

IN THE COURT OF APPEAL, FIJI
[ON APPEAL FROM THE HIGH COURT]

Criminal Appeal No. AAU 0095/2014
(High Court Case No. HAC 013/2014)

BETWEEN : **GREGORY WILCOX STIRES** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra, JA**
Gamalath, JA
Fernando, JA

Counsel : **Mr. Thompson Lee for the Appellant**
Mr. S. Babitu for the Respondent

Date of Hearing : **10 September 2018**

Date of Judgment : **04 October 2018**

JUDGMENT

Chandra, JA

[1] I agree with the reasoning and conclusion of the judgment of Gamalath JA.

Gamalath, JA

[2] On 2 February 2014, the appellant arrived at Nadi International Airport in an inbound flight from Hong Kong. At the passenger terminal his luggage, a brown colour suitcase, was examined on suspicion and the officers on duty at the Airport uncovered 3.8Kg of Methamphetamine, an illicit drug “concealed around the inner edges of the bag”, as described in evidence at the trial by one Amit Ram, the Customs officer, who detected the drugs.

- [3] The appellant was indicted under section 5 (a) of the Illicit Drugs Control Act 2004, and after trial the assessors opined unanimously that the appellant was guilty as charged. The learned High Court Judge having agreed with their opinion sentenced the appellant to 9 years and 6 months imprisonment with a non-parole period of 8 years.
- [4] The appellant appealed against the conviction and the following were the grounds of appeal advanced on behalf of the appellant for the consideration of the Learned Single Judge;
- a. Ground One; The learned Trial Judge erred in law and in fact when he did not adequately direct the assessors that possession without knowledge shall not constitute to be an offence.
 - b. Ground Two; The learned trial judge erred in law and in fact when he failed to direct the assessors regarding the manner in which they should draw inference when reaching their verdict.
- [5] The learned Single Judge ruled on 23 December 2015 that there were no merits to the grounds of appeal, hence the refusal to grant leave to appeal.
- [6] Presently, this hearing is coming up before this Court by way of a renewal application as per section 35 of the Court of Appeal Rules and relying on the following two grounds, which are slightly different in complexion to his original grounds of appeal, the appellant is seeking to canvass only the conviction;
- a. Ground One; that the Methamphetamine had been identified concealed in the rim and the inner edges of the brown suitcase where only the ION machine could identify it, therefore it could be proper to consider that the offence was done through fraudulent consignment activities without the actual knowledge of the appellant that the said brown

suitcase was the proceed of illicit drugs transaction and came from some form of unlawful activity.

- b. Ground Two; That Leonard Green been identified as the Manufacture and ownership of the suitcase delivered to the appellant in Lowe City Togo .Therefore it would be proper to consider him as First Party and this raises the question as to why appellant was charged for the offence organized by the fraudsters when there is no evidence to prove that Appellant knew or had the knowledge that the suitcase was the proceeds of illicit drugs business dealer.

[7] The Counsel for the appellant confined his submissions mainly to the matters raised in the first ground. The second ground, as I understand by the submissions of the Counsel for the appellant, should be considered along with the first ground for its factual basis is ancillary to the first ground.

[8] Accordingly, the substratum of the two grounds of appeal is that the appellant ought not to have been convicted as charged, for as regards the evidence adduced by the prosecution, it falls short of proving that the appellant had the requisite knowledge of the presence of the illicit drug hidden in the luggage that he was carrying whilst entering Fiji. In other words , the appellant is seeking to assail the conclusions made by the learned Trial Judge, who in his judgment made a categorical pronouncement , that by applying the test of probability and consistency, on the one hand the evidence of the appellant at the trial is improbable and inconsistent to such a degree so that he was at variance with its testimonial trust worthiness and on the other hand the appellant's evidence does not form a basis to create a reasonable doubt that he did not have the requisite knowledge of the presence of the illicit drug in the bag ,a factor that is sine qua non for the purpose of establishing the possession of the illicit drugs.

