

**IN THE COURT OF APPEAL**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU117 of 2011**  
**(High Court Case No. HAC 40/10 Ltk)**

**BETWEEN** : SANJEEV MOHAN  
*Appellant*

**AND** : THE STATE  
*Respondent*

**Coram** : Goundar JA

**Counsel** : Appellant in Person  
Mr. M. Delaney for the Respondent

**Date of Hearing** : 8 April 2014

**Date of Ruling** : 24 July 2014

**RULING**

- [1] This is an appeal against conviction and sentence. The appellant was tried and convicted of aggravated robbery in the High Court at Lautoka. On 5 October 2011, he was sentenced to 10 years and 8 months imprisonment. He filed an appeal on 28 November 2011. The appeal is out of time by about three weeks. The State takes no issue with the delay. Since the length of delay is not significant, I extend the time for filing the appeal to 28 November 2011.
- [2] The initial grounds of appeal filed by the appellant were broad and vague. On 14 March 2014, the appellant filed additional grounds of appeal and submissions. He seeks leave to appeal and bail pending appeal. The test for leave to appeal is whether the appeal is arguable before the Full Court (*Naisua v State Criminal Appeal No. CAV0010 of 2013*). The test for bail is whether the appeal has every chance of success.

**Conviction appeal**

- [4] The first ground alleges that the trial judge erred in not directing on the inconsistencies in the prosecution witnesses' evidence and their previous statements. The appellant provides no particulars of the alleged inconsistencies. The alleged error is too broad and vague. No arguable error arises under this ground.
- [5] The second ground is that the trial judge erred in not directing the assessors that they were free to place what weight they attached to the appellant's disputed confession. The trial judge at paragraph 19 of his summing up directed the assessors that it was for them to consider whether the appellant's confession was not obtained by physical abuse, and that the confession was true. These directions were correct in law and no arguable error arises under this ground.
- [6] The third ground alleges that the trial judge erred in admitting the appellant's confession in evidence. The appellant's confession was admitted in evidence after the trial judge held a voir dire to determine the grounds for objection. After hearing the evidence in the voir dire, the trial judge accepted the prosecution evidence and found that the appellant's confession was made freely and voluntarily and without threat or assault. The voir dire findings of the trial judge were available on the evidence and no arguable error arises from the admissibility of the appellant's confession.
- [7] The fourth ground alleges that the trial judge erred in putting the case before the assessors when the complainant's evidence was that the alleged robbers were "Fijian". The appellant's contention is that since he is of Indian ethnicity, and the alleged perpetrators of the robbery was identified by the complainant as "Fijian", he could not have been involved in the alleged robbery.
- [8] The trial judge at paragraph 12 of his summing up directed the assessors to consider the description that the complainant gave of the alleged perpetrators was that they were all Fijians. The trial judge further directed the assessors to consider that the complainant also told the court that she was petrified and did not look clearly at the alleged perpetrators. In

my judgment, the complainant's description of the alleged perpetrators was made in a state of shock and the assessors were entitled not to rely on that piece of evidence. No arguable error arises under this ground.

- [9] The fifth ground alleges that the assessors' guilty opinions were previous (sic). I take it that the appellant is alleging the guilty opinions of the assessors were perverse. The guilty opinions indicate that the assessors accepted the appellant's confession was true and reliable. The assessors acted upon the appellant's confession to convict him. The guilty opinions are supported by the evidence. This ground is not arguable.
- [10] The sixth ground alleges that the weight of the evidence does not support a conviction. The appellant's confession was sufficient to convict him. This ground is not arguable.
- [11] The seventh ground is that the trial judge erred in not deleting pages 3, 5 and 6 of the appellant's caution interview because of its prejudicial effect. Apart from the admissions that the appellant made in his caution interview, there was no other prejudicial information contained in the caution interview for the trial judge to exclude. This ground is not arguable.

#### **Sentence appeal**

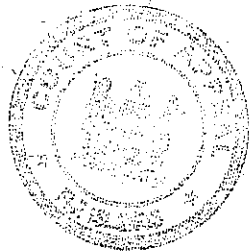
- [12] The appellant submits two grounds of appeal against sentence.
- [13] The first ground is that the sentence is harsh and excessive. The second ground is that the trial judge took into account impermissible aggravating factors.
- [14] The appellant was sentenced to 10 years and 8 months imprisonment. The tariff for robbery with violence is 10 to 16 years' imprisonment (*Samuela Donald Singh v State unreported Cr. App. No. AAU15 and 16 of 2011*). The appellant's sentence is clearly on the lower side of the tariff and there is nothing in the sentencing remarks of the trial judge to indicate he used impermissible aggravating factors to enhance the sentence. The sentence appeal is not arguable.

**Result**

[15] The grounds of appeal against conviction and sentence are not arguable. The application for bail must fail as well because the test for bail has not been satisfied.

[16] Leave to appeal against conviction and sentence is refused.

[17] The application for bail is refused.



A handwritten signature in black ink, appearing to read 'D. Goundar'.

Hon. Justice D. Goundar  
**JUSTICE OF APPEAL**

**Solicitors:**

Appellant in person  
Office of the Director of Public Prosecutions for State