

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 46 of 2011
(High Court HAC 24 of 2010L)

BETWEEN : **DEO NARAYAN SINGH** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra JA**

Counsel : **Appellant in person.**
Mr M. Korovou for the Respondent.

Date of Hearing : **19 June 2013**

Date of Ruling : **29 July 2013**

RULING

[1] The Appellant was charged with five others with fraud related offences. The charges against him were count 1 (conspiracy to fraud – contrary to section 385 and 345(a) of the Penal Code), count 14 (forgery - contrary to section 335(2)(a) of the Penal Code), count 15 (causing payment of money by virtue of a forged document – contrary to section 345(a) of the Penal Code), count 16 (forgery – contrary to section 335(2)(a) of the Penal Code), count 17 (causing payment of money by virtue of a forged document – contrary to section 345(a) of the Penal Code) count 18 (forgery – contrary to section 335(2)(a) of the Penal Code), Count 19 (causing the payment of money by virtue of a forged document), count 20 (forgery – contrary to section 335(2)(a) of the Penal Code), count 21 (Obtaining money by virtue of a forged document – contrary to section 345(a) of the Penal Code) count 28, 29 and 31 (money laundering – contrary to section 69(2), (3a) of the Proceeds of Crime Act 1997).

- [2] After trial the Appellant was found guilty on counts 1 (conspiracy) 15, 17 and 19 (causing payment of money by virtue of forged documents), count 20 (forgery), count 21 (obtaining money by virtue of a forged document), counts 28,29 and 31 (money laundering).
- [3] The Appellant was convicted and sentenced to 4 years imprisonment with a minimum term of 3 years with effect from 19th April 2011.
- [4] The Appellant at first filed a letter of appeal dated 26th April 2011 appealing against sentence only and later by letter dated 2nd August 2011 appealing against conviction.
- [5] The grounds of appeal of the Appellant are:

Against conviction :

1. That the learned trial judge erred in law and in fact when his Lordship failed to have a separate trial and by doing so prejudiced his right to a fair trial;
2. The trial judge erred in law and in fact in proceeding to trial without the presence of the 1st and 2nd accused.
3. The trial judge erred in law and in fact in failing to direct the assessors that the prosecution failed to prove beyond reasonable doubt that the appellants had the intention to steal.

Against sentence:

1. That the sentence is manifestly harsh and excessive and wrong in principle in all the circumstances of the case;
2. The learned judge erred in law and in fact when his lordship wrongfully took irrelevant circumstances into consideration in drawing the sentence of the appellant;

3. The learned trial judge erred in law and in fact when his lordship wrongfully breached the parity principle of sentencing of co-accused;
4. The learned trial judge erred in law and in fact when his lordship wrongly passed the sentence on an error of law.

Grounds of Appeal against conviction

[6] Ground 1 in the grounds of appeal against conviction is regarding the charging of the Appellant together with the other accused. Section 121 of the Criminal procedure Code (Cap.21 now repealed) provides that persons accused of the same offence committed in the course of the same transaction can be joined in one charge or information and tried together. The charge of conspiracy was against all five accused and it was only relating to the other offences that the charges differed against each accused based on their involvement in the chain of events which were connected to one another.

The issue of separate trials is a matter for the trial judge in the exercise of his discretion to ensure that the accused has a fair trial. **Eparama Nagalu v State** [2010] FJCA60;AAU3.2010 (28 September 2012). But where two or more are jointly charged with participation in an offence it is very rarely that separate trials are ordered. In the present case the chain of events was such that all five accused were involved in some aspects and it was nothing but fair to have one trial against all of them although some of the charges were common and some were independently leveled against the different accused. Therefore no prejudice has been caused to the Appellant by being tried in the same trial and the first ground lacks merit.

[7] The second ground of appeal is as regards the trial being proceeded with in the absence of the 1st and 2nd accused. The Appellant has submitted that if the 1st accused was present he

would have confessed to the commission of the crime and state that the Appellant and his wife had not conspired to defraud. This is mere speculation and there was no prejudice caused to the Appellant as he was present at the trial and had chosen to be unrepresented and was given every opportunity to cross examine the prosecution witnesses and lead evidence if he wished to. This ground therefore lacks merit.

- [8] The third ground of appeal relates to the mental element of the offence of stealing as the Appellant has submitted that the learned trial Judge had erred in failing to direct the assessors that the prosecution had failed to prove beyond reasonable doubt that the appellant had the intention to steal. The offences that were alleged against the Appellant were relating to forgery and not stealing. The elements of the offences with which the Appellant was charged were explained very clearly by the learned trial Judge in his summing up to the Assessors. The fact that the directions regarding the elements of law were clear is seen by the fact that the Appellant was not found guilty by the Assessors of all the charges leveled against him. There is no merit in this ground.

Grounds of appeal against sentence

- [9] The first ground of appeal against sentence is that the sentence is harsh and excessive and wrong in principle in all the circumstances of the case. The sentence imposed on the Appellant is 4 years imprisonment with a non parole period of 3 years for conspiracy and 4 years imprisonment for the other counts on which he was found guilty with a non parole period of 3 years, the sentences to run concurrently. The learned trial Judge in sentencing the Appellant stated that the Appellant had played a major role in the events relating to the several offences. The sentences imposed were based on the tariff that was applicable for such offences and also taking into account the aggravating and mitigating factors. In those circumstances the sentences do not appear to be harsh and excessive and therefore this ground is devoid of merit.

[10] The second ground of appeal against sentence is that the learned trial judge had taken irrelevant circumstances into consideration in imposing the sentences on the appellant. The learned trial judge in sentencing the Appellant stated the manner in which the Appellant had been involved in the commission of the offences and his family position and considered the fact that he had shown remorse and gave credit for same and the fact that he had a clear record. The matters said to be irrelevant have not been spelled out by the Appellant and therefore there is no merit in this ground.

[11] The third ground of appeal against sentence is that the learned trial judge had breached the parity principle of sentencing of co-accused. The application of the principle relating to parity of sentence has been stated in **Bote v The State** [2005] FJCA 58 Crim. Appeal No.AAU0011 of 2005 as:

“The parity principle applies where the sentences imposed on co-offenders are so disproportionate as to leave the offender with the larger sentence with a justifiable sense of grievance.”

[12] The Appellant was sentenced on the basis of his involvement in the offences leveled against him and the learned trial judge imposed sentences on the other accused according to their involvement in the offences leveled against them. The 1st accused was given a 6 year sentence, the 2nd and 3rd accused to 2 years, the Appellant and the 5th accused 4 years and the 6th accused 2 years suspended sentence. The differences in the sentences has been according to their participation in the offences and the learned trial judge has set out his reasoning while imposing these sentences. There is no error that is manifest in the sentencing of the appellant and therefore this ground has no merit.

[13] The fourth ground of appeal against sentence is that the learned trial judge erred in law and in fact when his lordship wrongfully passed the sentence on an error of law. As stated above the learned trial judge has considered the tariff applicable to the several offences that were levelled against the Appellant and the other accused and had also taken into

account the aggravating and mitigating factors in relation to each accused when imposing the sentences on them and therefore there is no error that can be shown in the sentence. This ground too lacks merit.

[14] As the grounds of appeal seeking leave to appeal against conviction and sentence lack merit the application for leave to appeal is refused.

Orders of Court:

The Application for leave to appeal against conviction and sentence is refused.

Suresh Chandra
Resident Justice of Appeal