

IN THE COURT OF APPEAL
[On Appeal from the High Court]

CRIMINAL APPEAL NO: AAU119 of 2011
CRIMINAL APPEAL NO: AAU0038 of 2013
[High Court Appeal Case No: HAA018/10L]

BETWEEN : **ERONI VAQEWA**
ASELAI WAQANIVALU

Appellants

AND : **THE STATE**

Respondent

Coram : **Goundar JA**

Counsel : **Mr. S. Sharma for the Appellants**
Mr. M. Delaney for the Respondent

Date of Hearing : **27 May 2014**

Date of Ruling : **6 June 2014**

RULING

[1] The appellants were convicted of robbery with violence after a trial in the Magistrates' Court. The first appellant was sentenced to 6½ years' imprisonment while the second appellant was sentenced to 7 years' imprisonment. Both appealed against their convictions and sentences in the High Court. They challenged the reliability of the identification evidence that formed the basis for their convictions. The learned High Court found that the trial Magistrate's assessment of the identification evidence was correct in law and fact. The learned judge upheld the trial Magistrate's finding that the appellants were correctly identified by the complainant who had enough time and opportunity to see the appellants well during the commission of the crime.

- [2] The present appeals were filed way out of time after the High Court dismissed the appellants' appeals. The first appellant is late by about 2 years and 8 days. The second appellant is late by 1 year and 1 month.
- [3] The delay is not the only hurdle for the appellants. Their appeals to this Court are governed by section 22(1) of the Court of Appeal Act. Section 22(1) provides:

“22(1) Any party to an appeal from a magistrate's court to the [High Court] may appeal, under this Part, against the decision of the [High Court] in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only”

- [4] The grounds of appeal advanced by the appellants are:

Ground One

The Learned Appellate Judge erred in law when he did not rule that the Learned Trial Magistrate had wrongly allowed dock identification of the Appellants which was prejudicial.

Ground Two

The Learned Appellate Judge erred in law when he did not rule that the identification of the Appellants in the Police Station was without their consent and that there was no evidence from the Police Officer who was present during the identification of the Appellants that the identification was carried out fairly and properly.

Ground Three

The Learned Appellate Judge erred in law when he failed to consider that the Learned Trial Magistrate had given no weight to the unsworn evidence of the First Appellant when the Appellant had put forward his defence.

Ground Four

The Learned Appellate Judge erred in law when he did not consider that although the confession had been excluded the Learned Trial Magistrate had already heard the confession which was led in evidence hence a substantial miscarriage of justice had occurred.

- [5] Counsel for the State submits that none of the grounds raise a question of law only and therefore the appellants do not have a right of appeal.

Ground 1

[6] Dock identification is admissible in Fiji. The appellants' contention is that the dock identification should not have been allowed in their case because of its prejudicial effect. Whether the dock identification should have been allowed in the circumstances of this case requires consideration of the evidence that was led at the trial. This question does not raise an issue of law only.

Ground 2

[7] The reliability of the identification of the appellants by the victim at the police station is a question of fact and not an issue of law only.

Ground 3

[8] The appellant was not entitled to give a dock statement in his defence. By the time the trial was held, dock statement was abolished. The mistake made by the trial Magistrate to allow the appellant to make a dock statement was prejudicial to the prosecution and not to the appellant, because the prosecution could not cross-examine the appellant on his dock statement. No error of law only arises from this mistake.

Ground 4

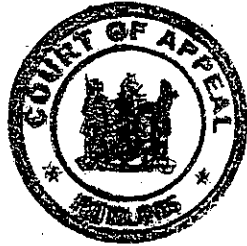
[9] The trial Magistrate excluded the appellants' confessions from consideration because the appellants were unrepresented and the confessions were led in evidence without first determining its admissibility in a voir dire. The exclusion was proper and no error of law only is shown under this ground.

[10] A single judge has power to dismiss an appeal that is bound to fail because there is no right of appeal. In this case I have reached the conclusion that the appellants' appeals are bound to fail because they have no right of appeal under section 22 of the Court of Appeal Act.

Result

[11] Extension of time to appeal is refused.

[12] The appeals are dismissed under section 35(2) of the Court of Appeal Act.



A handwritten signature in black ink, appearing to be "D. Goundar".

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Hon. Justice D. Goundar
JUSTICE OF APPEAL