

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO: HAA 38 OF 2016

BETWEEN : **RONIL KUMAR**
Appellant

AND : **STATE**
Respondent

Counsel : **Appellant in Person**
Mr. A. Singh for the Respondent

Date of Hearing : **23rd November, 2016**

Date of Ruling : **08th December, 2016**

RULING

1. The Appellant was charged with another in the Magistrates Court at Nadi with three counts of Robbery with Violence contrary to Section 293 (1) (b) of the Penal Code Cap. 17. Appellant is the 1st accused in Court below.
2. The Appellant and the co-accused pleaded not guilty to the charges. The matter was then set down for hearing. At the hearing, while evidence of prosecution witness Agt. Meli was being led, the 2nd accused objected to his caution interview statement being tendered in evidence. Accordingly, the learned trial Magistrate conducted a trial within trial on the admissibility of the caution statement and ruled the caution statement of the 2nd accused inadmissible.
3. At the hearing, the Prosecution called eight witnesses and closed the Prosecution case. When the Prosecution closed its case, a no case to answer application was made by the Appellant under Section 178 of the Criminal Procedure Decree. Having considered the

submissions made by the accused and the evidence led in the trial, the learned Magistrate by her Ruling dated 11th January, 2016 found that there was a case for the 1st accused (Appellant) to answer and put him in his Defence.

4. Since the Appellant did not exercise his rights in defence, the learned Magistrate fixed the matter for judgment.
5. Pending judgment, the Appellant filed this Appeal on the sole ground that the learned Magistrate erred when she called the complainant to give evidence at the *voir dire* proceeding in respect of the 2nd accused and thereby he was prejudiced.
6. The Respondent made a preliminary objection that the Appeal was prematurely filed and therefore should be dismissed.
7. The law relating to appeals from Magistrates Court is clear. Section 246 of the Criminal Procedure Decree 2009 reads:

246. — (1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgment and sentence.

(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption..

(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.

(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.

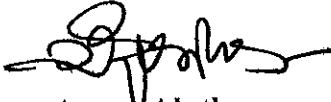
(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.

(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law. (emphasis added)

8. The Appellant has not shown any legal provision under which his appeal may be brought before the Magistrates Court has finally determined his guilt. Therefore, pursuant to Section 246 (7) of the Criminal Procedure Decree this Appeal should not be allowed to proceed.
9. Preliminary objection of the Respondent is upheld. Appeal is dismissed accordingly.




Aruna Aluthge
Judge

At Lautoka

08th December, 2016

Solicitors: Appellant in Person
Office of the Director of Public Prosecution for Respondent