

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

CRIMINAL APPEAL NO.AAU 0086 OF 2014
(Criminal Case No. 30/12)

BETWEEN : **TIMOCI MOMOTU** *Appellant*

AND : **THE STATE** *Respondent*

Before : **The Hon. Justice Daniel Goundar**

Counsel : **Mr. J. Savou for the Appellant**
Mr. M. Vosawale for the Respondent

Date of Hearing : **8 July 2016**

Date of Ruling : **15 July 2016**

RULING

[1] This is a timely application for leave to appeal against conviction only. The appellant was charged with one count of aggravated robbery. The High Court extended the jurisdiction of the Magistrates' Court to hear the charge. Following a trial in the Magistrates' Court the appellant was convicted of the charge and sentenced to 4 years and 7 months imprisonment with a non-parole period of 3 years.

[2] The grounds of appeal are as follows:

1. The Learned Trial Magistrate erred in law and in fact in allowing Dock Identification of the accused without any prior identification.

2. The learned Trial Magistrate caused the trial to miscarry when he failed to consider that even though two people were arrested as highlighted by the arresting officers only the Appellant was charged for the offending.

[3] The complainant was a taxi driver. His evidence was that on the day of the incident, the appellant and two others hired his taxi from Deep Sea nightclub to take them to Rewa. When he was about to drop them off, the passenger sitting in front grabbed his hand while the passenger sitting at the back (referring to the appellant) grabbed his mobile and wallet. They took off with his taxi meter. The appellant gave evidence. He admitted his presence in the taxi but denied involvement in the robbery. He said he was sleeping and when he woke up, he saw his two friends assaulting the complainant. Clearly, identification was not an issue. The issue was whether the appellant was involved in the joint enterprise to rob the complainant. The complainant said the appellant was involved. The issue was credibility and not identification. It was open on the evidence for the learned Magistrate to believe the complainant. Ground 1 is unarguable.

[4] The charge alleged that the appellant committed the robbery with another. The complainant also gave evidence of three people being involved. The prosecution relied upon the principle of joint enterprise to prove the charge against the appellant. There is no arguable error in the charge or in the application of joint enterprise to establish guilt. Ground 2 is unarguable.

Result

Leave refused.



A handwritten signature in blue ink, appearing to read 'Daniel Goundar'.

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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State