ILIASERI SAQASAQA v STATE (AAU0003 of 2005)

COURT OF APPEAL — CRIMINAL JURISDICTION

HENRY, SCOTT and MCPHERSON JJA

13, 15 July 2005

Criminal law — criminal procedure — robbery with violence — sentencing — Appellant unrepresented during trial — Whether principal offender or aider and abettor — Court of Appeal Act (Cap 12) s 22(1) — Criminal Procedure Code s 210 — Penal Code (Cap 17) s 21(1).

The Appellant was convicted following trial at the Magistrates' Court on two charges of robbery with violence and was sentenced to concurrent terms of 2 years' imprisonment on each charge. Appeals to the High Court against conviction and sentence were dismissed. The Appellant represented himself during the trial in this court and in the High Court. The Appellant argued he was placed in a disadvantaged position during the trial because of a suggested change of emphasis from being a principal to being a party to the offence. At issue was whether the Appellant was an aider or abettor or a principal offender in the offence.

Held — (1) There was sufficient evidence to put the Appellant to his defence either as an aider and abettor or as a part of a joint enterprise although there was no evidence that the Appellant was the principal offender. The Appellant remained silent and called no witnesses. He then proceeded to make detailed submissions on what he described as a lesser charge of being a party to the offences.

(2) Section 21(1) of the Penal Code (Code) makes no distinction between the classes of parties to an offence — all come under the umbrella of one offence. There was no question of law identified in this case and no error of law was discerned which will amount to a miscarriage of justice.

Appeals dismissed.

No case referred to.

Appellant in person

P. Bulamainaivalu for the Respondent

[1] Henry, Scott and McPherson JJA. The Appellant was convicted following trial at the Magistrates' Court at Suva on 2 July 2004 on two charges of robbery with violence. He was sentenced to concurrent terms of 2 years' imprisonment on each charge. On 29 October 2004 appeals to the High Court against conviction and sentence were dismissed.

[2] In this court, as in the High Court and also in the later stages of the trial the Appellant represented himself. In his grounds of appeal to this court the Appellant raised issues relating both to conviction and sentence. These grounds were supplemented by a further written document under the heading "final grounds of appeal". We also heard the Appellant orally in support of his written material.

[3] This court's jurisdiction in this case is governed by s 22(1) of the Court of Appeal Act (Cap 12) which provides:

> 22.(1) Any party to an appeal from a magistrate's court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.
>
> Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court.

[4] Being mindful of the fact that the Appellant is not legally represented we have given particular consideration to the substance of his matters of complaint.

[5] As to conviction, the primary concern relates to the Appellant having being found guilty of aiding and the abetting the offences on question rather than being a person who had done the acts constituting the offence. The magistrate applied s 21(1) of the Penal Code (Cap 17), which provides:

> 21.(1) When an offence is committed, each of the following persons is deemed to have taken part in committing the offence and to be guilty of the offence, and may be charged with actually committing it, that is to say—
>
> (a) every person who actually does the act or makes the omission which constitutes the offences;
>
> (b) every person who does or omits to do any act for the purpose of enabling or aiding another person to commit the offence;
>
> (c) every person who aids or abets another person in committing the offence;
>
> (d) any person who counsels or procures any other person to commit the offence.
>
> In the last-mentioned case he may be charged either with committing the offence or with counselling or procuring its commission.

[6] The record shows that at the conclusion of the prosecution's case counsel for the Appellant made a submission of no case under s 210 of the Criminal Procedure Code (Cap 21). The magistrate ruled that although there was no evidence that the Appellant was the principal offender, there was sufficient evidence to put the Appellant to his defence either as an aider and abettor or as a part of a joint enterprise. When put to his defence, the record shows that the Appellant remained silent and called no witnesses, but then in person proceeded to make detailed submissions on what he described as a lesser charge of being a party to the offences. Section 21(1) of the Penal Code of course makes no distinction between the classes of parties to an offence — all come under the umbrella of the one offence. The Appellant has argued that he was somehow disadvantaged in the trial process because of a suggested change of emphasis from being a principal to the offending to being a party to it. Quite apart from being unable to identify any question of law in this context, we are satisfied that there has being no miscarriage of justice whether in process or otherwise and in particular we are satisfied that there can be no criticism of the way in which the judge in the High Court considered and decided the issues raised in that court. No error of law is discernible.

[7] The remaining issues raised by the Appellant relate either to sentence or to peripheral matters which are not relevant to either conviction or sentence. As no questions of law can on any reading be extracted from those, it is unnecessary to embark on a detailed consideration of them.

[8] For the above reasons the appeals against conviction and sentence are dismissed.

Appeals dismissed.