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

CRIMINAL APPEAL NO. AAU 014 of 2022
[In the High Court at Lautoka Case No. HAC 44 of 2019]

BETWEEN	:	**DEVNEEL DHIRAJ RAM**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Prematilaka, RJA**
Counsel	:	**Appellant in person**
	:	**Ms. S. Shameem for the Respondent**
Date of Hearing	:	**11 December 2023**
Date of Ruling	:	**12 December 2023**

RULING

[1] The appellant, Devneel Dhiraj Ram had been charged with 03 others and found guilty in the High Court at Lautoka on a single count of aggravated robbery contrary to section 311(1) (a) of the Crimes Act, 2009. The charge is as follows:

> *'**Statement of Offence***
>
> ***AGGRAVATED ROBBERY:*** *Contrary to section 311 (1) (a) of the Crimes Act 2009.*
>
> ***Particulars of Offence***
>
> ***Sunit Venkat Ram, Anusheel Ansal Chand, Devneel Dhiraj Ram*** *and* ***Akshay Nawal Raju*** *on the 20th day of February, 2019 at Nadi in the Western Division, in the company of each other robbed* ***Ratan Devi Chand*** *of $10,874.50 cash, $5,000.00 of cash cheque and $64,185.95 of dated cheques, all to the total value of $80,060.45, the property of Yees Cold Storage.'*

[2] After trial, the appellant was found guilty as charged by a High Court Judge alone who sentenced him on 03 December 2021 to a period of 07 years', 04 months' and 15 days' imprisonment with a non-parole period of 06 years.

[3] The appellant's appeal filed in person against conviction is out of time by about 02 months but given the fact that he had appealed in person it may be regarded as a timely appeal. Although, his sentence appeal is late by about 04 months, I shall deal with that too as a timely appeal for the sake of convenience along with the conviction appeal.

[4] In terms of section 21(1)(b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. For a timely appeal, the test for leave to appeal against conviction is **'reasonable prospect of success'** [see **Caucau v State** [2018] FJCA 171; AAU0029 of 2016 (04 October 2018), **Navuki v State** [2018] FJCA 172; AAU0038 of 2016 (04 October 2018) and **State v Vakarau** [2018] FJCA 173; AAU0052 of 2017 (04 October 2018), **Sadrugu v The State** [2019] FJCA 87; AAU 0057 of 2015 (06 June 2019) and **Waqasaqa v State** [2019] FJCA 144; AAU83 of 2015 (12 July 2019) that will distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 (15 July 2014) and **Naisua v State** [2013] FJSC 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds [see **Nasila v State** [2019] FJCA 84; AAU0004 of 2011 (06 June 2019)].

[5] Further guidelines to be followed when a sentence is challenged in appeal are whether the sentencing judge (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to guide or affect him (iii) mistook the facts and (iv) failed to take into account some relevant considerations [vide **Naisua v State** [2013] FJSC 14; CAV0010 of 2013 (20 November 2013); **House v The King** [1936] HCA 40*;* (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015].

[6] The facts could be summarised as follows:

> *'On 20 February, 2019, the complainant Ratan Devi Chand left her office at about 2.30 pm for banking at ANZ Bank, Namaka. She was brought to the bank in*

the company vehicle driven by Rajendra Lal. The banking was for Yees Cold Storage, where the complainant was working. She was dropped outside ANZ Bank, Namaka and as she was making her way into the bank the 01st accused Sunit Venkat Ram came and grabbed the money bag from her hand and ran to a waiting getaway car. This bag contained cash of $10,874.50, cash cheque of $5,000.00 and dated cheques of $64,185.95 all to the total value of $80,060.45. The complainant saw the 01st accused run to the bus bay and get into the waiting getaway grey hybrid car. The bank security officer and another person tried to catch the 01st accused by giving a chase but were not successful. Before the incident, the 01st accused was seen standing near ANZ Bank, Namaka, and had been in communication with the other co-accused persons via call conferencing. The matter was reported at the Namaka Police Station, upon investigation the CCTV footage clearly showed the 01st accused crossing and running with the money bag towards the bus bay where he boarded the waiting car.

The second and the third accused persons (the appellant) were on the lookout when the robbery was taking place. The getaway car was driven by the fourth accused who drove the first accused away, some people tried to catch the first accused but were not successful. All the accused persons had planned to rob the victim that afternoon and they were communicating with each other via call conferencing.

After leaving the crime scene all the accused persons met and shared the stolen cash of $10,874.50. The matter was reported to the Namaka Police Station, upon investigation the accused persons were arrested, caution interviewed and charged.'

