IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. HAA 35 OF 2010

BETWEEN: **LUKE RAVUWAI**

Appellant

A N D: **STATE**

Respondent

Appellant in Person
Ms S. Tagivakatini for the State/Respondent

Date of Hearing: 3 March 2010
Date of Judgment: 19 March 2010

JUDGMENT

[1] On the 19th May 2009 at the Nausori Magistrates Court the appellant was convicted of one count of robbery with violence, contrary to section 293(1)(a) of the Penal Code, Chapter 17, Laws of Fiji. He was sentenced to 9 years imprisonment. He now appeals both his conviction and sentence.

[2] The facts at trial were that on the 26th November 2008, the accused with 2 others broke into the complainant's house at 2.10am when he and his family were sleeping. They forcefully woke the occupants, kicked and punched the complainant and threatened to kill his family. They were armed with a cane knife, a chisel and punch bars. They ransacked the house for about 1 ½ hours and stole $6053 cash, watches worth $1350, ball pens $1200, cufflinks $520, jewellery $7155, 3 cigarette lighters, fishing spear gun, fishing knives, 3 digital cameras $1200, one ipod $1045, 2 sunglasses $600, cosmetics $25, 3 mobile phones $350; all to the total value of $19,793.00.

[3] The appellant has filed written grounds for his appeal and the State has filed written submissions in response. Both parties seek to rely on those written submissions.

[4] The appellant bases his appeal against conviction on a multitude of grounds, most of which ask this Court to revisit the evidence at trial. He disputes the Magistrate's finding on the voir dire, he states that he was not allowed to cross examine the complainant, he claims the Magistrate was biased, he was denied his legal

counsel of choice, the Magistrate didn't consider his alibi, the knife exhibited did not match the knife *"stated"* etc.

[5] It is difficult to isolate any one ground of merit in this obvious "*catch-all*" list of complaints, however in additional grounds filed later he goes on to claim that the Magistrate did not deliver a written judgment, that the prosecution case was weak, that there was no direct, real or circumstantial evidence and that the rules of procedure were not properly followed *by "criminal justice officials"*, and finally that the charge is *"unconstitutional"*.

[6] The trial was conducted by a very senior and experienced Magistrate, and the Court Record does not reveal any improprieties at trial or at the judgment stage. The appellant waived his right to counsel and was invited by the Court to cross examine the complainant. He appears not to have asked any questions. The procedures of trial within a trial were explained to the appellant at trial and the record shows that he stated he understood. He then gave an unsworn statement in his defence on the trial within a trial and called no witnesses. The Magistrate gave a perfectly proper and well-reasoned ruling at the end of the trial within a trial, ruling that the statement was voluntarily made and admissible, and the

Magistrate quite fairly left the ultimate discretion to admit it until the end of the trial.

[7] A proper judgment was delivered by the Magistrate and it is quite apparent from reading the judgment that it was well considered and reflected upon the Magistrate finding that the only evidence available to him was the appellant's confession and he relied on that to find the prosecution's case proved beyond reasonable doubt.

[8] Nowhere on the record is revealed evidence of any one of the grounds raised by the appellant. The only evidence against the appellant was the caution statement and it is obvious that he feels aggrieved by this state of affairs. The practice of *"scatter gun"* grounds, that is multiple grounds relied upon, in case one of them might be of merit, is to be deprecated.

[9] The appeal against conviction fails.

Sentence

[10] In his appeal against sentence, the appellant submits that the term of ten years is excessively harsh and that the proper tariff should be in the range of 4 to 6 years.

[11] Sentences for robbery with violence are now regularly exceeding terms of 10 years imprisonment. In the case of **State v Rokonabete & Others** – HAC 118 of 2007 Goundar J. in dealing with sentences for robbery with violence, invoked the authorities of English cases which the Fiji Court of Appeal had said that Fiji Courts should be following (**Basa** AAUU 24 of 2005). I followed this case in **State v Turagakula and Another** (HAC 057/2008) where I said *"in recent years the Courts have consistently said they will no longer tolerate such highly anti-social behaviour and sentences in the range of ten to fifteen years will now be the norm"*.

[12] In those circumstances, a sentence of nine years for a very violent robbery cannot be said to be harsh and improper. The sentence appeal must fail.

[13] The appeal is dismissed.

Paul K. Madigan
Judge

At Suva
19 March 2010