IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

Criminal Appeal No. 59 of 2010

BETWEEN	:	**EPARAMA NAGALU**
		Appellant
AND	:	**STATE**
		Respondent
BEFORE	:	**HON. MR. JUSTICE PAUL MADIGAN**
Counsel	:	Appellant in person Mr. L. Fotofili for the State
Date of Hearing	:	9 December 2014, 24 and 28 January 2014, 25 February 2014, 30 May 2014, 17 June, 7 July, 13 August, 12 September, 9 October, 4 and 16 December 2014, 16 January 2015.
Date of Judgment	:	13 February 2015

JUDGMENT

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1. On the 23rd September 2010, the appellant was convicted after trial in the Suva Magistrates Court of two counts of dangerous driving, 2 counts of failing to stop after an accident, one count of driving a motor vehicle without a driving license

and one count of driving a motor vehicle in contravention of third party policy risks.

2. The accused was sentenced to a fine $200 for each of the dangerous driving offences; $50 for each of the failing to stop after an accident charges and $50 for each of the driving without 3rd party insurance cover and for driving without a driving licence.

3. The appellant filed an appeal against conviction only, within time. The extraordinary delay in having the appeal determined in this Court is in part explained by the fact that a related matter involving this appellant was before the Court of Appeal for determination. That appeal has now been determined and that judgment was confirmed by the Supreme Court (in CAV 0011/12). None of the material revealed in either of the judgments from the Court of Appeal or from the Supreme Court can be said to prejudice the appellant in the instant appeal nor do those decisions offer him any advantage in this appeal.

4. The prosecution case at trial was that this appellant was identified to be a person who was driving a vehicle with registration "Media 1" by PW3 who was an Inspector of Police. The vehicle was being followed by Police because it had been reported as having being used in a robbery. Lying in wait on Princes Road, Tamavua, the police saw the vehicle and followed it. The "Media 1" stopped so did the Police vehicle. The vehicle made a U turn and came to directly ram the Police vehicle front on. Inspector Divuana (PW3) says that the driver of the vehicle stayed seated at the wheel just a bumper away from him. He identified him in Court. He said he looked at him that night for 3-5 minutes. The vehicle ("Media 1") subsequently drove off and hit another vehicle in Princes Road.

5. The appellant relies on the following grounds of appeal, against conviction only:

   (i) that the Magistrate failed to warn herself in terms of the **Turnbull** guidelines in assessing the quality of identification against the appellant

   (ii) that the Magistrate failed to direct herself on the burden of proof and the standard of proof.

6. In his detailed submissions, the appellant submits "a careful perusal of judgment ascertain (sic) that the sole evidence advance by the prosecution which result in

the conviction of the appellant is the issue of identification, the identification made by PW3 even though was uncorroborated the learned trial Magistrate satisfied that it is sufficient to convict. However, conviction arises thereof will be unsafe and unsatisfactory in the absence of a proper caution and direction to herself in respect of the Turnbull guidelines".

7. The identification guidelines as recommended by the House of Lords in **Turnbull** (1976) 63 Cr. App. R. attempted to alleviate the notorious mistakes made at trial in the identification of suspects on accused persons. The House suggested asking questions of distance, lighting, obstruction etc. This case and its guidelines is widely known and applied by all judicial officers when appropriate. The Court of Appeal confirmed the application of those identification principles in **Wainiqolo** [2006] FJCA 70.

8. The identification of the appellant in this particular case was made over a 3-4 minute period and from a close distance while the Inspector and the appellant were seated in the driving seats of their particular vehicles facing each other at a car bonnet's width and with the street lights on.

9. The learned Magistrate in returning to the Inspector's evidence said

> "PW3 said that he was assaulted by the occupants of Media 1. In about 3-5 minutes and during the whole time driver of Media 1 was sitting in the driver's seat. PW3 identified the driver of Media 1 as the accused and said in court that he could not take that incident off from his mind".

10. She went on to find in her analysis of the evidence that "PW3 was very positive about the identity of the driver of Media 1 and without any hesitation identified the accused".

11. Whilst the Magistrate must take all factors into account when making a finding on identification, it is not necessary for him or her to actually go through the **Turnbull** process in the judgment as long it is apparent from the judgment that he or she has turned the judicial mind to the dangers and to the process of identification.

12. The Court of Appeal in **Vicky Ram** AAU0008 of 1999 said:

> *"In a trial without assessors or jury, the presiding Judge or Magistrate is still obliged to direct himself or herself in accordance with the requirements in* ***Turnbull*** *and this should be demonstrated in the judgment or decision. However detailed exposition is not necessary".*

and in **Vatuabele** (CA 18/98) that Court said:

> *"Magistrates cannot be expected to write as full judgments as judges of the High Court. In their judgments they must state clearly what findings of facts they have made and the evidentiary basis for those findings. Where legal principles have to be applied in that process, it is sufficient in our view if they expressly acknowledged the principles to be applied and if it is demonstrated that they have then applied them".*

13. It is apparent from the reasoning of the Magistrate in her analysis of the evidence that she was alive to the issue of identification and gave great weight to it ignoring a self-incriminating question asked by the appellant.

14. The ground of appeal fails.

15. In dealing with the second ground of appeal (failure to address the burden and standard of proof) similar principles of reasoning pertain. In para 18 of the judgment the Magistrate concluded in this way;

> "18. Even though accused chose to deny any knowledge of the incident I am satisfied that the prosecution had proved all the charges beyond reasonable doubt (my emphasis).

16. As this Court said in **Taitusi Ravasua** [2010] FJHC33:

> *"The questions of burden and standard of proof are such fundamental tenets of our legal system, it is incomprehensible that the learned Magistrate would not have these uppermost in his mind. They are not a mantra to be recited in every judgment but they are principles which can be assumed and they are made evident from words that the Magistrate used".*

17. And so the learned Magistrate shows by her words (emphasized above) that she is well aware of the burden and standard of proof and she had applied those principles to the facts.

18. The second ground of appeal fails.

19. The appeal against conviction is dismissed.

P.K. Madigan
Judge

At Suva
13 February 2015