[7] None of the prosecution witnesses had identified the appellant and his identity had been established through his confessional statement and charge statement. The appellant had not given evidence; nor had he called any other witnesses on his behalf at the trial. He, however, had given evidence at the *voir dire* inquiry.

[8] The grounds of appeal against conviction and sentence are as follows:

Conviction

Ground A:

THAT the Learned Trial Judge erred in law and in fact when he disregarded in his Lordships judgment that the confession was made involuntary thus the procedure under judges rules were nor complied fully by the interview officer and charging officer.

Ground B:

THAT the Learned Trial Judge erred in law and failed to direct and remind himself in judgment that in a case involving circumstantial evidence if there is any doubt or hypothesis consistent with innocence it was their duty to acquit.

Ground C:

THAT the Learned Trial Judge erred in law and in fact when he convicted the appellant in the absence of any cogent evidence to prove the theory contained in the confession.

Ground D:

THAT the Learned Trial Judge erred in law and in fact when he did not direct his mind to the fact that the caution interview of the appellant pages 1 to 8 all were oppressive due to the accused was not given opportunity to read and thus failure of signatures in the record resulting the appellant such was denied a fair trial resulting in miscarriage to justice.

Ground E:

THAT the Learned Trial Judge erred in law thus failed to deal fairly and adequately in the judgment mostly factual matters during Voir Dire Hearing.

Ground F:

THAT the Learned Trial Judge erred in law thus failed to consider that there was no other evidence to support the confession in the caution interview statement.

Ground G:

THAT the Learned Trial Judge failed and/or neglected to fairly put the defence of the appellant in his judgment and in the Voir Dire ruling which resulted in substantial miscarriage of justice thus violated article 29 (1) of the Constitution of 1997 which confers on every person charged with an offence has a right to fair trial before a court of law.

Ground H:

THAT the Learned Trial Judge erred in law thus failure to give direction with regards to truthfulness and voluntariness in his judgment disputed confessions.

Ground I:

THAT the Learned Trial Judge erred in law thus failed to restricted the discretion in the judgment with regards to the credibility weight of the evidence or any matter including voluntariness or thus failed to evaluate the evidence on any issue.

Ground J:

THAT the Learned Trial Judge erred in law thus in fact failed to consider with warning in his lordship judgment the inconsistencies/contradiction evidence

given by the interviewing officer, charging officer and the witnessing officer during the trial.

Sentence

Ground K:

THAT the Learned Trial Judge erred in law by imposing a sentence harsh and excessive without having regard to the sentencing guidelines and applicable tariff for the offence [Aggravated Robbery] of this nature.

Ground L:

THAT the Learned Trial Judge erred in law by selecting a starting point of the sentence outside the applicable tariff.

Ground M:

THAT the Learned Trial Judge erred in law by imposing a non-parole term very close to the head sentence in the absence of the parole board.

Grounds A, G, H and I

[9] All the above grounds of appeal relate to the admissibility of the appellant's cautioned interview and charge statement.

[10] The trial judge had at the *voir dire* ruling dealt with the prosecution evidence (paragraphs 85-106) and the appellant's evidence (paragraphs 124-136) led at the *voir dire* inquiry followed by his analysis (paragraphs 165-175) and determination (paragraphs 176-193). The trial judge in the end had admitted the appellant's cautioned interview as having been voluntarily made. In the process, the trial judge had reminded himself of the relevant principles of law set out in **Ganga Ram and Shiu Charan v R**, Criminal Appeal No. AAU 46 of 1983 and constitutional provisions applicable, correctly identifying the burden and standard of proof of voluntariness as beyond reasonable doubt cast on the prosecution.

[11] The law relating to directions on confessional statements was stated succinctly in **Tuilagi v State** [2017] FJCA 116; AAU0090.2013 (14 September 2017) as follows:

> *'[26] ……. The correct law and appropriate direction on how the assessors should evaluate a confession could be summarised as follows.*

(i) *The matter of admissibility of a confessional statement is a matter solely for the judge to decide upon a voir dire inquiry upon being satisfied beyond reasonable doubt of its voluntariness (vide **Volau v State** Criminal Appeal No.AAU0011 of 2013: 26 May 2017 [2017] FJCA 51).*

(ii) *Failing in the matter of the voir dire, the defence is entitled to canvass again the question of voluntariness and to call evidence relating to that issue at the trial but such evidence goes to the weight and value that the jury would attach to the confession (vide **Volau**).*

(iii) *Once a confession is ruled as being voluntary by the trial Judge, whether the accused made it, it is true and sufficient for the conviction (i.e. the weight or probative value) are matters that should be left to the assessors to decide as questions of fact at the trial. In that assessment the jury should be directed to take into consideration all the circumstances surrounding the making of the confession including allegations of force, if those allegations were thought to be true to decide whether they should place any weight or value on it or what weight or value they would place on it. It is the duty of the trial judge to make this plain to them. (emphasis added) (vide **Volau**).*

