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

CRIMINAL APPEAL NO. AAU 0010 of 2024
[Lautoka High Court Case No: HAC 13 of 2018]

BETWEEN : **DESHWAR KISHORE DUTT**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Appellant in Person**
: **Kumar R for the Respondent**

Date of Hearing : **11 March, 2025**

Date of Ruling : **10 April, 2025**

RULING

[1] The Appellant [Deshwar Kishore Dutt] was charged with another by the Director of Public Prosecution; the Information states:

FIRST COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (a) and (b) of the Crimes Act 2009.

Particulars of Offence

DESHWAR KISHORE DUTT, SAVENACA VUNISA and another between the 29th day of December 2019 and 30th day of December 2017 stole one Alcatel one touch mobile phone valued $49.00 and one torch valued $60.00, properties of BHAGUTY PRASAD, all to the total value of approximately FJD $109.00 and at the time of such theft, the said DESHWAR KISHORE DUTT, SAVENACA VUNISA and another were armed with a kitchen knife, axe and pinch bar and had also applied force on the said BHAGUTY PRASAD.

SECOND COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to Section 311(1) (a) and (b) of the Crimes Act 2009.

Particulars of Offence

DESHWAR KISHORE DUTT, SAVENACA VUNISA and another between the 29th day of December, 2019 and 30th day of December 2017 stole, $10,000 cash in Fijian and US currencies, Samsung J7 brand mobile phone valued $250USD and Samsung one brand mobile phone valued $350USD, 1 Vido brand mobile phone valued $100FJD, 1 Forme brand Mobile phone valued $100FJD and a Toyota Prius motor vehicle registration number JC 367 valued $17,000, properties of JAI REDDY, all to the total value of approximately FJD$28,400.00 and at the time of such theft, the said DESHWAR KISHORE DUTT, SAVENACA VUNISA and another were armed with a kitchen knife, axe and pinch bar and had also applied force on the said JAI REDDY.

THIRD COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (a) and (b) of the Crimes Act 2009.

Particulars of Offence

DESHWAR KISHORE DUTT, SAVENACA VUNISA and another between the 29th day of December 2019 and 30th day of December 2019 stole about 50 assorted jewelleries and watches valued approximately USD$102,000,$2000 cash in Fijian and US currencies, ELIZABETH ARDEN RED DOOR perfume valued at USD$79.00, the properties of MUNI LAKSHMI REDDY, all to the total value of approximately FJD$206,160.00 and at the time of such theft, the said DESHWAR KISHORE DUTT, SAVENACA VUNISA and another were armed with a kitchen knife, axe and pinch bar and had also applied on the said MUNI LAKSHMI REDDY.

FOURTH COUNT

Statement of Offence

AGGRAVATED ROBBERY: Contrary to section 311(1) (a) and (b) of the Crimes Act 2009.

Particulars of Offence

DESHWAR KISHORE DUTT, SAVENACA VUNISA and another between the 29th day of December 2017 and 30th day of December 2017 stole a gold Samsung J7 brand mobile phone valued $250USD, USD $100 cash, Adidas backpack valued $80USD, OLD SPICE brand deodorant valued $10USD, TOMMY BAHAMA brand body spray valued $20USD and a white mobile phone charger valued at $10USD, the properties of BRANDON REDDY, all to the total value of approximately FJD$940.00 and at the time of such theft, the said DESHWAR KISHORE DUTT, SAVENACA VUNISA and another were armed with a kitchen knife, axe and pinch bar and had also applied force on the said BRANDON REDDY.

[2] After a contested trial in the High Court at Lautoka, the appellant and another were found guilty and convicted of the charges filed against them. At the trial, the prosecution called 7 witnesses and tendered 14 exhibits and documents. At the close of the case for the prosecution, the court was satisfied that there was case to answer for each of the accused and they were put to their defence. The appellant elected to give evidence under oath.

[3] The appellant was unrepresented at the trial. They were properly advised their rights at the trial. They waived their right to legal representation and legal aid.

[4] Judgement in the trial was delivered on 4 December 2023.The sentence ruling was delivered on 30 January 2024. The appellant was sentenced to 13 years imprisonment with a non-parole period of 10 years, concurrent to the sentence he was serving at the time.

The Appeal

[5] The appellant being dissatisfied with the judgement against him, filed a Notice of Appeal against conviction dated 25 December 2023. The Notice of Appeal also set out 23 grounds of appeal and supporting submissions. This is a timely appeal, having

being filed within the required 30 days from the date of his conviction: section 26(1) of the Court of Appeal Act 2009. The respondent filed their submission in response to the grounds of appeal against conviction, on 5 December 2024. A copy was served on the appellant in Court. The appellant replied to the respondent submissions, this was filed on 20 February 2025.

[6] The appellant filed amended grounds of appeal, not additional which was filed in court on 2 August 2024. The filing of amended grounds of appeal without clearly identifying how the new set of grounds, amend the earlier submitted grounds, is sometime an attempt to introduce grounds that were not raised as appeal ground with the required period, to avoid seeking enlargement of time to appeal.

[7] Section 21 (1)(b) of the Court of Appeal Act require leave to appeal on any ground of appeal which involves mixed question of law and facts. For a timely appeal like this one, the test for leave to appeal against conviction is **'reasonable prospect of success'** see: **Caucau v State** [2018] FJCA 171; **Navuki v State** [2018] FJCA 172 and **State v Vakarau** [2018] FJCA 173; and **Sadrugu v The State** [2019] FJCA 87.

Grounds of Appeal

[8] Before I set out the grounds of appeal set out in the Amended Grounds of Appeal that was filed on 2 August 2024, I should advise that the appellant's position on some of the grounds mutate over time.

[9] The 23 grounds of appeal are:

> *"**1.** **THAT the Learned Trial Judge erred in law** by failing to consider **at all** that the appellants trial was '**Ambused'** and **Unfair**; thereby failing to declare a mistrial and order a new trial in the circumstances of the appellants case;*
>
> ***2.** **THAT the Learned Trial Judge erred in law** by allowing the State to use against the appellant '**extrinsic evidence'** during trial and thereby convicting the appellant on the sole basis of that extrinsic and/or undisclosed evidence;*

3. ***THAT the Learned Trial Judge erred in law*** *by convicting the appellant on counts 2 and 4 in absence of any evidence from the Complainants given during trial;*

4. ***THAT the Learned Trial Judge erred in law*** *at para. 115 of his Judgement by treating the allowed oral confession, as* ***"admission of robbery and that it came naturally from the appellant on his own free-will****" without first testing its admissibility and truthfulness;*

5. ***THAT the Learned Trial Judge erred in law*** *by failing to apply and follow the guideline principle pertaining the test established by the Supreme Court in Naicker v. State CAV.0019/18 before acting in reliance with the first time dock ID;*

6. ***THAT the Learned Trial Judge erred in law*** *and in fact by accepting and relying on PW2's unsupported evidence that it was the appellant,* ***and no other*** *who had spoken to her in Hindi language during the commission of crime saying* ***"Nahi Nahi Nahi"*** *and that the appellant speaks fluent Fijian language in absence of any independent and reliable evidence that* ***the appellant speaks fluent Fijian language*** *and was the same person who spoke to PW2 in hindi during the commission of crime;*

7. ***THAT the Learned Trial Judge erred in law*** *and in fact by declaring at para.110, 113, and 116 that PW2 had 'Positivity identified' the appellant who came 45 mins. after robbery bearing in mind that Police had failed to follow the procedure leading to a positive identification by Complainant Ms. Muni Luchimi Reddy (PW2) through the proper ID. Parade to test the accuracy of her evidence pertaining the appellant's ID.*

8. ***THAT the Learned Trial Judge erred in law*** *by placing substantial reliance on PW2's speculative and hypothetical evidence that it was indeed the appellant who robbed PW2 without bearing in mind the whole circumstances of alleged ID by PW2 of the appellant;*

9. ***THAT the Learned Trial Judge erred in law*** *by convicting the appellant on the sole basis of PW2's speculative evidence that "the man in Green Shirt' was no other but the appellant" who had robbed her some 45 mins. Earlier without the said Green Shirt be produced in Court for identification purpose;*

10. ***THAT the Learned Trial Judge erred in law*** *by convicting the appellant on the sole basis of PW2's uncorroborated identification evidence which had 'doubts' since according to PW2's own evidence in chief and as per her statement all Robbers were Masked and were*

FIJIANS whereas the appellant in no doubt INDIAN; (material discrepancies – Turnbull Guidelines not observed).

11. ***THAT the Learned Trial Judge erred in law*** *at para.114 of his judgment by wrongly assessing and analyzing that the 'alleged oral admission' amounts to Confession of the alleged crime in question when the facts proves otherwise;*

12. ***THAT the Learned Trial Judge erred in law*** *at para. 104 of his Judgment and analysis of evidence when he 'shifted the burden of proof from the State to the appellant' without considering the issue pertaining non-disclosure by the State of evidence that was material to the defence in advance;*

13. ***THAT the Learned Trial Judge erred in law*** *and in fact when he failed to adequately address and direct himself on the relevant principles on prior inconsistent statements made by PW2 during trial and in failing to apply those relevant principles to the prior inconsistent statements made to Police by PW2 at Namaka Police Station;*

14. ***THAT the Learned Trial Judge erred in law*** *and in fact by failing to independently assess and evaluate PW2's evidence in light with her "belief in Police Officer's that Police Officer's won't lie" with the fact that PW2 might have thought that Police have caught the right person who had robbed her could have contributed to her pointing the appellant as the culprit in an empty Court-Room where the appellant was the only indian man available for her to point;*

15. ***THAT the Learned Trial Judge erred in law*** *by failing to direct himself adequately the required identification Turnbull guideline warning, in particular, (1) the Quality of PW2 identification evidence of the alleged Green Shirt and Black Pants; and (2) the precise circumstances surrounding PW2's identification of the said Green Shirt and Black Pants during the commission of crime;*

16. ***THAT the Learned Trial Judge erred in law*** *and in fact by declaring PW2's identification evidence of the appellant in Court 'noteworthy' because the appellant was identified by PW2 whilst he was sitting at the 'Bar Table instead of the Dock' without drawing its attention to the fact that the appellant was the Only Indian man present in Court and that it does not matter where the appellant sits (whether Dock or Bar Table) he would definitely be picked out in Court because the Complainant (PW2) had – AFTER THE ROBBERY – seen the appellant on various occasions; newspaper; TV and other Social Media cites;*

17. ***THAT the Learned Trial Judge erred in law*** *and in fact in his assessment and judgment at para.102 when he misguided and misdirected himself on a very crucial and material point pertaining PW2's failure not to mention in her Police Statement (1) an Indian man; (2) wearing Green Shirt during robbery; (3) speaking in Hindi during the commission of crime; (4) coming back 45 mins. after robbery was the same person in Green Shirt; and (5) fleeing in her vehicle registration No. JC:367 was the same person who came back 45 mins. past robbery; and because of PW2's traumatic stage, whilst evidence in chief by PW2 suggests otherwise – hence the Judge (with respect) had failed to act upon evidence.*

18. ***THAT the Learned Trial Judge erred*** *in his assessment at para.118 of his Judgment by finding that "there was a solid foundation for dock identification" when the fact remains blatantly clear via PW2's evidence that (1) she (PW2) had never seen the appellant prior to the robbery; (2) had never said in her police statement that one out of the three intruders were Indian and had worn a Green Shirt at the time of robbery; (3) had never identified the appellant through proper ID procedure; OR said in her initials or any other statement to Police that she had identified the appellant at the Namaka Police Station; inter alia;*

19. ***THAT the Learned Trial Judge erred in law*** *and in fact by accepting two contradicting versions of PW2's inconsistent evidence; one being PW2's evidence on Oath and the other being her prior inconsistent statement to Police dated 30th Dec 2017, as legitimate excuse for Police in their failure to conduction ID Parade, whilst by the same token further erred when he just took into account only part of PW2's inconsistent statements as true instead of acting on the 'whole of her statement in conjunction with her sworn evidence' to ascertain for himself where the truth lies: This is especially since the finding made by the learned Trial Judge at para. 98 and 117 of his Judgment is totally contradicting each other;*

20. ***THAT the Learned Trial Judge erred in law*** *by failing to warn himself – especially in the circumstances of the appellants case – that a mistaken witness can be convincing one and that a number of such witnesses can all be mistaken; and further erred by failing to caution himself of the danger of relying entirely on PW2's uncorroborated identification evidence;*

21. ***THAT the Learned Trial Judge erred in law*** *in his assessment of evidence of para.114 before misguiding himself pertaining the "alleged oral admission" as strong evidence to implicate the appellant as the Robber, despite the fact that (even if true) the said*

alleged admission does not, in any form or shape, amounts to confession of the alleged Robbery in Question;

22. ***THAT the Learned Trial Judge erred in law*** *failing to enter an acquittal after the close of Prosecutions case, on the sole basis that the case against the appellant was substantially and/or wholly based entirely on uncorroborated first time dock identification evidence from a single source which was of poor quality and highly doubtful thus causing substantial and grave miscarriage of justice;*

23. ***THAT the Learned Trial Judge erred in law*** *by failing to independently assess and evaluate PW2's evidence under oath that she had told Police "Everything" including the description, clothing and language used by the Robbers and thereby drawing probable inference via the application of his own common sense that "had PW2 indeed informed Police of the appellants description etc. then the Police must and should – as a priority – have conducted a Photo ID. Parade in order to expedite the apprehension of the person identified."*

Assessment

[10] Grounds 1 and 2 above relates to a claim by the appellant that his defence was ambushed or misled by the evidence adduced in court at the trial, because there was no disclosure in the prosecutions intention to rely on PW2 Mrs Reddy's evidence. It was not made clear in the supporting submission by the appellant how was his defence prejudiced by PW2 evidence. It is clear that the prosecution is at liberty to call PW2, after all she is owner of the most of property that were stolen from the premises on which the crime was committed. Her evidence is relevant and the appellant did not challenge PW2's evidence in the way it now being argued on appeal. The trial judge from paragraphs 106 to 109 of the judgement set out fully PW2 evidence and the basis on which it was accepted by him. The appellant was free to call witnesses and adduce other evidence at his trial in his defence to rebut PW2's evidence but he did not. He cannot blame his failure on the prosecution.

[11] On the issue of identification of the appellant by PW2 and whether the Turnbull guidelines were followed. Paragraph 110 of the judgement state:

"110. Even though PW 2 could not identify any of the robbers because they were all masked, I am sure that she positively identified the Indian man who came unmasked to her house later that night. I applied the Turnbull Guidelines on visual identification to satisfy myself that PW

2 was not mistaken in her identification. PW 2 said she could identify the Indian man as his mask was pulled down. She saw his face clearly at a distance of 4-5 metres. All the lights were turned on and the hallway light was very bright. He came towards her and even spoke to her in Hindi. It was not a fleeting glance identification. No doubt, there is a reasonable basis for a dock identification.

Identification at the Namaka Police Station

111. *PW 2 said she did not know that the name of this Indian man who approached her after the robbery was Deshwer Dutt until she came to Namaka Police Station a few days after the robbery. She explained the events that transpired at the police station where she came to know the name of the 1st Accused.*

112. *A few days after the robbery, she was at the Namaka Police Station when the stolen items were being retrieved by the police. She was conversing with Abdul Khan (Divisional Police Commander) face-to-face at the police station when a lady came in with a bag of jewellery. Abdul Khan asked PW 2, whether she could identify the jewellery to which she answered in the affirmative. As she was examining the jewellery, that lady started crying and said, 'Sorry, I did not know it was yours'. At the same time, she heard somebody say from behind, "sorry, qalti hoiqe hum se" (sorry, I have done something wrong). She turned around to see who uttered those words. Then she saw the 1st Accused who said to her, 'I'm sorry'. She told the 1st Accused 'You could have stolen everything, but you should not have tortured my son'. The 1st Accused was crying, limping and his face was a bit swollen with bruises. Abdul Khan then asked her, was this the guy? PW 2 said 'yes'. The 1st Accused in his evidence admitted that this incident took place at the police station, but he denied that he was picked (identified) by PW 2 on her own. His position is that it was Abdul Khan who pointed him out as one of the robbers.*

113. *I observed the demeanour of PW 2 who was so confident that it was the 1st Accused who approached her after the robbery. I am inclined to believe that PW 2 told the truth in Court and having considered my assessment based on the Turnbull Guidelines which I alluded to above, I find that PW 2 positively identified the 1st Accused at the police station as the Indian man who approached her and talked to her 45 minutes after the robbery.*

114. *Even if I were to accept what the 1st Accused said in Court was the truth when he said that Abdul Khan pointed him out at the police station, there is still a strong evidential basis to implicate the 1st Accused in the Sonaisali Robbery which I would like to describe now. Having denied that he was picked by PW 2 on her own at the police station, the 1st Accused did not challenge the admission he is said to have made to PW2 by saying, "sorry, qalti hoiqe hum se"*

(sorry, I have done something wrong). PW 2 said she was sure it was the 1st Accused because he apologized to her at the police station.

115. It is established law that an admission made by a suspect to a police officer or a person in authority is not admitted in evidence unless it has passed the test of voluntariness. Although made at the police station, the admission by the 1st Accused was not made to a police officer but to PW 2 and it came naturally from the 1st Accused on his own free will. He would not have tendered an apology to PW2 if he was not involved in the robbery. Therefore, I accept that the first accused made the said admission because he was guilty."

[12] It is extravagant to claim without any basis that the appellant was tricked by the prosecution theory of its case by PW2's evidence. The trial judge opined at paragraph 4 of the judgement that the appellant did far better than most legal practitioners in cross examining the witnesses and that he identified all the relevant issues involved in the trial and his cross examination was on point and impeccable. This showed that the appellant was not easily tricked. The appellant was prepared to plead guilty even after the voire dire ruling was pronounced which ruled his cautioned interview statements to be inadmissible. At the trial proper the appellant recanted and pleaded not guilty.

[13] The above grounds of appeal have no merit.

[14] For Ground 3 the appellant's claim is that counts 2 and 4, the prosecution failed to produce evidence to prove the charges. The appellant claim that the failure of any direct evidence from the complainants renders the guilty verdict for these counts is questionable and unsafe. This claim is misconceived. There is no dispute that PW2 and her family were violently robbed at their home, as in the particulars of the offence charged against the appellant. There is need in law for the husband of PW2 to be also present to identify the items stolen: PW2 is familiar with the property stolen from their residence and can give the evidence. This ground has no merit.

[15] Grounds 4, 11 and 21 – for these grounds of appeal the appellant argues that the trial judge erred in law and fact when he treated the apology, he made to PW2 at the police station, as an admission of guilt. The appellants submission did not substantiate the error of law and fact that the trial judge committed. The trial judge at paragraphs 114 and 115 of the judgement set out the basis for his treating the apology and as an

admission. He was satisfied that the apology was made voluntarily by the appellant and therefore was admissible. The appellant did not challenge this at the trial proper. This ground lack merit.

[16] Grounds 5, 7, 18 – these grounds of appeal are argued by the appellant on the basis his identification was improper being based solely on first time dock identification. Factually this claim is not correct. In this case, adequate foundation was in place for the dock identification to be permitted. At paragraph 110 of the judgement the trial judge stated that after applying the Turnbull requirement and being satisfied that there was reasonable basis for dock identification to be carried out.

[17] There is much reliance by the appellant on **Naicker v State [2018] FJSC 24,** but in that case, there were inadequate foundation for dock identification established, in this case their adequate foundation accepted by the trial judge and not contested by the appellant. Keith J summarized the Turnbull Direction in the following terms:

> *"[19] Keith J has succinctly summarized the Turnbull direction in Naicker's case at para. 29, as follows:*
>
> > *"...Where the case depends wholly or substantially on the correctness of someone's identification of the defendant, **Turnbull** requires the judge (i) warn the assessor's of the special need for caution before convicting on the basis of that evidence, (ii) to tell the assessors what the reason for that need is, (iii) to inform the assessors that a mistaken witness can be convincing witness and that a number of witnesses can be mistaken, (iv) to direct the assessors to examine closely the circumstances in which each identification was made, (v) to remind the assessors of any specific weakness in the identification evidence, (vi) to remind the assessors (in case where such a reminder is appropriate) that even in the case of purported recognition by witness of a close friend or a relative, mistakes can occur, (vii) to specify for the assessors the evidence, and (viii) to identify the evidence which might appear to support the identification but does not in fact do so."*
>
> *[20] All these requirements would not be necessary, if dock identification had been preceded by an identification parade or photograph identification."*

[18] In any event, as stated by the Supreme Court in **Nalave v The State** [2019] FJSC 27;

> *"... the discretion to allow dock identification lies with the trial judge after weighing its probative value over its prejudicial effect."(para 36).*

[19] On the application of the case law cited above on the facts of this case, these grounds have no merit.

[20] Grounds 6, 8, 9, 10, 14, 15, 16, 17 and 20 relate to the appellant's submission that the identification evidence given by PW2 were inadequate to find him guilty as charged. Like his other grounds of appeal these claims are not backed up with relevant supporting submission based one the alleged error of law and fact. Most of the discussion in the written submissions are based on the appellant's own supposition of what should have been followed by the trial judge. There is no direct reference to evidence given by PW2 which should not have been admitted or if admitted were been given unduly importance on the determination of the trial judge. There is even a submission from the appellant that PW2 evidence have not been independently supported by other evidence. In law this is not a requirement.

