

IN THE COURT OF APPEAL, FIJI AT SUVA

CRIMINAL APPEAL NO. AAU0038/2002
(High Court Criminal Appeal No. HAA36 of 2002)

BETWEEN: DAVENDRA NAIR Applicant

AND: THE STATE Respondent

APPLICATION FOR LEAVE TO APPEAL OUT OF TIME

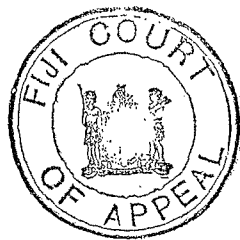
1. On the 5th March 2002 in the Magistrates' Court at Suva the Applicant pleaded guilty to one count of Robbery with Violence, and one of Unlawful Use of Motor Vehicle.
2. The facts of the case as outlined by the Prosecution were:-

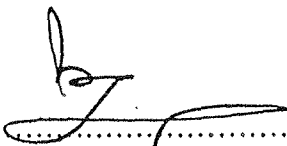
"On 23/02/2002 at 11.50 p.m., Complainant a taxi driver, 23 years old was in his taxi No. CC829 opposite Village 6 Cinema. Accused went to Complainant to hire his taxi to Nailuva Road. At Westpac Bank, he asked Complainant to pick up 2 Fijian youths. Accused sat in front, the 2 at the back, went to Nailuva Road. Complainant was asked to stop near Nailuva Road, one at the back seat, got off, pulled Complainant out, punched him, and they robbed the items in the charge in Count 1.

Accused sat in the driver's seat the 2 at the back, he drove off and they abandoned it at Lakeba Street. Matter reported, taxi recovered with No. plate DG936. Upon information, accused was arrested, interviewed under caution, put on identification parade, Complainant identified accused as the one who first hired him, and also drove the taxi away. He was charged."

3. The Applicant admitted the facts, and mitigated both orally and in writing. The learned Magistrate sentenced the Applicant to imprisonment for 3 years and 9 months on the first count, and 4 months on the second to be served consecutively.
4. The Applicant appealed to the High Court against the sentence and on the 24th of May 2002 Shameem J. dismissed his appeal.
5. The Applicant was sentenced to one year's imprisonment in another file (C/F405/02). Because the Applicant referred to that sentence in his submissions, Shameem J. called for the file, to satisfy herself that the total term the Applicant was serving reflected the offending. The learned Judge concluded that the total term of four years and eight months fell within the tariff and was not manifestly excessive, nor did it offend the totality principle. She dismissed the appeal.
6. The Applicant now seeks leave to appeal to this Court from the judgment of the High Court. This is a second appeal, and is limited to questions of law alone.
7. I do not see any error of law in the judgment of Shameem J. I will treat the Applicant's letter of 4th June 2002 as application for leave to appeal out of time. I grant the Applicant leave, and dismiss the appeal under Section 35(2) of the Court of Appeal Act (as amended). The appeal is incompetent, and therefore has no prospects of success. Under Section 35(3) of the Act, the Applicant is entitled, if he so elects to have the application for leave dealt by a full bench of Judges.

Dated at Suva this 25th day of September, 2002.




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Jai Ram Reddy
President