IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: HAA 25 OF 2013

BETWEEN: **RONEEL VINEEL LAL**

Appellant

AND: **STATE**

Respondent

Counsels : **Mr. R. Kumar for the appellant**
Mr. F. Lacanivalu for the Respondent

Date of Judgment : **6 December 2013**

JUDGMENT

1. The appellant was charged before the Nadi Magistrate under following count:

Statement of Offence

BURGLARY:- Contrary to Section 312 (1) of the Crimes Decree No. 44 of 2009.

Particulars of the Offence

RONEEL VINEEL LAL, on the 3rd day of February and 4th Day of February, at Nadi in the Western Division, entered into Korovuto College office as trespasser, with intend to steal a camera therein.

2. The appellant pleaded not guilty, convicted after trial and sentenced for 2 years and 5 months imprisonment with non parole period of 12 months on 17th June 2013.

3. The facts of the case are in the night of 3.2.2010, appellant drank grog with PW 2 and then went to the school close by with PW2. Then he came back with a camera one hour later.

4. This appeal was filed on 19th July 2012 within time.

5. The grounds of appeal are :

   (i) That the learned trial Magistrate erred in failing to draw his mind to the Turnbull requirements on identification and by doing so prejudiced my right and denied me a fair trial.
   (ii) That learned trial Magistrate erred in law failing to consider PW 2 Shelvin N has been accomplice and thereby failed to direct himself on the danger on convicting an accomplice's evidence
   (iii) That the learned trial Magistrate erred in law in not directing himself that PW Shelvin N was not a mentally person and not a credible witness and by doing so denied me a fair trial.

6. Both parties have filed written submissions. In the written submissions filed by the counsel for the appellant, it is stated that appellant does not wish to pursue his appeal against conviction on the third ground.

Ground (i)

7. In ***R v. Turnbull*** [1977] QB 224 it was held that:

   "First, whenever the case against an accused depends wholly or substantially on one or more identifications of the accused which ***the defence alleges to be mistaken,*** *the Judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications."*

8. According to the evidence of the PW2, the appellant and the PW2 are from the same village and drink grog in the evening. Therefore the appellant is a known person to the PW2. In his evidence, PW2 had clearly stated that appellant went to school after drinking grog and came back with a camera. This position was never disputed by the appellant in his cross examination. Further appellant had asked "*What time we went to school?*" That is a clear indication that the appellant is not disputing the identification. There is no merit in this ground of appeal and it fails.

Ground (ii)

9. The second ground is that the PW2 is an accomplice and therefore the learned Magistrate should have warned himself before acting on such evidence and convicting the appellant.

10. The PW2 had gone to the school with the appellant. He had not taken part in the commission of the offence. There is no evidence that he acted with the appellant with a common intention. Therefore, PW 2 cannot be considered as an accomplice. There is no need for the learned Magistrate to consider PW 2 as an accomplice as there is no such evidence.

11. In dealing with the principle of offences committed by joint offenders in prosecution of common purpose, following factors could be considered:

(i) The case of each accused must be considered separately. That is, there should be evidence as to what each accused did to demonstrate that he too had shared the intention in common to prosecute unlawful purpose;

(ii) Each accused must have been actuated by that common intention with the doer of the unlawful purpose at the time the offence was committed and should have contributed in some meaningful way towards the prosecution of the unlawful purpose;

(iii) Each one of them should have known that the commission of the offence is a probable consequence of the prosecution of that unlawful purpose;

(iv) Common intention must not be confused with same or similar intention entertained independently of each other. Instead, it should clearly be distinguished from similar intention. That is, if there is no evidence to show a particular accused did not share the intention in common with others and that he was actuated by his own intention which was, however, similar to the intention of other, that accused is guilty only for what he has committed and not for anything else;

(v) There must be evidence, either direct or circumstantial, or pre-arrangement or some other evidence of common intention. Sometimes, such common intention could occur on the spur of the moment;

(vi) The mere fact of the presence of the accused at the time of the offence is not necessary evidence of common intention.

12. The only evidence in this case is mere presence of the PW2. Thus there is no evidence that the PW2 is an accomplice. PW 2 was not cross examined by the appellant on such basis. There is no merit in this ground of appeal and it fails.

13. For the reasons given above the appeal against the conviction is dismissed.

Sudharshana De Silva
JUDGE

At Lautoka
06th December 2013

Solicitors for the Applicant: **Office of the Legal Aid Commission**
Solicitors for the Respondent: **Office of the Director of Public Prosecution**