

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
exercising extended jurisdiction

CRIMINAL APPEAL AAU 136 OF 2015
(Magistrates Court NO. 8 of 2011 at Vunidawa)

BETWEEN : MANASA RADROTINI
APOROSA TUICOLO
OVETI KORODRAU

Appellants

AND : THE STATE

Respondent

Coram : Calanchini P

Counsel : Ms A Veretawatini for the Appellants
Mr Y Prasad for the Respondent

Date of Hearing : 8 August 2018

Date of Ruling : 23 October 2018

RULING

- [1] Following a trial in the Magistrates Court at Vunidawa exercising extended jurisdiction of the High Court the appellants were convicted on one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009. On 16 September 2015 the

appellants were each sentenced to 5 years imprisonment with a non-parole term of 4 years.

- [2] The appellants filed a timely joint notice of appeal against conviction and sentence dated 5 October 2015. An amended notice of appeal against conviction and sentence was filed on 20 July 2016 by the legal practitioner acting for the 3 appellants. However on 3 May 2018 each appellant signed an application to abandon the appeal against sentence. Those applications are to be listed before the Court of Appeal on a date to be fixed.
- [3] The relevant background to the convictions has been summarised in the submissions filed by the Appellants. There is, however, one matter that needs to be clarified. In the notices of appeal filed by the appellants and in the written submissions it is claimed that the appellants had pleaded guilty. However this is not supported by the judgment of the Magistrates Court dated 11 August 2015. It is stated at page 3 of that judgment that the prosecution called 6 witnesses and the three appellants gave sworn evidence. The material facts are that the complainant with a friend was visiting a neighbor. The Appellant Korodrau approached the complainant to ask him about a rumour that the complainant was having an affair with Korodrau's sister. Korodrau started to punch the complainant while Radrotini and Tuicolo held the complainant. Tuicolo removed the complainant's wrist watch while Korodrau continued to punch the complainant.
- [4] Of the grounds of appeal that were filed as the amended notice of appeal, only one can be said to relate to the appeal against conviction being:

"That the learned Magistrate erred in law and fact in jointly convicting them under section 311(1)(a) of the Crimes Decree (sic)"

- [5] The issue raised by the appellants in the submission is that there was no intention on the part of the appellants to rob the complainant. This is a reference to what is now termed as the "*fault element*" under section 18 of the Crimes Act 2009, which provides that:

“(1) A fault element for a particular physical element may be intention, knowledge, recklessness or negligence.”

[6] Section 19(1) of the Crimes Act goes to provide that:

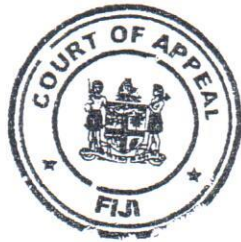
“A person has intention with respect to conduct if he or she means to engage in that conduct.”

[7] In this case the appellants were convicted of an offence under section 311(1)(a) of the Crimes Act which may be referred to as “robbery in company.” The physical element was established in that the appellants were engaged in the activity of robbing the complainant in the company of each other. They all played a part in the physical element. The fault element is established by showing that each appellant meant to engage in the physical element. It does not matter at what point in time the intention to engage in the physical element is manifested. In other words by playing a part in the assaulting or threatening of the complainant while stealing the watch the appellants each manifested an intention to engage in that activity.

[8] In my judgment the ground is not arguable. There is one other issue that requires comment. The particulars of the offence that are reproduced in both the judgment and sentencing decision appear to allege stealing in company without any reference to the use of force or the threat to use force as is required by section 310 of the Crimes Act. The particulars as presently worded do not allege the offence of robbery in company. The point was not raised by the appellants at the trial in the Magistrates Court nor in the application for leave. The evidence established the elements of the offence of aggravated robbery under section 311(1)(a). Leave to appeal against conviction is refused.

Orders:

1. Leave to appeal against conviction is refused.
2. The applications to abandon the appeals against sentence are to be listed before the Court of Appeal on a date to be fixed.



W. Calanchini

Hon Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL