

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE MAGISTRATES COURT**  
*Exercising extended jurisdiction*

**CRIMINAL APPEAL NO. AAU 49 OF 2017**  
(Magistrates Court No: 1682/2016 at Suva)

**BETWEEN** : **RAJIT SINGH** and  
**RAMNIK CHAND**

*Appellants*

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

*Respondent*

**Coram** : Calanchini P

**Counsel** : Ms S Kunatuba for the Appellant Singh  
Mr A K Singh for the Appellant Chand  
Mr S Babitua for the Respondent

**Date of Hearing** : 27 March 2019

**Date of Ruling** : 24 May 2019

**RULING**

- [1] The appellants were each convicted on their pleas of guilty on one count of aggravated robbery and one count of attempted aggravated robbery by the Magistrates Court at Suva

exercising extended jurisdiction. On 15 March 2017 the appellants were each sentenced to terms of imprisonment of 8 years 11 months with non-parole periods of 5 years.

- [2] By letter dated 20 March 2017 the appellants filed a timely joint application for leave to appeal against sentence. On 27 June 2018 the appellant Rajit Singh filed an amended notice of appeal against sentence. The appellant Ramnik Chand filed a timely amended notice of appeal that included an application for leave to appeal against conviction.
- [3] This is their applications for leave to appeal against sentence (Singh) and against conviction and sentence (Chand) pursuant to section 21(1) of the Court of Appeal Act 1949 (the Act). Section 35(1) of the Act gives to a judge of the Court of Appeal power to grant leave. The test for granting leave to appeal against conviction is whether the appeal is arguable before the Court of Appeal and the test for granting leave to appeal against sentence is whether there is an arguable error in the exercise of the sentencing discretion (**Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 30 November 2013).
- [4] Considering first the application for leave to appeal against sentence by the first appellant, the amended grounds of appeal are drafted with some prolixity and raise issues that are more appropriately related to conviction than to sentence.
- [5] The real issue raised by the grounds of appeal against sentence is that the sentence is harsh and exercise. It is claimed that the judge has erred by relying on the decision of **Wise –v- The State** [2015] FJSC 7; CAV 4 of 2015, 24 April 2015.
- [6] The relevant facts may be stated briefly and are adopted from the sentencing decision of the learned Magistrate. On 29 September 2016 the first complainant was walking with a friend along Fletcher Road in Vatuwaqa, Suva in the afternoon on their way to the complainant's home. They saw the appellants walking towards them. The appellants attacked the first complainant and stole a Samsung S5 mobile phone and a "rip curl" brand wallet with a total value of \$215.00. The appellants then attempted unsuccessfully to rob the second complainant (the friend with the first complainant) of her iphone S5

mobile phone valued at \$300.00. The first appellant ran away and was shortly afterwards apprehended by some bystanders as a result of the first complainant having raised the alarm.

- [7] The Court assessed their pleas as unequivocal and proceeded to convict the appellants on one count of aggravated robbery and one count of attempted aggravated robbery. The force necessary to steal the wallet and the mobile phone was sufficient to constitute robbery and the fact that there were two offenders present and involved constituted aggravated robbery under section 311(1)(a) of the Crimes Act 2009.
- [8] The sentence imposed by the Court on the first appellant was determined on the basis that the tariff for aggravated robbery was 8 – 16 years relying on the decision of the Supreme Court in **Wise –v- The State** (supra). However in that case the Supreme Court was considering a case of aggravated robbery in the form of a night time home invasion by a group of armed intruders while the occupants were sleeping. On the other hand, the form of aggravated robbery in this appeal is often described as “*street mugging*.”
- [9] The approach to be adopted when sentencing an offender for aggravated robbery in the form of a “*street mugging*” was discussed by this Court in **Raqauqau –v- The State** [2008] FJCA 34; AAU 100 of 2007, 4 August 2008. The Court indicated that an appropriate tariff in such cases is 18 months to 5 years. Although the decision was delivered in 2008, there has been no move by the appeal courts to interfere with that tariff.
- [10] As a result, I have concluded that there has been an arguable error in the exercise of the sentencing discretion. Leave to appeal against sentence is granted to the first appellant Singh on that basis.
- [11] As for the application for leave to appeal against conviction and sentence by the appellant Chand, the appellant’s grounds of appeal are:



- “1. ***That*** the Learned Magistrate erred in law when he convicted the Appellant for the offence of ***AGGRAVATED ROBBERY*** and ***ATTEMPTED AGGRAVATED ROBBERY*** when in facts the offence should have been ***ROBBERY*** and ***ATTEMPTED ROBBERY***.
2. ***That*** the Learned Magistrate erred in law that:
  - (i) He convicted the Appellant with another as joint accused;
  - (ii) Erred when he failed to consider that there were two separate complainants; and
  - (iii) That the offence occurred simultaneous;
 by reason of which circumstances (the circumstances) there was a material irregularity in the course of the proceedings before the court such that a substantial miscarriage of justice occurred.
3. ***That*** the Appellant's plea was equivocal in that:
  - (i) The Resident Magistrate to put ***extreme*** pressure on the appellant to plead guilty; and or
  - (ii) That is Appellant don't plead guilty and admitted the offence whereby if the Learned Magistrate finds him guilty the Learned Magistrate will give Appellant the maximum sentence; and/or
  - (iii) That if the Appellant plead guilty he will be given the discount sentence by the Learned Magistrate.
4. ***That*** there had been a miscarriage of justice when the learned State Counsel produced summary of facts to the Learned Magistrate that were contrary to the witness's statement.
5. ***That*** the Learned Magistrate erred in law regarding the principle of sentencing.”

[12] The first point that needs to be made about Chand's appeal against conviction is that an appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence of equivocation on the record. (***Nalave -v- The State*** [2008] FJCA 56; AAU 4 and 5 of 2006, 24 October 2008). It is submitted that the second appellant had initially entered a plea of not guilty but changed his plea allegedly as a result of pressure from the court. It is also alleged that the second appellant objected to the summary of facts presented by the prosecution.

[13] Although none of the allegations made by the second appellant in his written submissions are reflected in the sentencing decision, it is necessary to examine the record to determine

whether the plea was unequivocal. It must be noted however that at all times the charges were aggravated robbery and attempted aggravated robbery and that at least for some of the time prior to trial the appellants were legally represented. However equivocation may be evidenced by ignorance, fear, duress mistake or even the desire to gain a technical advantage. **Maxwell -v- R** (1996) 184 CLR 501. For that reason leave to appeal is granted on ground 3.

- [14] In my opinion leave to appeal against conviction on grounds 1, 2 and 4 should be refused. The summary of facts satisfied the elements of aggravated robbery and attempted aggravated robbery. Both appellants were present when the two offences, arising out of the same incident, were committed. Force was used to seize the items in one case and in the other case force was used in the attempt to seize the item concerned.
- [15] Furthermore sections 59 and 60 of the Criminal Procedure Act 2009 permit offences and accused to be joined in circumstances that existed in the present case. Leave to appeal is refused on grounds 1, 2 and 4.
- [16] For the same reason for which leave was granted to the first appellant Singh, leave to appeal against sentence is also granted to the second appellant. Although no particulars are provided in the amended notice of appeal, the notice of appeal filed by the appellant in person sets out grounds of appeal against sentence that are sufficient to give leave to appeal on the basis that there is the same arguable error in the exercise of the sentencing discretion.
- [17] The second appellant also applies for bail pending appeal. The appellant Chand relies on the decision of **Zhong -v- The State** [2014] FJCA 108; AAU 44 of 2013, 15 July 2014. The law on granting bail pending appeal is well settled and is conveniently summarized in this Court's decision in **Zhong** (supra). In my judgment the appellant's submissions do not establish the necessary special circumstances in the present case when the material is considered objectively. Bail pending appeal is refused.

[18] There is a reference in some of the material that the second appellant intends to apply for leave to adduce fresh or new evidence. Such an application can only be made to the Court of Appeal. As far as can be ascertained there is presently no material on the file that such an application has been filed.

Orders:

1. Leave to appeal against sentence is granted to the first appellant Rajit Singh.
2. Leave to appeal against conviction on ground 3 is granted to the second appellant Ramnik Chand.
3. Leave to appeal against conviction on grounds 1, 2 and 4 is refused.
4. Leave to appeal against sentence is granted to the second appellant Ramnik Chand.
5. Application for bail pending appeal by the second appellant Ramnik Chand is refused.
6. The second appellant is to file and serve an application for leave to adduce fresh, new or further evidence together with a supporting affidavit within 28 days from the date of this Ruling if it is proposed to proceed with the application.



*W. Calanchini*

Hon Mr Justice W. D. Calanchini  
**PRESIDENT, COURT OF APPEAL**