

**IN THE COURT OF APPEAL**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO: AAU0103 OF 2011**  
(High Court Case No. HAC 40/10)

**BETWEEN** : **JOE KING** Applicant

**AND** : **THE STATE** Respondent

**BEFORE** : **HON. MR. JUSTICE DANIEL GOUNDAR**

Counsel : Ms. N. Nawasaitoga for the Applicant  
Ms. M. Fong for the State

Date of Hearing : 21 November 2013  
Date of Ruling : 29 November 2013

---

**RULING**

---

- [1] The applicant (King) was jointly tried with his co-accused (Mohan) on a charge of aggravated robbery in the High Court at Lautoka. He was convicted and sentenced to 10 years and 8 months imprisonment. This is an appeal against that conviction and sentence.
- [2] King's appeal is governed by section 21 (1) of the Court of Appeal. A ground of appeal that raises an arguable pure question of law may proceed as of right (s 21 (1) (a)). Grounds involving mixed questions of law and fact, or fact alone, require leave (s 21 (1) (b)). The test for leave is whether the ground is arguable before the Full Court (*Simeli Naisua v State* Crim. App. No. CAV0010 of 2013).
- [3] Further, leave is required to appeal against sentence (s 21 (1) (c)). The test is whether the trial judge made an error in sentence by:
- (i) Acting upon a wrong principle; or
  - (ii) Allowing extraneous or irrelevant matters to guide or affect him; or
  - (iii) Mistaking the facts; or

- (iv) Failing to take into account some relevant considerations (*Kim Nam Bae v The State*, Criminal Appeal AAU 0015).

[4] King has conveniently summarised his grounds using headings, which I adopt in this ruling.

### **Conviction Appeal**

[5] **Ground 1 – wrongful assessment of confession and its admission**

This ground requires consideration of law and facts on the admissibility of King's confession. King's objections to his confession were that the police fabricated his confession and then severely beat him to make him sign the record of interview. To put it another way, King claimed he did not confess as a result of assault, but force was used to make him sign a fabricated record of interview.

[6] King's argument under this ground is based on the discrepancies in the Station Diary and the evidence of the interviewing officer who recorded the caution interview. According to King he was arrested on 30 April 2010 and locked up in a cell at the Lautoka Police Station. He was not interviewed under caution until 2 May 2010. According to the Record of Caution Interview, the interview was conducted on 1 May 2010. But there is no entry made in the Station Diary kept at the Lautoka Police Station to show that King was released from the cell for an interview on 1 May 2010. The only entry that is made in relation to an interview was made on 2 May 2010. King contends that the Station Diary entry on 2 May 2010 confirms his version that he was interviewed on 2 May 2010. He therefore submits the trial judge should have believed him that he was assaulted by the police before and during the caution interview.

[7] Counsel for the State submits that although there was no entry made in relation to King on 1 May 2010, the entry on 2 May 2010 relates to the charge statement and not the caution interview. According to the charge statement, King was charged on 2 May 2010, and he elected not to make any statement. Counsel for the State further points out that King's evidence in the *voir dire* and the trial proper was that he was interviewed on 1 May 2010.

[8] I am persuaded to accept the State's submission on this ground as they are supported by the court record. The trial Judge concluded that the applicant's caution interview was made on 1 May 2010 and the lack of entries in the Station Diary was insignificant when it came to assessing whether King was assaulted before and during the caution interview. This conclusion was available on the evidence. No arguable error is shown in the trial judge's decision to admit King's caution interview in evidence.

[9] **Ground 2 – Failure to direct the assessors on period of detention**

King contends that he was detained for four consecutive days before taken to court. He submits his period of detention was oppressive and the trial judge failed to direct the assessors on this point.

[10] King's submissions are misconceived. Period of detention was not a ground for objection to the confession. The trial judge found that King was interviewed within 24 hours of his arrest. Period of detention was a non issue when King confessed within 24 hours of his arrest in police custody. Since King was arrested on a Friday afternoon (30 April 2010), interviewed on Saturday (1 May 2010), charged on Sunday (2 May 2010), he could not be presented in court until Monday (3 May 2010). In these circumstances, no arguable point can arise against conviction from King's detention.

