

IN THE COURT OF APPEAL, FIJI ISLANDS
ON AN APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0039/99S
(High Court Case No. HAA0023/99L)

BETWEEN : ANWAR ALI f/n Yakub - *Appellant*

AND : THE STATE - *Respondent*

Coram : The Rt Hon. Sir Maurice Casey, Presiding Judge
The Hon. Sir Rodney Gallen, Justice of Appeal
The Hon. Mr. Justice John E. Byrne, Judge of Appeal

Hearing : Tuesday, 15 May 2001

Counsel : Mr. A.K. Singh for the Appellant
Mr. J. Naigulevu, Director of Public Prosecutions
for the Respondent

Date of Judgment : Thursday, 24 May 2001

JUDGMENT OF THE COURT

This is an appeal from a judgment of the High Court (Townesley J.) dismissing an appeal against the Appellant's conviction by the Lautoka Magistrate's Court on 29th January 1999 of the offence of Shopbreaking, Entering and Larceny committed on 23rd March 1996 at the Lautoka Police Canteen.

The relevant facts are that the Appellant, a Police Officer, was found by the owner and a Policeman friend lurking in the shadows of the Police Canteen at Lautoka with tins of fish bearing price markings in the Canteen owner's hand writing. He was recognised by the two men. He ran when his name was called dropping one of the tins and, a little later abandoning the rest

while running away. He was found a short while later and brought back to the scene. He was found to have keys in his quarters that fitted the Canteen door. He at first denied, then admitted taking the tins from inside the Canteen, and offered to pay for them. He made no mention at all of the defence he later raised that he had with a certain Police Constable Rakesh found the tins on a table near the Canteen, taken them for safe-keeping, but, thinking that he might be compromised by their possession, was in the act of replacing them where he had found them, when suprised by the sudden appearance of the owner. Thereupon he hid, but then ran for fear that he might be thought to have stolen the tins.

Three grounds of appeal were argued before this Court:

- 1.1 That the learned Appellate Judge was wrong in holding that the Appellant had made a confession to the owner of the Canteen who was present and other witnesses gave evidence to the contrary.
- 1.2 That the learned Appellate Judge was wrong in not holding that the alleged confession was not made, and if made was not admissible having regard to the circumstances of the case.
2. That the learned Appellate Judge was wrong in law in not holding that the breaking entering of the Canteen and larceny from it was not proved and in upholding the decision of the trial Magistrate.
3. That the learned Appellate Judge was wrong in not considering that the decision or verdict was unsafe and unsatisfactory and the conviction could not in law be upheld having regard to the circumstances and evidence.

Section 22 of the Court of Appeal Act has been considered frequently in this Court. Sub-section (1) is in the following terms:

"Any party to any appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only (not including severity of sentence)."

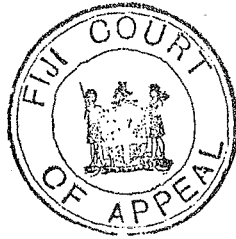
In our judgment ground one involves questions of mixed law and fact whilst ground two consists of a matter of fact. We consider that in the circumstances here the owner of the Canteen should not be regarded as a "person in authority" as contemplated by the rules relating to admissibility of confessional statements. But in any event this was not a case of the owner of the goods trying to induce a confession as in R. v. Wilson, R. v. Marshall-Graham (1967) 1 ALL E.R. 797, but of the Appellant trying to induce a Police Officer, Sergeant Luke, not to charge him if he paid for the tins.

Accordingly we reject the first two grounds.

As to ground three, we agree with Townsley J. that having considered the totality of the evidence, the learned Magistrate was correct in finding that the Appellant's story was far-fetched and inherently incredible and did not raise any reasonable doubt about the guilt of the Appellant. Indeed, if this Court had had to decide on the facts of this case we would have found the circumstantial evidence against the Appellant overwhelming and consistent only with a finding of guilty.

The appeal is therefore dismissed.

M. Casey
.....
Sir Maurice Casey
Presiding Judge



R. Gallen
.....
Sir Rodney Gallen
Justice of Appeal

John E. Byrne
.....
Mr. Justice John E. Byrne
Judge of Appeal

Solicitors:

A.K. Singh Law, Nausori for the Appellant

Office of the Director of Public Prosecutions, Suva for the Respondent