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IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

CRIMINAL APPEAL NO: AAU0085/07

BETWEEN:

JOPE RAMALASOU

Appellant

AND:

THE STATE

Respondent

Coram: Byrne P
Goundar JA

Hearing: 24th May 2010

Counsel: Appellant in Person
Ms T. Leweni for State

Date of Judgment: 28th May 2010

JUDGMENT OF THE COURT

[1] On 22 May 2007 after trial by the High Court at Lautoka the appellant was convicted of one count each of robbery with violence, throwing object and

damaging property. He was sentenced to 9½ years imprisonment for robbery with violence, 6 months imprisonment for throwing object and 6 months imprisonment for damaging property, to be served concurrently. The total sentence of 9½ years imprisonment was further made concurrent to a sentence of 4 years imprisonment imposed earlier for another offence of robbery with violence.

- [2] The facts reveal a daring robbery. The appellant was among a group of five to six men who entered the Hideaway Hotel armed with cane knives. They subjected the security officer there to a great deal of terror, offering him physical violence as well as punching him in fear of his life by brandishing cane knives. They used a twin cab to sever an ATM containing \$146,870.00 before fleeing the scene with it.
- [3] When the police pursued them, they pelted the police vehicle with stones. They threw spikes on the road puncturing a tyre of the police vehicle and managed to avoid arrests. The ATM was dumped in a bush, but was recovered by the police with its contents intact.
- [4] The only evidence that implicated the appellant was his confession to the police. He challenged the voluntariness of his confession but the learned trial judge admitted it in evidence after holding a trial within trial. In the summing up, the learned trial judge gave careful directions to the assessors on the disputed confession of the appellant. The assessors were directed that they can only act on the confession if they were satisfied beyond a reasonable doubt about two matters. Firstly, they must be satisfied beyond a reasonable doubt that the appellant did in fact make the confession, and if he did, secondly, they must be satisfied beyond a reasonable doubt that the confession was true. These were proper directions and the majority opinions of the assessors were that the appellant was guilty of the offences, which the learned trial judge accepted to convict the appellant.

- [5] The appellant challenges his conviction on the sole ground that he was unrepresented at trial. He submits that the learned trial judge erred in refusing him an adjournment to appeal against the decision of the Legal Aid Commission refusing his application to the Legal Aid Board under the Legal Aid Act.
- [6] The court record shows that the appellant was advised of his right of counsel on the first call, that is, 30 September 2004. Since that date until the trial commenced on 22 February 2007, the appellant had opportunity to engage counsel. After the learned trial judge gave his ruling on the voir dire on 22 March 2007, the appellant applied for an adjournment to engage counsel. The learned trial judge acceded to the request and granted an adjournment until 10 April 2007. The court then granted two more adjournments whilst the Legal Aid Commission assessed the appellant's application.
- [7] On 7 May 2007, Mr. Sharma from Legal Aid Commission appeared and informed the court that the accused refused to give instructions and was un-cooperative. The case was adjourned to 10 May 2007 when Mr. Sharma informed the court that he had returned the disclosures to the appellant. The appellant informed the court that he will engage a lawyer and if he is not able to engage one, he will defend in person. On 16 May 2007 the trial continued and was concluded on 22 May 2007 with the appellant conducting his defence.
- [8] We are of the view that the learned trial judge was quite generous in giving the appellant so many adjournments to engage counsel. The fact of the matter is that the appellant showed no genuine attempt to secure counsel and any further adjournments to allow him engage counsel would have been an exercise in futility.
- [9] This court has on several occasions explained the practical limits on the right to counsel. The right to counsel is not absolute. Where an accused person is indigent,


the right to be provided with representation under the Legal Aid Scheme must depend on the interests of justice. Although, as this Court observed in *Asesela Drotini v. The State* Cr. App. AAU1/05, 24 March 2006:

“It is preferable that anyone facing a serious charge should be able to be represented by counsel. Unfortunately the limited resources of the State and the financial circumstances of many defendants mean they are unrepresented. In such circumstances the trial court should ensure that the defendant has been allowed reasonable time to instruct counsel. Once he has, the court also has a duty to hear the case as expeditiously as possible. Whenever an accused is unrepresented the court should explain the procedure sufficiently for the accused to be able to conduct his defence.

The question for this Court is whether there is a possibility that he was adversely prejudiced by his lack of representation. In the present case, the record shows that he was given more than adequate time to find counsel, he was advised correctly of his rights by the trial judge and conducted his case competently.”


- [10] In our judgment, the appellant was not prejudiced by lack of legal representation at his trial. We bear in mind the prosecution case against the appellant was not overwhelming. He was convicted on the evidence of confession alone. However, the learned trial judge conducted a trial within trial before admitting the confession in evidence. The record shows the trial within trial procedure was explained to the appellant.
- [11] In the trial within trial and in the trial proper the appellant cross-examined the police officers at length and challenged their evidence.
- [12] We are satisfied that the appellant competently cross-examined the prosecution witnesses and quite ably put his case to the prosecution witnesses. The majority assessors and the learned trial judge found the confession of the appellant to be reliable and credible. We have no reason to interfere with those findings.

[13] For the reasons we have given, we find no merit in the ground of appeal and we dismiss the appeal accordingly.



Hon. Mr. Justice John Byrne
President, Court of Appeal





Hon. Mr. Justice Daniel Goundar
Judge of Appeal

Solicitors:

Appellant in person

Office of the Director of Public Prosecutions for State