[11] **Ground 3 – Failure to direct and warn the assessors on the dangers of convicting on uncorroborated confessional statement alone**

This ground is misconceived. As pointed out by the Full Court in *Kean v State* [2013] FJCA 14; AAU0018.2008, corroboration directions are not required even if the case against an accused is substantially based on his confessional statement to a person in authority.

[12] **Ground 4 – Failure to direct on what weight should be given to the confession**

Although the trial judge did use the word 'weight' in his directions, he made it plain to the assessors at paragraphs [18] and [19] that it was entirely a matter for them to determine whether the accused voluntarily made the confession and that the confession was true. The assessors were further directed that if they were not sure of any one of these two matters, they must ignore the confession. It is clear from these

directions that the assessors were told on what weight they should attach to the disputed confession. This ground is not arguable.

[13] **Ground 5 - Trial judge was bias before, during and after trial**

This ground has no factual foundation. It appears that the applicant has just thrown a bias allegation into thin air hoping this Court will accept it. This is not arguable ground.

[14] **Ground 6 - Non-Direction on Alibi Evidence**

King did not give any alibi notice as required by section 125 of the Criminal Procedure Decree. He only raised alibi as part of his objection to the admissibility of his confession. King told the trial judge that when he gave his alibi during his caution interview, the police did not believe him. At trial King gave evidence he was at someone's birthday party drinking grog at the time the alleged robbery took place. King did not provide any further details of this function or names of the people who could confirm his alibi. It is clear that King's defence was more of a denial rather than an alibi. The trial judge fairly summarised King's defence at paragraph [16] of the summing up. This ground is not arguable.

[15] **Ground 7 - Non Direction on Prior Inconsistent Statement of the Complainant**

King contends that at the trial, the complainant identified a heart-shape money box, while in her statement to the police, she said the stolen money was in a till that was blue in colour.

[16] Counsel for the State submits that there is no contradiction because the heart-shape till could have been blue in colour. In any event, the complainant's evidence did not incriminate King, and therefore, the inconsistency was not material. I agree. This ground is not arguable.

**Sentence Appeal**

[17] **Ground 1 - Sentence is harsh and excessive due to disparity arising from the co-offender's sentence**

The sentences were calculated as follows:

**King**

Starting point	-	12 years
Add aggravating factors	-	2 years
Deduct good character	-	2 years
Deduct remand period	-	3 months
Final Sentence	-	11 years and 9 months
Non parole period	-	10 years

**Mohan** (the co-offender)

Starting point	-	12 years
Add aggravating factors	-	2 years
Deduct good character	-	2 years
Deduct remand period	-	16 months
Final Sentence	-	10 years and 8 months
Non parole period	-	9 years

- [18] Clearly, the disparity in sentences was due to the different remand periods. But when the remand periods are added to the non-parole periods, King's length of incarceration comes to 10 years and 3 months before he will be eligible for parole, while Mohan's length of incarceration comes to 10 years and 4 months before he will be eligible for parole. In other words, Mohan's length of incarceration is more than King. This ground is not arguable.
- [19] **Ground 2 – Disparity arising from other comparable cases**  
 This ground is misconceived. Other comparable cases are only relevant to determine the tariff for an offence. For robbery with violence, the established tariff is 10 to 16 years imprisonment (*Samuel Donald Singh v State* Crim. App. No. AAU15 and 16 of 2011). King's sentence is clearly within that tariff.
- [20] **Ground 3 - Consideration of impermissible aggravating factors**  
 Apart from the aggravating features inherent in the charge (use of weapon and joint attack), the trial judge considered the invasion of a domestic premises as an aggravating factor. No arguable error is shown in the consideration of the aggravating factors.
- [21] **Ground 4 – Failed to give proper discount to personal factors**  
 King was 41 years old and a labourer at Fiji Sugar Corporation at the time of sentencing. Out of his 22 previous convictions, only one was current. The trial judge

accepted that King had made some attempt to reform and therefore gave him a discount of 2 years in his sentence. No arguable error is shown in the consideration of the mitigating factors.

**Result**

[22] Leave to appeal against conviction and sentence is refused.



A handwritten signature in black ink, appearing to read "D. Goundar", written over a dotted line.

Daniel Goundar  
**Justice of Appeal**

**Solicitors:**

Office of the Legal Aid Commission for the Applicant  
Office of the Director of Public Prosecutions for the State