[21] The Respondent submits that PW2 Mrs Muni Lakshmi Reddy's evidence on identification is unshaken and established the guilt of the appellant beyond reasonable doubt. The circumstances in this case were, such that the Turnbull directions was not required. PW2 was only 4-5 meters away in fully lit room when he was identified. PW2 in her own evidence stated that she was 101% sure that it was the appellant who had been one of the robbers at the material time.

[22] On the submission the appellant made, that no sensible robber would return to the scene of the crime within 45 minutes of the commission of the crime. At paragraphs 109 and 110 of the judgement the trial judge set the basis of accepting PW2 evidence on submission and also the foundation for the dock identification.

[23] These grounds lack merit and has reasonable prospect of success on appeal.

[24] Ground 12 is a claim by the appellant that the trial judge shifted the burden of proof to him. This appear to arise when the trial judge discussed the need for an explanation which as matter of law was required and explained at paragraph 104 of the Judgement:

> *"The 1st Accused argued that even if the Indian man whom PW 2 identified was him, there was no evidence that he was one of the robbers who had robbed her house approximately 45 minutes ago. That is a valid argument.*

However, it has to be accepted that once it has been established that the unmasked Indian man was the 1st Accused, a plausible explanation is required from him as to what he was doing at around 1 am in the premises that was robbed and why he ran back to the vehicle parked in the vicinity and fled the scene without helping to bring down the police, as he had pretended to PW 2 being his reason to be there. If he fails to raise a reasonable doubt either by adducing evidence or pointing to Prosecution evidence, I cannot help but conclude that the 1st Accused was one of the robbers."

[25] The appellant misunderstands what the trial judge was stating. He was NOT reversing the onus of proof but explaining that the appellant is required to provide an explanation on why he was in the robbed premises at 1 am. This ground has no merit.

[26] Grounds 13, 19 and 23 attacks credibility of PW2 evidence because of inconsistencies in her evidence. The trial judge addressed these issues directly in his judgement: at paragraph 98 to 101 on credibility. The claim of inconsistencies in PW2's evidence raised by the appellant are directly discussed by the trial judge at paragraphs 103 to 107. Based on the summary of the evidence outlined in the judgements the inconsistencies are such that is only refers to peripheral issue and does not affect the core identification evidence given by PW2 that the appellant was one of robbers. That evidence remains intact.

[27] These grounds have no merit.

[28] Ground 22 for this ground, the appellant submits that the trial judge erred in law in not ruling at the end of the prosecution case that here was no case to answer. Section 231 of the Criminal Procedure Act 2009 [CPA] is relevant. Under subsection (1) a finding of not guilty will only be entered if the court considers that there is no evidence that the appellant committed the offence for which he is charged. On the facts of this case, there were evidence upon which the appellant needs to be put to his defence. At page 3 of the judgement, it states:

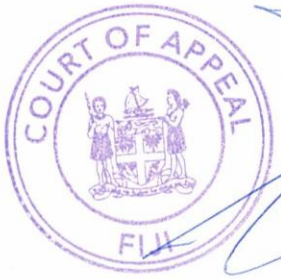
"3. The Accused pleaded not guilty to the charges. At the ensuing trial, the Prosecution presented the evidence of 7 witnesses and tendered 14 exhibits and documents. At the close of the case for the Prosecution, the Court, being satisfied that there was a case for each Accused to answer on each count, put the Accused to their defence. Both Accused elected to give evidence under oath."

[29] In **FICAC v Rajeshwar Kumar & Jaswant Kumar [2010] FJHC 56 (HAC 001/2009)** the court held that there must be some relevant and admissible evidence, direct or circumstantial, touching all elements of the offence before it can put the appellant to its defence. In this case as noted above there were relevant admissible evidence adduced in court and therefore a no case to answer ruling was not open to the trial judge as per: section 231(2) CPA 2009. This ground has no merit.

[30] In conclusion and from the assessment undertaken above with regard to the appellants grounds of appeal, they all have no reasonable prospect of success.

ORDER:

1. Appellant's application for leave to appeal on all the grounds is declined.



Hon. Justice Isikeli U. Mataitoga
PRESIDENT, COURT OF APPEAL