

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

CRIMINAL APPEAL NO. AAU0098 OF 2013
[High Court Case No. HAC146/10]

BETWEEN : ROBIN SURYA SUBHA SHYAM
Appellant

AND : THE STATE
Respondent

Coram : Goundar JA

Counsel : Mr. F. Vosarogo for the Appellant
Ms J. Prasad for the Respondent

Date of Hearing : 29 July 2014

Date of Ruling : 15 January 2015

RULING

- [1] Following a trial in the High Court at Suva, the appellant was convicted on one count of money laundering and sentenced to 12 years' imprisonment. This is his application for leave to appeal against conviction and sentence. The test for leave is whether the grounds of appeal are arguable.
- [2] The grounds of appeal are as follows:

Against Conviction

1. The learned Judge erred in law by not adequately addressing the law on accomplice evidence and the danger of conviction based solely on evidence of accomplice(s) which rendered demonstrably perverse or unsafe or unsatisfactory the opinion of the assessors and the judgment of the Court.

2. The learned Judge failed to adequately address to the Assessors the issues concerning immunity witnesses which failure was detrimental to the fairness of the trial and the weight upon which the evidence ought to have been received by the Assessors and the Court which rendered the judgment unsafe or unsatisfactory.
3. That the learned trial Judge gave undue weight and regard to circumstantial evidence of the witnesses capable of giving circumstantial evidence which weight and regard was not balanced in the summing up address as forming part of the work required from the Appellant to perform as part of his day to day activity and such undue preference drew irresistible inference of guilty from the Assessors which inference was unsafe and unsatisfactory.
4. That the learned trial Judge misdirected and did not give adequate directions to the assessors on the elements required for the prosecution to prove each transaction relied upon by the prosecution had to be considered independently of the others and that each of them had to be proven beyond reasonable doubt.
5. That the learned Judge failed to bring to the Assessors attention the details of the Appellants caution interview which explains his position and such failure caused a miscarriage and rendered the opinion of the assessors and the judgment of the court to be unsafe, unsatisfactory and or fatal to the overall justice of the case.
6. That in all the circumstances of the case, there has been a miscarriage of justice by reason of the failure of the trial Judge to properly address the issue of immunity and accomplice evidence, particularly that of Abdul Jamal Aziz also known as Jimmy and such inadequacy in the courts approach, summing up and direction caused justice to miscarry and such judgment of the court is unsafe in all the circumstances of the case.
7. That the learned trial Judge erred in law and fact by declining to accept the evidence that in majority of the transactions, the accomplice Abdul Jamal Aziz was the recipient of the monies (and no such evidence was given other than given by such witness that the Appellant was involved in any way other than the performance of his work as assessor with Fiji Island Revenue and Customs) and such evidence which absolved the Appellant was not considered in the summing up which renders the judgment fatal.
8. That the learned Judge's summing up did not adequately address the evidence in its totality in favour of the Appellant and such inadequacy of the trial Judge's summing up was prejudicial to the Appellant in the court's Judgment.

Against Sentence

9. The learned trial Judge and sentencing Judge erred in law and fact by finding that the Appellant's level of criminal responsibility was made more culpable by the absence of any trace in the monies allegedly laundered.
10. That the learned trial and sentencing judge failed to properly sentence the Appellant giving due regard to existing laws and precedent which departure caused a sentence which is harsh and excessive in all circumstances of the case.
11. That in all the circumstances the sentence imposed upon the Appellant was manifestly excessive.

Conviction appeal

- [3] I will consider the grounds as they were argued in the written submissions filed by counsel for the appellant. The grounds of appeal against conviction were condensed into two issues. Grounds 1, 2, 3, 6 and 7 relate to the inadequacy of directions on accomplices' evidence. Grounds 4, 5 and 8 relate to the burden and standard of proof and the adequacy of directions on the defence case.
- [4] At trial, it was not in dispute that the appellant was employed as a senior assessor by the Fiji Islands Revenue and Customs Authority. The prosecution case was that the appellant obtained nearly \$350,000.00 from his employer using false tax returns. Some of the false documents used were found at his home during police investigation. After obtaining the proceeds, the appellant laundered it using his friends' bank accounts. The nine bank account holders who gave evidence were granted immunity from prosecution. It was not in dispute that they were accomplices. Their evidence directly implicated the appellant. The full directions on the accomplice evidence are contained at paragraphs [12] – [14] of the summing up. The assessors were warned to approach the accomplices' evidence with caution and that they should look for independent evidence to corroborate their evidence even if they found the accomplices to be credible. The directions made it clear to the assessors that the independent evidence that they were looking for must implicate the appellant to the alleged crime. The trial judge then pointed out to the circumstantial evidence that implicated the appellant as capable of corroborating the evidence of the

accomplices. He left the issue of whether the circumstantial evidence corroborated the accomplices' evidence for the assessors to consider. The directions on the accomplice evidence are correct in law and fact. These grounds are not arguable.

- [5] Grounds 4, 5 and 8 were argued together. At trial, the appellant elected to remain silent. The learned trial judge gave clear directions on the elements of money laundering that the prosecution was required to prove beyond reasonable doubt at paragraphs [7]-[10] of the summing up. The appellant's defence was a denial of the charge and the prosecution to establish guilt beyond reasonable doubt. At paragraph 34 of the summing up, the learned trial judge clearly directed the assessors that it was on the prosecution evidence that they were to determine the appellant's guilt because the appellant did not have to prove anything. The directions are fair and correct. These grounds are not arguable.

Sentence appeal

- [6] Counsel for the appellant has correctly identified the principles upon which appellate courts review sentencing discretion. Counsel cites a passage from House v The Queen (1936) 55 CLR 499 that summarizes the principles:

"It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the material for doing so. It may not appear how the primary judge has reached the result embodied in his order, but if upon the facts it is reasonable or plainly unjust the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred."

- [7] Unfortunately, counsel for the appellant has not articulated his grounds in accordance with the above principles.

- [8] The appellant contends that the trial judge was wrong to hold him more culpable because there was no trace of the proceeds (money). The State was clearly defrauded of a substantial amount of money when the proceeds could not be traced. This was a relevant consideration when considering the appellant's criminal responsibility.
- [9] The maximum sentence for money laundering is 20 years' imprisonment. The trial judge considered the sentences that were imposed in other money laundering cases and said the tariff ranged from 5 to 12 years' imprisonment. The learned trial judge arrived at a sentence of 12 years' imprisonment after balancing the mitigating and aggravating factors using a starting point approach. There is no arguable error in the sentencing discretion. The sentence is within the tariff. The sentence appeal is not arguable.

Result

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



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

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Hon. Mr. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Mamlakha Lawyers for Appellant
Office of the Director of Public Prosecutions for State