IN THE FIJI COURT OF APPEAL

Appellate Jurisdiction

Criminal Appeal No.63 of 1984

Between:

TEVITA BOLA LEDUA Appellant

and

REGINAM Respondent

Appellant in Person
V.J. Sabharwal for the Respondent

Dates of Hearing: 31st October, 1984, 16th November, 1984
Delivery of Judgment: 24th November, 1984

JUDGMENT OF THE COURT

O'Regan, J.A.

The appellant was convicted in the Magistrates' Court on 19th January, 1984 of club breaking, entering and larceny contrary to section 300 of the Penal Code (Cap.17). He duly appealed to the Supreme Court against his conviction and sentence. On 4th July, 1984 the learned Chief Justice in exercise of the powers conferred by subsection 2 of section 313 of the Criminal Procedure Code, ordered summary dismissal of the appeal.

Subsection 2 of section 313, so far as it is applicable to the case, provides :

> " Where an appeal is brought on the grounds that the decision is unreasonable or cannot be supported having regard to the evidence ...... and it appears to the Judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right .... the appeal may, without being set down for hearing be summarily dismissed by an order of the Judge certifying that he has perused the record and is satisfied that the appeal has been lodged without any sufficient ground of complaint. "

This section was considered by this Court in Sashi Suresh Singh, Criminal Appeal Number 58 of 1982, (judgment 23rd March, 1983) in which is said :

> " The effect of the section where it is applied and implemented is to deprive the appellant of the ordinary right to a hearing by himself or his advocate and for this reason it is in our opinion a procedure to be used sparingly. Furthermore, the power conferred is in the nature of a special jurisdiction in accordance with the section. "

And the Court went on to adopt a passage from the judgment in Asivorosi Logavatu F.C.A. Crim. App. 16 of 1980 in which it was said that the power "should be used only where it is patently clear to a Judge that the appeal is limited to the grounds that the conviction was against the weight of evidence .... Where there are other matters raised or which appear on the face of the record indicative that the conviction may be vitiated then the section should not be used and the appeal should be heard and determined in the normal way".

In the present case, in the first six grounds of the petition of appeal presented by the appellant in person, he traversed at length the evidence of the various witnesses. That part of his appeal could well be said to encompass, in the words of the section, "grounds that the decision is unreasonable or cannot be supported having

regard to the evidence ....." However, paragraph 7 of the petition appears to us in a different category. It reads :

> "(7) That, before the identification parade was held, the police witness was brought first to me in the charge room, to look at me. After half an hour and the identification parade was held. It was improper and unfair to me. "

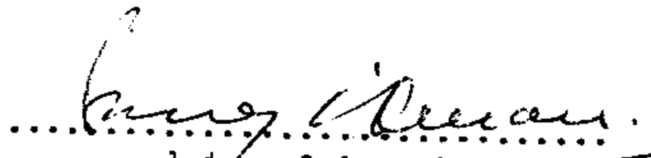
In our opinion this ground of appeal in essence raises a question of law as to the admissibility of the evidence as to the identification parade and is thus outside the provisions of the section conferring jurisdiction to dismiss an appeal summarily.

If the appeal had been limited to the first six grounds of appeal only, we would have been obliged to say that there emerges from them a consistent complaint as to the quality of the evidence of identification adduced before the magistrate. And in his submissions to us the appellant attacked the evidence as to identification and pointed us to passages in it which lead us to conclude that "there is material in the circumstances of the case which could raise a reasonable doubt". The learned magistrate accepted the evidence of identification because he found the witnesses who gave such evidence to be credible. He did not give consideration to the quality of such evidence as is ordained in Turnbull (1976) 63 Cr. App. R. 312; (1976) 3 All E.R. 549. That state of affairs throws up the question as to whether "the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal". And that question is one of law - Edwards v. Bairstow (1956) A.C. 14 at page 36 per Lord Radcliffe. And questions of law being involved on whichever basis the matter is looked at, this Court has jurisdiction to entertain the appeal - subsection 1 of section 22 of the

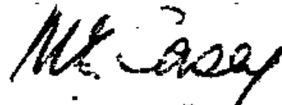
Court of Appeal Act (Cap. 12).

The appeal is allowed and the case remitted to the Supreme Court for listing and hearing.

Vice President



Judge of Appeal



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