IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0014 OF 2007S
(High Court Criminal Action No. HAC 015 of 2006L)
CRIMINAL APPEAL NO. AAU0011 OF 2007S
(High Court Criminal Action No. HAC 015 of 2005L)

BETWEEN: ORISI TAMANI
First Appellant

RODNEY SILIKULA
Second Appellant

AND: THE STATE
Respondent

Coram: Byrne, JA
Powell, JA
Hickie, JA

Hearing: Thursday, 30st October 2008, Suva

Counsel: S. Valenitabua for the First Appellant
F. Vosarogo for the Second Appellant
W. Kurisaqila for the Respondent

Date of Judgment: Thursday 30th October 2008, Suva

JUDGMENT OF THE COURT

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[1] On 1 December 2006 Orisi Tamani ("the first appellant") and Rodney Selikula ("the second appellant") were convicted of two counts of armed robbery and each was sentenced to a term of five years on each count to be served concurrently.

[2] The robberies took place at a hotel between 2.30 am and 2.40 am on Monday 3 February 2003. At the time of the hearing of this appeal each appellant has served about two years in prison.

[3] The only evidence against the appellants were confessions made to the police.

[4] The first appellant objected to the admissibility of his confession on the grounds that it was beaten out of him by the police over two days on 5 & 6 February 2003.

[5] The second appellant objected to the admissibility of his confession, which was contained merely in his charge statement, on the basis that it was prepared prior to him seeing it and that he signed because the charging officer threatened to charge him with other offences unless he did so.

[6] The evidence of the appellants was that when they were taken to Natabua Prison on 7 February 2003 they were refused admission because of the first appellant's injuries and, prior to being re-admitted on 10 February 2003, they were examined by a doctor.

[7] At the Voir Dire Govind J placed little credence on this evidence by the appellants and satisfied himself that the statements were made voluntarily and were admissible.

[8] In his Summing Up the trial judge referred to the evidence of the first appellant that he was not admitted to Natabua Prison because of his injuries and to the evidence from the prosecution that the appellants were taken to the prison separately and that the first appellant was only refused admission because of the late hour.

[9] In his Summing Up the trial judge expressed surprise that the prosecution did not produce any documentary evidence or call any prison officer to challenge the appellants' version of events, namely that they were taken to the prison together and that the first appellant was refused admission because of his injuries, but otherwise left the issue to the Assessors.

[10] On 7 March 2008 the Court of Appeal gave the appellants leave to adduce further evidence being a memorandum dated 10 July 2007 ("the memorandum") from the Officer in Charge Lautoka Prisons and at the hearing of the appeal on 30 October 2008 the Court admitted into evidence, inter alia, a report by the Medical Officer of Lautoka Hospital dated 10 February 2003 ("the Medical Officer's Report").

[11] Part A of the Medical Officer's Report (Docket Details – completed by a police officer) records that the first appellant claimed that he had been assaulted by a policeman. Part B (completed by a doctor) is for the most part impossible to decipher but it was accepted by the parties that it records injuries caused by *"blunt force"*.

It is important to note that there was no evidence from the police that any injuries had been caused in the course of arresting either of the appellants, or that either appellant was suffering injury at the time of his arrest.

[12] The memorandum records that on Friday 7 February 2003 both appellants were refused admission by the prison gatekeeper *"because of physical injuries sustained that appeared in their bodies"* and that they were returned on Monday 10 February 2003 with medical reports.

[13] This evidence (the Medical Officer's Report and the memorandum) entirely corroborates the evidence of the appellants that the first appellant was beaten by the police and exposes as false the evidence of the police regarding the prison admission.

[14] If this evidence had been before the trial judge he would have been bound to find the police evidence false and the confessions involuntary and therefore inadmissible. The confessions being the only evidence to connect the appellants to the robbery, the trial judge would have been obliged to direct acquittals.

[15] In his Summing Up the trial judge says that the first appellant *"also called two witnesses, his grandmother and a friend, to say that he was at home in Raiwaqa till late the Sunday night before the robbery of the early"* Monday morning in Nadi.

[16] This is alibi evidence, perhaps not conclusive because it is apparently physically possible to get from Raiwaqa to Nadi in a couple of hours and the trial judge ought to have dealt with the evidence in his Summing Up. However apart from the single sentence reproduced above, the trial judge fails to deal with this evidence at all.

[17] At the appeal hearing the first appellant sought leave to amend his Notice of Appeal to add as a ground of appeal the trial judge's failure to give adequate directions in relation to this alibi evidence. The amendment was, quite properly, not opposed by the State.

[18] The Summing Up was also flawed because it dealt overwhelmingly with the case against the first appellant and failed to delineate the case against the second appellant. For example the second appellant's seven line confession gave very little

detail at all as to the circumstances of the robbery. Yet the trial judge said in his Summing Up that the State's case was that *"the statements are far too detailed to have been made up by the police"*. In failing to point out that this was an untenable submission in relation to the second appellant's confession, the Summing Up was very unfair to the second appellant.

[19] For the reasons set out above the trial judge ought to have acquitted the appellants.

[20] The Notice of Appeal had as a ground that the sentences of 5 years were excessive. This ground was not pursued on appeal.

[21] At the conclusion of the appeal hearing on 30 October 2008 the Court made the following orders:

[1] The appeals are allowed;

[2] The convictions of the appellants, Orisi Tamani and Rodney Silikula, are quashed.

[3] There are to be no retrials.

Byrne, JA

Powell, JA

Hickie, JA

Solicitors:

Valenitabua Esq. Suva for the First Appellant
Office of the Legal Aid Commission, Suva for the Second Appellant
Office of the Director of Public Prosecutions, Suva for the Respondent