

IN THE FIJI COURT OF APPEALCRIMINAL JURISDICTIONCRIMINAL APPEAL NO. 12 OF 1993

(High Court Criminal Appeal No. 2 of 1993)

BETWEEN:JOPE CAVUKAIAPPELLANT

-and-

STATERESPONDENT

Appellant appeared in Person
Miss L. Laveti for the Respondent

Date of Hearing : 8 November 1993

Date of Delivery of Judgment : 11 November 1993

JUDGMENT OF THE COURT

The Appellant was convicted in the Magistrate's Court on 20 January 1993 on charges of unlawfully using a motor vehicle, wilful damage and theft. He was sentenced to imprisonment for 2 years and 6 months. He appealed to the High Court against both his conviction and sentence. On 18 March 1993 his appeal was dismissed as to both conviction and sentence. He has now appealed further to this Court. In terms of s. 22(1) of the Court of Appeal Act, Cap. 12, the present appeal must be confined to a ground which involves a question of law only.

The Appellant's notice of appeal sets out 3 grounds which we summarise as follows :

1. *That the Magistrate erred in law in accepting the unsworn evidence of one Ilisavani Sole.*
2. *That the Magistrate erred in law in basing a conviction on the evidence of an accomplice, namely Ilisavani Sole.*
3. *That the Magistrate misdirected herself in accepting as evidence that which was not correctly evidence.*

These grounds all relate to the evidence of the accomplice and can conveniently be dealt with together. They do not refer to the judgment of Byrne J in the High Court, but they were all matters argued in the High Court and dealt with by Byrne J and, as the Appellant is unrepresented, we are prepared to consider them on the basis that the Judge is said to have erred in the same way as the Magistrate.

Originally the Appellant and Ilisavani Sole were charged together with the three offences. Sole pleaded guilty and was convicted and sentenced. The Appellant pleaded not guilty, and at his trial Sole was called by the prosecution as a witness. It is his evidence in that capacity which is the subject of the present appeal.

Sole did not give evidence under oath, but instead exercised his right to affirm (s. 136 of the Criminal Procedure Code). Evidence given in that way has the same effect as that given under oath and was correctly admitted in this case.

Sole was, however, an accomplice of the Appellant in the same offences charged against him and accordingly had to be considered subject to the reservations which apply to such a witness. The principle is that it is regarded as dangerous to convict a person upon the uncorroborated evidence of an accomplice. It was therefore necessary for the Magistrate, before accepting Sole's evidence, to look for corroboration of it. She did not have far to look. The Appellant had made a statement under caution to the Police in which he had given a full account of what he and Sole had done in committing the offences.

At his trial the Appellant sought to challenge the admissibility of his statement on the basis that it had been obtained from him as the result of ill treatment by the Police in depriving him of food, his clothes and bedding. He called witnesses in support of this but, after hearing the evidence, the Magistrate rejected the account given by the Appellant and admitted the statement. As we have indicated, the Appellant's confession provided ample corroboration of the accomplice's

evidence. We should add that there was other corroborating evidence also, but in view of the confession we do not need to refer further to it.

At the hearing of the appeal, the Appellant raised before us a number of matters of fact regarding the evidence given by the witnesses. Not being questions of law these were not available as grounds of appeal to this Court, and no reference had been made to them by the Appellant in his notice of appeal. As the Appellant was unrepresented we allowed him to address us on these matters but we are not able to take them into account in deciding the appeal.

We can find no merit in the present appeal and it is accordingly dismissed.

Michael M Helsham

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Mr Justice Michael M Helsham
President Fiji Court of Appeal

P Quilliam

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Sir Peter Quilliam
Justice of Appeal

Gordon Ward

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Sir Gordon Ward
Justice of Appeal