

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

**CRIMINAL APPEAL NO. AAU0047 of 2010**  
**High Court Criminal Action No. HAA 8 of 2010L**

**BETWEEN** : **MANOA BALEINAKEBA**

*Appellant*

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

*Respondent*

**Coram** : **Chandra RJA**

**Counsel** : **Appellant in Person**  
**Mr L. Fotofili for the Respondent**

**Date of Hearing** : **18 April 2013**

**Date of Ruling** : **4 July 2013**

**RULING**

1. This is an application for leave to appeal against the judgment of the High Court sitting in appeal from a judgment of the Magistrate's Court.
  
2. The Appellant was charged before the Magistrate's Court at Lautoka on the following counts:
  1. Conspiracy to commit a felony contrary to section 385 of the Penal Code.
  2. Robbery with violence contrary to section 293(1) of the penal Code.
  3. Wrongful confinement contrary to section 253 and 356 of the Penal Code.
  4. Unlawful use of motor vehicle contrary to section 292 of the Penal Code.(Cap.17).

3. The Appellant had been with a group of young men who had hired a van in Lautoka city to go to Simla. On arrival there they had assaulted and tied up the driver and robbed him of cash and his mobile phone and unlawfully driven the van to Waiyavi.
4. The Appellant pleaded guilty and he was sentenced to 12 months imprisonment on count 1, 8 years imprisonment on count 2, 9 months imprisonment on count 3 and 5 months imprisonment on count 4, the sentences to run concurrently.
5. The Appellant appealed against the sentence to the High Court.
6. The High Court dismissed the appeal of the Appellant.
7. The Appellant in his notice of appeal to the Court of Appeal has adduced the following grounds :
  1. That the sentence is harsh and excessive in all the circumstances of the case.
  2. That the learned Magistrate failed to take into account the time spent in custody on remand.
  3. That the disparity of sentence in comparison with other more violent offences of similar nature.
  4. That the Magistrate failed to apply the four principles of sentencing and also the totality principle.

8. These were the same grounds that were urged before the High Court in his first appeal. The learned High Court Judge considered these grounds and dismissed the appeal as none of the grounds found favour with the Court.
9. An appeal against the judgment of the High Court in a situation such as this is a second appeal against the judgment of a Magistrate's Court and is governed by the provisions of Section 22(1) of the Court of Appeal Act, Cap.12.
10. According section 22(1) an appeal lies against the judgment of a High Court sitting in appeal from the judgment of a Magistrate's Court only on a question of law. In terms of sub-section (2) (a) No appeal would apply unless the appeal is on the ground that the sentence was an unlawful one or was passed in consequence of an error of law.
11. When the application was taken up in Court, the Appellant wished to have a reduction in sentence.
12. Since this is a second appeal, it has to be considered as to whether the Court of Appeal has jurisdiction to entertain an appeal against quantum or extent of sentence. In **Prem Chand & Another v Reginam** (1976) 22FLR 100 the Court of Appeal stated –

*“We read section 22(1) as meaning that there is no jurisdiction to entertain an appeal against sentence which goes to the quantum or extent of a sentence even if a question of law is involved.”*

Section 22(1) not only limits a second appeal to a “a question of law only” but places a further restriction by the use of the words “not including severity of sentence”.

This view was adopted in **Shamsher Ali v State** [1996] FJCA 12 where the Court held that the legislation has specifically prohibited a second appeal against severity of sentence.

13. In view of the above position the application for leave to appeal is refused.

**Order of Court**

Application for leave to appeal refused.

Suresh Chandra  
**Resident Justice of Appeal**