, and is, used to disguise the true nature of money derived from criminal activity and so make it available for legitimate use. It is essential for large criminal organizations if they are to be able to maximize the proceeds of their unlawful activities of

necessity, it is an international problem and undoubtedly small jurisdictions may be seen as useful and unsuspecting conduits. That is why Parliament imposed the heavy penalties under the Proceeds of Crime Act.”

“However, where, as here, the court is also sentencing for the associated criminal offences which produced the money to be laundered, it must base its sentence on the relative seriousness of the individual offences.”

[38] Having passed strong sentences on the first accused for his fraud offences, I will not additionally punish him for the money laundering offences, despite the fact that they are very serious offences indeed. I sentence the first accused to a term of six years for each money laundering offence he has been convicted of. Each of these terms is to be served concurrently with each other and concurrently to the conspiracy sentence.

[39] The second accused, in addition to the conspiracy has been convicted of one count of forgery and one count of obtaining money by virtue of forged documents (counts 24 and 25 respectively). For these two offences I pass two concurrent terms of two years each to be served concurrently with the conspiracy sentence.

[40] The third accused has also been convicted of one count of obtaining money by virtue of forged documents and he too is sentenced to a term of two years for this offence, to be served concurrently with his two years for conspiracy.

[41] The fourth accused, in addition to the conspiracy has been convicted of one count of forgery (count 20) three counts of causing payment of money by virtue of a forged document (counts 15, 17 and 19), one count of obtaining money by virtue of a forged document (count 21) and three counts of money laundering (counts 28, 29 and 31). For all of these counts he is sentenced to terms of imprisonment for four years, to be served concurrently with each other and concurrently with the conspiracy sentence of four years.

[42] The sixth accused, in addition to the conspiracy conviction has been convicted of one count of money laundering (count 29). For this offence she is sentenced to a term of 2 years imprisonment to be served concurrently with her conspiracy term of two years.

[43] I am persuaded by Mr. Shah's eloquent plea of mitigation for the sixth accused. If both the fourth and sixth accused are

imprisoned, two small children are deprived of both parents. In any event, the seriousness of offending by the sixth accused is not high. She was very much under the influence of her husband and there is no evidence that she gained personally from the fraud. She was certainly not abusing the trust of any employer or customer. The sentence of the sixth accused will be suspended for a period of two years and the effect of a suspended sentence is now explained to her.

[44] In summary these six accused will serve sentences as follows:

First Accused - Six years, with a minimum term of five years, the sentence to start from the date of his arrest.

Second Accused - Two years, with a minimum of 18 months, the sentence to start from the date of his arrest.

Third Accused - Two years, with a minimum term of 18 months.

- Fourth Accused - Four years, with a minimum term of three years.
- Fifth Accused - Four and a half years, with a minimum term of three years.
- Sixth Accused - Two years, suspended for a period of two years.

Paul K. Madigan

JUDGE

At Lautoka

19 April 2011