

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: 299 OF 2018

BETWEEN : STATE

AND : JAMES ASHWIN RAJ

Counsel : Ms U Tamanikaiyaroi for the State
Mr K Chang & Ms M Singh for the Accused

Date of Ruling : 27 January 2020

RULING

- [1] After hearing oral arguments I allowed dock identification of the Accused by the complainant. My reasons are as follows.
- [2] The prosecution case is substantially based upon identification of the Accused by the complainant. In his evidence the complainant said the Accused is well known to him. He is his childhood friend and they are from the same neighbourhood. He has known him for more than twenty years and has regularly used his vehicle as his mode of transport. He said he recognized the Accused when he stopped his vehicle, switched on the light inside the vehicle and had a conversation with him. The Accused then came out of the vehicle and had a further conversation with him before snatching his mobile phone and bag with money and fleeing the scene. The following day the complainant reported the incident to the police and implicated the Accused.

[3] The question of whether or not to allow dock identification is a matter of discretion for the trial judge. Generally, allowing a witness to identify the accused for the first time in the dock is not permitted because the identification in the dock is suggestive and therefore unreliable. But the same rule is not applicable in cases of recognition. When an identification is based on recognition, police line up or dock identification will not add anything to that identification. The witness will obviously identify the accused based on recognition instead of physical built or features of the accused.

[4] The complainant identified the accused because he recognized him. In these circumstances, dock identification is not unfairly prejudicial to the Accused. It is allowed.



A handwritten signature in blue ink, appearing to read "Daniel Goundar", is written above a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused.