

IN THE COURT OF APPEAL, FIJI AT SUVA

CRIMINAL APPEAL NO. AAU0001/2001
(High Court Criminal Appeal No. 71 of 2000)

BETWEEN: TASIR USMAN Appellant
(f/n Nasir Usman)

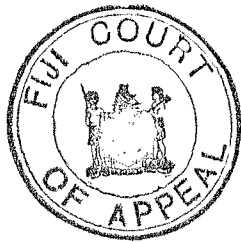
AND: THE STATE Respondent

APPEAL AGAINST CONVICTION

1. On 16 June 2000, after a long drawn out hearing in the Magistrates' Court, the appellant was convicted of larceny from a person. On 1 December 2000 the High Court dismissed his appeal against conviction and sentence. The appellant then lodged a further appeal against conviction to this Court.
2. In both Courts the sole issue was identification. The appellant was identified by an eye witness who had a good view of events and soon afterwards picked the appellant out at an identification parade. The Magistrate accepted the evidence of that witness. Although the Magistrate did not explicitly refer to Turnbull's case it is clear from the terms of his decision that he had in mind the considerations arising where the case turns on identification by a witness not previously familiar with the accused.
3. From the judgment on appeal it is evident that again the only issue was identification. The Judge considered the evidence and found that the Magistrate was amply justified in finding that the eye witness had correctly identified the appellant. This time, Turnbull's case was referred to in the judgment.

4. A second appeal against conviction may only be brought on a ground of appeal involving solely a question of law, see s.22(1) of the Court of Appeal Act. Whether the legal principles relating to identification have been applied correctly is not a question of law alone, in the context of this case the issue is a mixed question of law and fact. Accordingly, in terms of s.35 of the Court of Appeal Act as amended, the appeal is bound to fail because there is no right of appeal, nor any right to seek leave to appeal. I therefore dismiss the appeal.

Dated at Suva this 15 October 2001.



Thomas Eichelbaum
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Thomas Eichelbaum
Justice of Appeal