

IN THE COURT OF APPEAL, FIJI
[On Appeal from the Magistrates Court]

CRIMINAL APPEAL NO.AAU 0089 of 2021
[In the Magistrates Court at Lautoka Case No. 366 of 2018/EJ25 of 2018]

BETWEEN : **SEMI RAISEVUNIVAI**

Appellant

AND : **THE STATE**

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Mr. M. Fesauti for the Appellant**
: **Mr. R. Kumar for the Respondent**

Date of Hearing : **28 November 2022**

Date of Ruling : **30 November 2022**

RULING

[1] The appellant with two others (the appellants in AAU 0074 of 2018) had been charged in the Magistrates court of Lautoka exercising extended jurisdiction on a single count of aggravated robbery contrary to section 311(1)(a) of the Crimes Decree, 2009 committed on 09 April 2018 by mugging the complainant of an iPhone valued at \$2000.00 and a wallet containing \$364.00.

[2] The appellant had pleaded guilty and the learned Magistrate had convicted the appellant. He had been sentenced on 05 July 2018 to 07 years, 09 months and 02 weeks of imprisonment with a non-parole term of 04 years.

- [3] The appellants being dissatisfied with the sentence had signed a timely notice of leave to appeal against sentence. Legal Aid Commission had submitted an amended notice of appeal containing a single ground of appeal against sentence along with written submissions. The respondent too had tendered written submissions in response.
- [4] According to the summary of facts (as stated in the appellants' written submissions), the complainant had gone to a shop around 5.00 p.m. on the day of the incident and as he was coming out of it, the appellants and another had grabbed him and pinned him to the ground. His iPhone and the wallet had been removed and the appellants and their accomplice had fled the scene.
- [5] This court delivered its Ruling on 29 April 2020 granting leave to appeal to the appellant's co-accused mainly on the sentencing error of the learned Magistrate applying the sentencing tariff of 08-16 years, set in **Wise v State** [2015] FJSC 7; CAV0004.2015 (24 April 2015) against the factual background where the accused had been engaged in home invasion in the night with accompanying violence perpetrated on the inmates in committing the robbery. Subsequently, the court enlarged the two co-accused on bail pending appeal by its Ruling on 20 December 2021.
- [6] Since this court had explained the basis for granting leave to appeal and bail pending appeal in those Rulings, it would only be futile to repeat the same over and again. Further, since the co-accused' ruling the Supreme Court delivered **State v Tawake** [2022] FJSC 22; CAV0025.2019 (28 April 2022) handing down sentencing guidelines for street mugging which is relevant to the determination of the appellant's appeal on sentence. The appellants has already served 04 years and 04 months since the sentence and prior to that he had been in remand for 10 weeks. He has already served the non-parole period.
- [7] For the additional reasons set out in the leave to appeal ruling with regard to the co-accused, the appellant too should be given enlargement of time to appeal his sentence so that his appeal could be taken up before the full court for hearing along with AAU 0074 of 2018 where the certified appeal records have been uplifted by the Legal Aid


Commission and the DPP and directives have been given for written submissions. LAC has already filed its WS and the State's WS is to be filed on or before 05 January 2023.

[8] Similarly, for the reasons set out in the bail pending appeal ruling with regard to the co-accused, logically the appellant too should be given bail pending appeal. Therefore, I am inclined to allow the appellants' application for bail pending appeal and release him on bail on the conditions given in the Order.

Orders of the Court:

1. Bail pending appeal is granted to the appellant, **SEMI RAISEVUNIVAI** subject to the following conditions:
 - (i) The appellant shall reside at Lot 23 Natokowaqa Street, Lautoka with his family.
 - (ii) The appellant shall report to Lautoka Police Station every Saturday between 6.00 a.m. and 6.00 p.m.
 - (iii) The appellant shall attend the Court of Appeal when noticed on a date and time assigned by the registry of the Court of Appeal.
 - (iv) The appellant shall provide in the person of Inoke Luvu Nasilivata who is the cousin of the appellant.
 - (v) Surety shall provide sufficient and acceptable documentary proof of their identities.
 - (vi) The appellant shall be released on bail pending appeal upon condition (iv) and (v) above being fulfilled.
 - (vii) The appellant shall not reoffend while on bail.




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Hon. Mr Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL