

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NOS. AAU0154/14 &
AAU0008/15
(High Court Criminal Case No. HAC215 of 2011)

BETWEEN : **SATISH LAL**
ISAIA BOBO

Appellants

AND : **THE STATE**

Respondent

Before : The Hon. Justice Daniel Goundar

Counsel : Mr. J. Savou for 1st Appellant
2nd Appellant in person
Mr. M. Vosawale for the Respondent

Date of Hearing : 1 August 2016

Date of Ruling : 5 August 2016

RULING

- [1] This is an application for leave to appeal against both conviction and sentence. The test for leave is whether the appeal is arguable. Both appellants were jointly charged with aggravated robbery (count 1). Apart from the joint charge, the 1st appellant was charged with theft (count 2) and the 2nd appellant was charged with giving false name to a police officer (count 3). The charges arose from the same facts. Following a trial in the High Court at Suva, the appellants were convicted of the charges and sentenced to a total term of 9 years imprisonment.
- [2] The 1st appellant's grounds of appeal in summary are:

- (i) The trial judge gave no directions on the law on circumstantial evidence.
- (ii) The trial judge failed to define the elements of dishonesty and appropriation in relation to the theft charge.
- (iii) The trial judge gave no directions on prejudicial media publicity.
- (iv) The directions on the law on joint enterprise were inadequate.
- (iv) The trial judge gave no directions on the law on recent possession.
- (v) The directions on caution interview were inadequate (this ground was abandoned at the leave hearing).
- (vi) The trial judge gave no directions on the 2nd appellant's evidence implicating the 1st appellant.
- (vii) Remand period not taken into account in sentence.

[3] The 2nd appellant's grounds of appeal in summary are:

- (i) The trial judge failed to direct on reliability of the identification evidence in accordance with the Turnbull guidelines.
- (ii) The trial judge gave no directions on the law regarding alibi defence.
- (iii) Remand period was not taken into account in sentence.

[4] At trial, the only incriminating evidence against the 1st appellant was the possession of the stolen property. There was no direct evidence that he was either involved in the alleged robbery or theft. The summing up contains no directions on the law as alleged in the 1st appellant's grounds of appeal. During the sentencing hearing, the learned trial judge was advised by the State that the 1st appellant had been in custody on remand for more than 1 year, but the sentencing remarks make no reference to the remand period. In my judgment, the 1st appellant's ground of appeal are arguable.

- [5] The only incriminating evidence against the 2nd appellant was the identification evidence of one of the complainants. The 2nd appellant's defence was that the witness was mistaken in her identification, the police identification was defective, and that he was at his brother-in-law's home at the time of the alleged robbery. The summing up contains no directions on the identification evidence in accordance with the Turnbull guidelines and the law regarding alibi defence. Like the 1st appellant, the 2nd appellant had also spent substantial period in custody on remand. The learned trial judge made no reference to the 2nd appellant's remand period in his sentencing remarks. In my judgment, the 2nd appellant's appeal is arguable.

Result

- [6] Leave granted to both appellants.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for the 1st Appellant

2nd Appellant in person

Office of the Director of Public Prosecutions for the Respondent