

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

Criminal Appeal No. AAU0097 of 2013
[HC Appeal No. HAA 17 of 2013S]

BETWEEN : SANJAY SINGH VERMA

Appellant

AND : THE STATE

Respondent

Coram : Hon. Mr. Justice Goundar

Counsel : Ms S. Vaniqi for the Appellant
Ms J. Prasad for the Respondent

Date of Hearing : 4 July 2014

Date of Ruling : 25 July 2014

RULING

[1] The appellant was charged with the following offences:

FIRST COUNT

Statement of Offence

Forgery: Contrary to Section 341(1) of the Penal Code Act 17.

Particulars of Offence

SANJAY SINGH VERMA, on the 10th day of July, 2008 at Suva in the Central Division, with intent to defraud forged the signature of AMIT PRASAD on the Tax Invoice Number 0343 purporting the same to be genuine.

SECOND COUNT

Statement of Offence

Uttering Forged Document: Contrary to Section 343 of the Penal Code Act 17.

Particulars of Offence

SANJAY SINGH VERMA, on the 10th day of July, 2008 at Suva in the Central Division, knowingly and fraudulently uttered a forged Tax Invoice Number 0343 at the Small Claims Tribunal, Suva.

- [2] Following a trial in the Magistrates' Court he was convicted of the charges and sentenced to 2 years' imprisonment. He filed an appeal against conviction and sentence to the High Court. On 27 September 2013, the High Court dismissed the appeal against conviction, but allowed the appeal against sentence. The term of 2 years' imprisonment was quashed and substituted with a term of 9 months' imprisonment.
- [3] On 25 October 2013, the appellant filed a timely appeal against conviction to this Court. Since the appellant is appealing against a judgment of the High Court in its appellate jurisdiction, his right of appeal is governed by section 22 of the Court of Appeal Act. Section 22 restricts the appellant's right of appeal to questions of law only.
- [4] Counsel for the State submits that the grounds of appeal filed by the appellant does not raise any question of law only and therefore the appeal is bound to fail because the appellant has no right of appeal under section 22 of the Court of Appeal Act.
- [5] The grounds of appeal are drafted as if they raise errors of law only. However, whether a ground of appeal indeed raises a question of law alone is a matter for the Court to determine. The Court has to be satisfied that a ground of appeal involves a question of law alone.
- [6] The first ground alleges:

"i. That the Learned Appellant Judge erred in law when he stated at para 9, pg 6 of his judgment that "it is not acceptable for a trial Magistrate to recuse himself or herself from any case on any flimsy ground On my reading of the court record, there was no reason for the trial Magistrate to recuse himself from this case ..." as the Appellant gave sufficient grounds to guide the Appellant Judge to find cause for a recusal application."

[7] Whether the trial Magistrate was disqualified from presiding over the appellant's trial is a question of mixed law and fact. The learned High Court judge described the grounds upon which the appellant sought to disqualify the trial Magistrate as flimsy. I cannot see any error of law alone arising from this conclusion of the High Court.

[8] The second ground alleges:

"ii. That the Learned Appellate Judge erred in law when at para 10, pg 6 of his judgment he found that the Learned Trial Magistrate reached a correct conclusion on the no case to answer without himself analyzing and taking into consideration the facts and the law that were before the Learned Trial Magistrate."

[9] Whether the trial Magistrate was correct to reject the appellant's application for no case to answer is question of mixed law and fact. The High Court concluded that the trial Magistrate's decision to find the appellant had a case to answer after the close of the prosecution case was correct in law and in fact. No error of law alone arises from this ground.

[10] The third ground alleges:

"iii. That the learned Appellant Judge erred in law in stating at para 11, pg 7 of his judgment that the Learned Trial Magistrate "correctly covered the issues concerning the burden and standard of proof without himself analyzing adequately the complaints raised by the Appellant that were filed before the Appellant Judge."

[11] This ground makes no sense. The trial Magistrate applied the correct burden and standard of proof in the criminal cases, and the High Court judge found no error regarding the

appellant's complaint based on the burden and standard of proof. No question of law alone arises under this ground.

[12] The fourth ground alleges:

"iv. That the Learned Appellant Judge erred in law at para 15, pg 8 of the judgment in stating "what the Learned Magistrate was referring to was the evidential burden, not the standard burden of proof beyond reasonable doubt, which of course, lies on the prosecution from the start to the end of trial".

[13] The contention under this ground is that the learned Magistrate shifted the burden of proof on the appellant by saying the appellant had to explain the missing signature. In this case, the appellant elected to remain silent. The trial Magistrate had to consider the charges on the prosecution evidence. The High Court said any complaint regarding shifting of the burden of proof cannot be considered in isolation. The whole judgment has to be considered to see if the burden of proof was shifted to the appellant. The High Court judge found that the burden of proof was not shifted on the appellant. No question of law alone arises under this ground.

[14] The fifth ground alleges:

"v. That the Learned Appellant Judge erred in law at para 12, pg 7 when he dismissed grounds No. 5(6), 5(8), 5(9), 5(12), 5(13), 5(16), 5(17), 5(18) and 5(19) of the Appellant's appeal without himself analyzing and taking into consideration the fact and the law that were before the Learned Trial Magistrate."

[15] This ground alleges the High Court judge dismissed the grounds of appeal in the High Court without first analyzing the facts and the law. Whether the High Court erred in dismissing the grounds of appeal without analyzing the facts and the law does not raise a question of law alone.

[16] The sixth ground alleges:

“vi. That the Learned Appellant Judge had pre-determined the matter which was evident in his comments in open court during the hearing date on the 27th August, 2013 when he said to the Appellants counsel “Isa this the same case where the Small Claims Tribunal documents had been tampered with?. If that is the case, then a custodial sentence is warranted.”

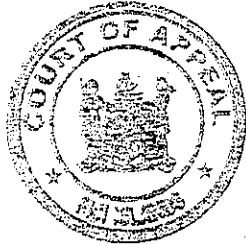
[17] Whether the High Court judge had pre-judged the appeal before the hearing does not raise a question of law alone.


Result

[18] None of the grounds raise any question of law alone.

[19] I am satisfied that this appeal is bound to fail because the appellant has no right of appeal under section 22 of the Court of Appeal Act.

[20] The appeal is dismissed under section 35(2) of the Court of Appeal Act.




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Hon. Justice D. Goundar
JUDGE OF APPEAL

At Suva
25 July 2014

Solicitors:

Vaniqi Lawyers for Appellant
Office of the Director of Public Prosecutions for State