

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO. HAA 051 OF 2018S

BETWEEN: SEREVI VANANALAGI

APPELLANT

AND: THE STATE

RESPONDENT

Counsels : Mr. A. Chand for Appellant
 : Mr. E. Samisoni for Respondent

Hearing : 17 June, 2019.

Judgment : 8 November, 2019.

JUDGMENT

1. On 10 November 2009, the appellant appeared in the Suva Magistrate Court on the following charge:

“First Count

Statement of Offence (a)

ROBBERY WITH VIOLENCE: *Contrary to 293 (b) of the Penal Code Act 17.*

Particulars of Offence (b)

SEREVI VANANALAGI with two others, on the 16th day of September, 2009 at Wailada, Lami in the Central Division robbed VETAIKI VIDO of one Alcatel mobile phone valued at \$79.00 and \$18.00 cash to the total value of \$97.00 and immediately before such robbery punched and hit VETAIKI VIDO with a pinch bar.

Second Count

Statement of Offence (a)

OFFICE BREAKING ENTERING AND LARCENY: Contrary to section 300 (a) of the Penal Code Act 17.

Particulars of Offence (b)

SEREVI VANANALAGI with two others, on the 16th day of September, 2009 at Wailada, Lami in the Central Division broke and entered into PRAKASH MOTORS office and stole therein one Nokia mobile phone valued \$520.00 and \$11.00 cash and a bunch of car keys valued at \$6,882.92 to the total value of \$7,413.92 the property of PRAKASH MOTORS.

Third Count

Statement of Offence (a)

UNLAWFUL USE OF MOTOR VEHICLE: Contrary to section 292 of the Penal Code Act 17.

Particulars of Offence (b)

SEREVI VANANALAGI, on the 16th day of September, 2009 at Wailada, Lami in the Central Division, unlawfully and without colour of right, but not so as to be guilty of stealing took for his own use vehicle registration number FO-424 on Queens Road, Lami the property of PRAKASH MOTORS.”

2. The appellant was unrepresented. His right to counsel was put to him. He waived his right to counsel. He appeared to say he will represent himself. He asked for the plea to be deferred, presumably to enable him to prepare. The case was adjourned to 13 November, 27 November, 11 December, 22 December 2009 and 5 January 2010 for pre-trial conferences. The appellant was present on all these occasions.
3. On 5 January 2010, in the presence of the prosecution and the appellant, the matter was again adjourned to 2 February 2010 for mention. On 2 February 2010, the appellant failed to appear, and a bench warrant was issued for his arrest. The case was adjourned for approximately 8 times for the rest of 2010, for the bench warrant to be executed. He was still not present. The case was again called 8 times in 2011 to check on the appellant's

presence. He was not present. On 20 February 2012, the case was again called. The appellant was still not present.

4. On 20 March 2012, the Prosecutor applied to withdraw the case under section 169 of the Criminal Procedure Act 2009, which read as follows:

“1. The prosecutor, may with the consent of the court, withdraw a complaint at any time before a final order is made.

2. On any withdrawal under subsection (1) –

(a) where the withdrawal is made after the accused person is called upon to make his or her defence, the court shall acquit the accused;

(b) where the withdrawal is made before the accused person is called upon to make his or her defence, the court shall make one of the following orders –

(i) an order acquitting the accused;

(ii) an order discharging the accused; or

(iii) any other order permitted under this Act which the court considers appropriate.

3. An order discharging the accused under subsection (2) (b) (ii) shall not operate as a bar to subsequent proceedings against the accused person on the basis of the same facts.”

5. When making the application, the appellant was not present. A bench warrant was still outstanding against him. The learned Magistrate allowed the prosecution’s application. The charge was withdrawn and the accused discharged, in his absence.

6. The appellant was not happy with the above decision. On 30 August 2018, the High Court received an application from the appellant for leave to appeal against the above learned Magistrate’s decision. He submitted three grounds, which were as follows:

- (i) That the Magistrate erred in law in allowing the prosecution to withdraw the charge under section 169 (2) (b) (ii) of the Criminal Procedure Decree on the 20th day of March, 2012 in the absence of the appellant causing the appellant to be denied a fair trial thus causing a miscarriage of justice.*
- (ii) That the learned Magistrate should have ordered for the appellant to be present at the day of the order of discharge was made to ensure that both the accused and the prosecution agreed on the application of discharge by prosecution thus causing an error of law.*
- (iii) That the appellant reserves the right to file further grounds of appeal upon receiving the court record and pray that the court send a production order and give priority to this appeal please.*

7. The appellant's right to appeal is governed by sections 246 and 248 of the Criminal Procedure Act 2009. Under section 248 of the Criminal Procedure Act 2009, the appellant had no right of appeal if he did not appeal within 28 days from the date when the order was made. That meant the 28 days appeal period expired on 17 April 2012. So, his application for leave to appeal out of time was approximately 6 years 4 months 13 days out of time. As a matter of law, the appellant had no right of appeal, unless he could show "good cause," for the court to grant him an extension of time.
8. I have carefully read and considered his appeal grounds. The responsibility of turning up to court, whatever a person's circumstances is, rest with the accused, in this case, the appellant. He was aware of the charge ever since he first appeared on the same in court on 10 November 2009. He was aware he was to attend court on 2 February 2010. He did not attend. A bench warrant was pending against him since then until 20 March 2012, when his case was discharged, after been withdrawn by the prosecution. In my view, the appellant's grounds of appeal is devoid of any merit whatsoever. He had shown no good cause. Permission to extend his time to appeal is refused. He had no right to appeal. His case is closed.

9. I understand, he is now serving a 13 years imprisonment, with a non-parole period of 11 years imprisonment, from 9 September 2011 in **State v Serevi Vananalagi & Others**, Criminal Case No. HAC 091 of 2010s, High Court, Suva.



Solicitor for the Appellant
Solicitor for the Respondent

: In Person
: Office of the Director of Public Prosecution,
Suva.

A handwritten signature in blue ink, appearing to be "Salesi Temo".

Salesi Temo
JUDGE