

IN THE SUPREME COURT OF TONGA
CRIMINAL APPEAL JURISDICTION
NUKU'ALOFA REGISTRY

CR.APP.NO.232/99.

MANEO ULA
[Talafo'ou]

-v-

POLICE

BEFORE THE HON JUSTICE FINNIGAN

Counsel appearing: Mr Fakahua for appellant,
Ms S~~M~~Tupou for respondent.

Date of hearing: 7 April 1999
Date of Judgment: 23 April 1999

JUDGMENT OF FINNIGAN, J

This is an appeal against a decision of a magistrate wherein the appellant was convicted of theft. The appeal is entirely factual and rests on 6 stated grounds.

The first ground is that the magistrate erred in ruling that there was a case to answer at the close of the prosecution case. The submission that there is no prima facie case is a submission that there is not sufficient evidence to put before a judge or a jury, so that even if all the evidence is accepted, it does not contain all the necessary ingredients to prove the charge beyond reasonable doubt. The court has recently made clear statements about this, see e.g. Cr App 122/97 *Rex v Tonga Tuita & Ors*, judgment 17 November 1998 (pp5-6), and Cr App 143/97 *Rex v Kaufusi & Anor*, judgment 3 February 1999. In the present case the ingredients of theft as charged were all in the police evidence, and if that evidence were all accepted, it was sufficient to prove the charge beyond reasonable doubt.

The second ground is that the complainant did not see who took the missing items. There is nothing in this, the police called other witnesses and invited the magistrate to find

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from their evidence (a) that the missing items were actually stolen, and (b) that it was the appellant who stole them.

The other 4 grounds all relate to the credibility of specific witnesses. The first principle where the credibility of witnesses is challenged on appeal is that the court that saw and heard the witnesses is the best judge of their credibility, because it saw and heard them. Some reason must be given for holding that the court below made a mistake in accepting the evidence that it did accept. In the present case, no ground has been shown for that. The evidence is a complete picture of circumstances which, if the evidence is accepted, show beyond reasonable doubt that the appellant stole the complainant's bananas, and took steps to prevent witnesses from giving evidence about that.

The appeal is dismissed.

NUKU'ALOFA, 23 April 1999



Jimigan J
JUDGE