(iv) *Even if the assessors are sure that the defendant said what the police attributed to him, they should nevertheless disregard the confession if they think that it may have been made involuntarily (vide **Noa Maya v. State** Criminal Petition No. CAV 009 of 2015: 23 October [2015 FJSC 30])*

(v) *However, **Noa Maya** direction is required only in a situation where the trial Judge changes his mind in the course of the trial contrary to his original view about the voluntariness or he contemplates that there is a possibility that the confessional statement may not have been voluntary. If the trial Judge, having heard all the evidence, firmly remains of the view that the confession is voluntary, Noa Maya direction is irrelevant and not required (vide **Volau** and **Lulu v. State** Criminal Appeal No. CAV 0035 of 2016: 21 July 2017 [2017] FJSC 19.'*

[12] The trial judge in the judgment had considered the prosecution evidence led at the trial against the appellant with regard to the recording of his cautioned interview and the defence challenge to it (paragraphs 47-53). Similarly, the trial judge had considered prosecution evidence relating to the appellant's charge statement and the challenge by the defence (paragraphs 61-65). Both had been challenged by cross-examination on the premise that they were not voluntary and/or fabricated by the

police. The appellant had unlike at the *voir dire* inquiry remained silent at the trial proper.

[13] The trial judge had considered the two confessional statements of the appellant in the judgment and tested them as to whether he had made them and then for truthfulness and weight to be attached at paragraphs 92-101 and concluded that they were in fact made by the appellant, truthful and not fabricated by the police.

[14] I see no reasonable prospect of success in any of the above grounds of appeal.

Ground B

[15] There does not appear to have been any circumstantial evidence led against the appellant and therefore, the appellant's complaint is misconceived. The conviction against him was based on the direct evidence of the complainant on the incident and his cautioned and charge statements relating to his identity.

Ground C

[16] It is clear from the summarised evidence that what the appellant had described in his cautioned and charge statements were consistent with the complainant's evidence as to the manner in which the robbery unfolded. There appears to have been a remarkable symmetry between the two versions. The identification of the 04th accused by the complainant and recovery of some currency notes (meant to be deposited by the complainant) with the registered owner of the getaway vehicle (PW6) hired by the 04th accused also provided a consistent narrative to the appellant's cautioned and charge statements.

Ground D

[17] The trial judge had dealt with the appellant's complaint that he was not given the opportunity to read the cautioned interview before signing at paragraphs 184 of the

voir dire ruling and rejected it, for the corrections to the answers to question 78 had been done with initials of the appellant and the interviewing officer.

Ground E

[18] The real purport of the appellant's complaint is not clear. The argument is ambiguous and the appellant has not made it clear what factual matters the trial judge had failed to take into account.

Ground F

[19] The supporting evidence, though indirect, against the appellant came from PW6 who knew the 04th accused who had given PW6 the money recovered by the police. PW6 had given the 04th accused his vehicle for a payment which the robbers had used as the getaway car. The description of the case was established through other independent evidence.

[20] In any event, it is trite law that an accused could be convicted on his confession alone and there need not necessarily be supporting evidence.

Ground J

[21] Contrary to the appellant's assertion, the trial judge had indeed considered some inconsistencies or contradictions among police officers at paragraph 105 of the judgment and treated them as not material. Even if there are some omissions, contradictions and discrepancies , the entire evidence need not be discredited or disregarded because an undue importance should not be attached to omissions, contradictions and discrepancies unless they go to the heart of the matter and shake the basic version of the prosecution's witnesses [vide **Nadim v State** [2015] FJCA 130; AAU0080.2011 (2 October 2015)].

Ground K , L and M (Sentence)

[22] When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered [vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006)]. The approach taken by the appellate court in an appeal against sentence is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015)]; if outside the range, whether sufficient reasons have been adduced by the trial judge.

[23] Considering that the maximum sentence is 20 years, the appellant's imprisonment of 07 years, 04 months and 15 days with a non-parole period of 06 years for his role in the aggravated robbery cannot be considered at all as excessive and harsh. If at all, the trial judge had been lenient on the appropriate sentence on the appellant.

[24] The gap of 01 year, 04 months and 15 days between the non-parole period and the head sentence is sufficient to allow for rehabilitation and also should achieve expected deterrence as well [see **Tora v State** [2015] FJCA 20; AAU0063.2011 (27 February 2015)].

Orders of the Court:

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is refused.

COURT OF APPEAL FIJI

.....
Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

Solicitors:

Appellant in person
Office for the Director of Public Prosecutions for the Respondent