

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**

**APPELLATE JURISDICTION**

**HIGH COURT CRIMINAL MISC.CASE NO: HAM 126 OF 2009**

**CRIMINAL CASE NO: 450 OF 2007**

**BETWEEN: LALESH KUMAR** **APPELLANT**

**AND: STATE** **RESPONDENT**

**Counsel: Appellant - Mr R. Singh**  
**Respondent - Mr S. Qica**

**Date of Hearing: 18<sup>th</sup> January, 2010.**

**Date of Judgment: 20<sup>th</sup> January, 2010.**

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**RULING OF THE COURT**

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[1] The applicant was convicted of the offence of Robbery with Violence in the Magistrates Court of Nausori on 10/08/2008. This application is made in the High Court for leave to appeal out of time and it is made on 2/12/2009 that is 3 months and 22 days after the conviction.

[2] Proposed grounds of appeal are : -

- 1. That the Learned Magistrate erred in Law and in fact in convicting the petitioner for the offence of robbery with violence when there was no evidence that your petitioner took part in any assault on the complainant or was a party to the assault with other persons.***

2. ***That the Learned Magistrate erred in Law and in fact in convicting the Petitioner when there was insufficient evidence to support a conviction on the standard required of proof beyond reasonable doubt.***
3. ***That Sentence of 2 years imprisonment is harsh and excessive bearing in mind all the circumstances of this case.***

[3] It is submitted on behalf of the applicant that as the applicant was incarcerated he could not lodge the appeal on time. Counsel for Respondent (The State) also accepted that fact as the accused was unrepresented at the trial before Magistrates Court, and consented to the application for leave to appeal out of time.

[4] It was further contended on behalf of the applicant that the applicant did not get a fair trial at Magistrates Court as no Voir dire inquiry was held.

When perusing the copy record of the Magistrates Court, the accused appeared unrepresented and therefore he has not objected to the caution interview statement being submitted as evidence. But although the accused was not represented by Counsel, at cross-examination accused has specifically questioned the witness of the non voluntariness of the statement. Therefore to give a fair trial as the accused was unrepresented by Counsel, on that questioning the learned Magistrate should have held a Voir Dire inquiry. Further in the Judgment the learned Magistrate has taken into consideration a portion<sup>of</sup> the caution interview statement as well when deciding on the matter.

[5] In the circumstance this court decides to allow the application to grant leave to appeal out of time.

[6] At the hearing of this case Counsels for both parties agreed to decide on substantive appeal on the arguments placed. But I find that this court will have to consider whether there was sufficient evidence to convict the accused even without the cautioned interview statement being admitted as evidence. It is an arguable matter at the stage of hearing of the substantive appeal. Therefore the application for leave to appeal out of time is allowed. A hearing date for the appeal will be set when the court record arrives.



**Priyantha Fernando**

**Puisne Judge**



19.1.2010