

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 147 OF 2012S

MELI VALETIRI

VS

THE STATE

Counsels : **Applicant in Person**
Mr. J. Niudamu for State

Hearing : **19th April, 2013**

Judgment : **24th May, 2013**

JUDGMENT

1. On 13th January, 2012, the applicant and another, appeared in the Nasinu Magistrates Court, on the following charges:

COUNT ONE

Statement of Offence

ROBBERY WITH VIOLENCE: Contrary to Section 293 of the Penal Code Act 17.

Particulars of Offence

SEMI NATE and **MELI VALETIRI** on the 26th day of August, 2009, at Nasinu in the Central Division, robbed one **JAMES**

SHIRI KRISHNA of cash \$140.00 and mobile phone valued \$249.00 all to the total value of \$389.00 and before the time of such robbery did use personal violence to the said **JAMES SHIRI KIRSHNA**.

COUNT TWO

Statement of Offence

UNLAWFUL USE OF MOTOR VEHICLE: Contrary to Section 292 of the Penal Code Act 17.

Particulars of Offence

SEMI NATE and **MELI VALETIRI** on the 26th day of August, 2009, at Nasinu in the Central Division, unlawfully and without colour of right but not as to be guilty of stealing did use a motor vehicle registration number LT 2453 the property of **JAMES SHIRI KRISHNA**.

2. Both the applicant (accused no. 2) and his co-accused (accused No. 1) waived their right to counsel. The charge was read and explained to them. They said, they understood the same. They pleaded guilty to both counts. The summary of facts was read to the court by the prosecutor.

3. Briefly, the facts were as follows. On 26th August, 2009, after 11 pm, the applicant and his co-accused hired the complainant's taxi from Samabula to Laucala Beach Estate. On arriving at Ivitavaya Road at Laucala Beach Estate, the applicants' co-accused attacked the complainant, and stole his \$140 and mobile phone. He then dragged him outside of his taxi. The applicant, who was sitting in the back seat, went to the driver's seat and assisted his co-accused by driving the complainants' taxi, a few meters away. The two later fled the crime scene in the complainants' taxi.

4. The above summary of facts was admitted by the applicant and his co-accused. Both were found guilty as charged, and convicted accordingly. The applicant's co-accused admitted 6 previous convictions, but only 4 are relevant, as they are not 10 years old. The applicant was a first offender. On 18th April, 2012, in a written sentence, the Learned Magistrate sentenced both accuseds to 5 years imprisonment each on count no. 1 and 3 months imprisonment each on count no. 2, both concurrent to each other. They were given 28 days to appeal, if dissatisfied with the decision.

5. The above 28 days appeal period expired on 16th May, 2012. So, in a technical sense, the applicant had no right to appeal. On 22nd August, 2012, the applicant applied for leave to appeal his sentence. He was not complaining about his conviction. For the applicant to be granted leave to appeal his sentence out of time, he must show "good cause" to the court, for permission to be given. "Good cause", in such circumstances, often meant that his chances of success on the merits of his appeal, are quite high.

6. I have called for and examined the Magistrate Court original record in Nasinu Magistrate Court Criminal Case No. 965 of 2009. I have read all the papers submitted. The applicant advanced 9 grounds of appeal against his sentence, but in my view, it could all be reduced to one ground, that is, the sentence was harsh and excessive, given his background.

7. For completeness, I will also consider, whether or not the applicant was properly convicted. In my view, the Learned Magistrate followed all the proper procedures, when examining his record. The convictions were therefore proper. The sentence, in my view, was not fair on the applicant. He was a first offender at the age of 40 years. His co-accused had 4 previous convictions in the last 10 years. When the crimes were committed, the applicant was the less violent of the two. The theft on the complainant and the force done on him, was done by the applicant's co-accused, not the applicant. These factors were not considered by the Learned Magistrate to differentiate the sentence between the two.

8. In my view, the justice of this case demanded I reduce the sentence for the applicant. He should have got 2 years imprisonment, instead of 5 years imprisonment. He was not the one who used force on the complainant, nor stole his money and mobile phone, at the material time. The co-accused did the above and he deserved the 5 years imprisonment. The applicant merely assisted his co-accused by driving the taxi a few meters away, and then the two fled in the same.

9. Given the above, I allow the applicant's appeal against sentence. I grant him leave to appeal out of time against his sentence. His previous total 5 years imprisonment dated 18th April, 2012 is quashed and set aside, and in substitution thereof, his sentence is now 2 years imprisonment, concurrent to any sentence been served from 18th April, 2012.

Salesi Temo
JUDGE

Solicitor for the Accused : **In Person.**
Solicitor for State : **Office of the Director of Public Prosecution, Suva.**