- [9] In this appeal it is common ground that the evidence of the prosecution establishes the fact that the appellant was in possession of the suitcase in which the drugs were found. It is equally the position without any doubt that the evidence relating to the mechanical process through which the drugs were detected was established without any controversy. Almost all the important prosecution witnesses are officers working at the AirPort and it is the performance of their official duty through which the detection had been made with success. The learned Trial Judge had analyzed the prosecution's evidence accurately and thus there is no valid ground upon which one can take umbrage at his conclusions.
- [10] Turning to the evidence of the appellant, it had been his evidence at the trial that being a citizen of the United States of America and having been engaged in the businesses relating to international leasing, he used to travel around the world covering many countries. On this particular occasion, he had left the United States on 22-23 January with the intention of reaching the final destination, Australia. In relation to the arrangement of the "excursion", (in his own words at the trial), the entire itinerary had been arranged by one Lawrence Green, who he had never met before.
- [11] These prior arrangements had been made via e-mails and telephone calls and their first meeting was expected to be in Australia. His first destination was Lome, Togo (located on the gulf of Guinea) on 23-24 January, where he spent seven days in one Ivis Hotel.
- [12] Whilst at Ivis Hotel he had met one Nelson, and his fiancée and another person by the name of Lawrence Green, who he was planning to meet in Australia, as described in the early part of his testimony. On this point if I may quote the appellant's own evidence, "I met Mr. Nelson and a lady girl friend or fiancée of Nelson. Another guy may be Lawrence Green." Answering the cross examination the appellant had further stated that:

"Q: You haven't seen Mr. Green?

A: I may have met him and spoken to him in Lome.

Q: Did you ask him whether he is Mr. Green?

A: No.

Q: This is the way you deal with your business transaction?

A: Eventually, we meet each other".

- [13] With regard to the brown suit case, the appellant had stated in his evidence that it was Nelson who handed over the suit case at Ivis Hotel. The transaction with regard to the suitcase was as a result of the prior arrangements made by Mr. Green via e mails and telephone calls. The suitcase was to be handed over to one Zubanda, in Australia. At Ivis Hotel, he received some money as well from Mr. Nelson. The appellant had further stated in evidence that he had a look into the contents of the suit case and seen some items of cloths. The appellant further stated that “Mr. Green told me that I was receiving gifts to be delivered to Mr. Zubanda”.
- [14] As regards the evidence of the appellant and if one were to believe his evidence as true , it could be inferred clearly , that he had been dealing with certain persons of whom he has had no prior knowledge and the suitcase in which the illicit drugs was found had been handed over to him by one Mr. Nelson who he had met for the first time in Loma. Following the purported instructions of one Green, he was carrying it with him to be given to another person called Zubanda.
- [15] In my opinion, in the backdrop of the nature of the evidence of the appellant, the decision of the learned Trial Judge to reject the evidence of the appellant by applying the test of probability and consistency is completely correct.
- [16] On the legal directions on the requisite knowledge to be established to bring home a conviction in a case involving illicit drugs, I find the learned Trial Judge has left the assessors with the accurate directions. In any event it is not the contention of the appellant in his renewed grounds of appeal that there was any issue with regard to the directions adduced by the learned Trial Judge in his directions to the assessors or in his own judgment.
- [17] The appellant’s renewed grounds of appeal are mostly revolving around the nature of the factual issues with regard to the manner in which the detection of the illicit drugs in the suitcase had been made and thus they do not form a justifiable basis to interfere with the pronouncement of guilt of the appellant.

Conclusion

[18] The grounds of appeal are without any merits and this appeal is therefore dismissed.

Fernando, JA

[19] I agree with the reasoning and conclusion reached by Gamalath JA.

Order of the Court:

Appeal dismissed.



.....
Hon. Mr. Justice S. Chandra
JUSTICE OF APPEAL



.....
Hon. Mr. Justice S. Gamalath
JUSTICE OF APPEAL



.....
Hon. Mr. Justice A. Fernando
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for the Appellant.

Office of the Director of Public Prosecutions for the Respondent.