

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Criminal Appeal No. AAU0053/2004
(High Court Criminal Case HAC 14/02L)

BETWEEN:

JOJI DRESUNA

Appellant

AND

THE STATE

Respondent

Coram: Barker, JA
Henry, JA
Scott, JA

Date of Hearing: 12 July 2006

Counsel: *Appellant in person*
Ms. A.A. Prasad for the Respondent

Date of Judgment: 14 July 2006

JUDGMENT OF THE COURT

[1] On the morning of 23 May 2002 four masked men armed with cane knives and empty beer bottles entered the Bank of Baroda,

Vidilo Street, Lautoka. After threatening the staff and customers they made away with about \$270,000 in cash. The bulk of this money has never been recovered.

- [2] On 3 July 2002, acting on information received, a number of police officers went by police vehicle to Votua Village, Ba. As they approached the village they came across a group of men who were apparently drinking by the roadside. One of the men, the Appellant in this case, ran away but was chased by the police and, in due course, apprehended. He was taken first to Ba Police Station and then to Lautoka Police Station where he was detained overnight.
- [3] The following morning the Appellant was interviewed by the police. He made what appears to be a full confession of his involvement in the robbery at the Bank of Baroda and his part in the unlawful use of the vehicle used by the robbers. He was formally cautioned and charged with two offences of robbery with violence and the unlawful use of a motor vehicle but made no further statement.
- [4] On 7 September 2004 the Appellant appeared for trial in the High Court at Lautoka (Connors J and assessors). He was represented by Mr. H.A. Shah of Counsel. He pleaded not guilty. Mr. Shah advised the Court that objection was to be taken to the admissibility of the confession statement. It was the Appellant's case that he had been severely assaulted by the police and, in fear of further assault, had confessed to his involvement in the Bank robbery. It is common ground that apart from the

confession there was no other evidence implicating the Appellant.

- [5] A voir dire was held before the commencement of the trial proper to determine the admissibility of the confession. Four police officers, including the officers who had apprehended the Appellant and who had interviewed him gave evidence. The Appellant and his brother also testified.
- [6] It is not disputed that between the time he was spotted at the roadside by the police and the time he arrived at Lautoka Police Station the Appellant suffered a number of injuries. The Lautoka Police Station diary and a medical report, both of which were tendered, confirm that the Appellant had received two black eyes, a cut lip, a cut on his right leg and various other bruises and abrasions about his legs and body. The prosecution case was that these injuries were suffered by the Appellant during the course of his apprehension after he had tried to run away and while he violently struggled to avoid arrest. The Appellant's case was that he was violently assaulted after he had been apprehended. He denied running away or attempting to evade arrest. The police told the Court that while running away the Appellant had tripped and fallen heavily on the gravel by the side of the road: this might explain the bruising and abrasions. They denied inflicting any violence upon the Appellant beyond such force as was necessary to apprehend him. They denied the Appellant's allegation that further violence was threatened if he did not admit his part on the robbery. It is notable that at no stage did the Appellant allege that any violence was inflicted

upon him after he had been apprehended and had been placed in the police vehicle before been taken to the Ba Police Station.

[7] On 9 September 2004 the trial judge ruled that the confession should be admitted. After carefully identifying the relevant legal questions which he was bound to ask himself he analysed the evidence which he had heard and gave his reasons for rejecting the Appellant's version of what had occurred. He found that the prosecution had proved beyond reasonable doubt that the confession was voluntarily given. He also rejected the Appellant's claim that he had been denied access to legal advice prior to giving his statement.

[8] At the conclusion of the voir dire the trial proper was held. The same police witnesses gave virtually the same evidence again. The Appellant gave an unsworn statement. He told the Court that the police had beaten him up and had threatened him with further violence if he did not confess. He called a witness who told the Court that he had seen the police violently assault the Appellant close to Votua village.

[9] In his summing up to the assessors the judge placed considerable emphasis on the circumstances which led to the confession being made. He told the assessors that they were :

"... required to take into consideration all the circumstances in which the confession was made including allegations of force if you think they may be true in assessing the value of the confession ... it is a matter for you to use your commonsense and for you to form an opinion, firstly as to the allegation of force

or brutality of the assault that are made by the accused and for you to form an opinion if you think they may be true. If you form the opinion that you think they may be true, you then have to determine what impact or what weight that has on the value of the confession."

In arriving at this conclusion the assessors were told to take into account not only the evidence of the police officers but also the unsworn statement of the accused and the testimony of his witness.

[10] The assessors returned unanimous opinions that the Appellant was guilty of all three charges. The judge agreed and convicted the Appellant. The Appellant had a number of previous convictions including a previous conviction for robbery with violence and the unlawful use of a motor vehicle. He was sentenced to a total of nine years imprisonment.

[11] In September 2004 the Appellant, who was by then representing himself, filed a petition of appeal against his conviction and sentence. His central complaint was that the police had violently assaulted him, in the process breaching his constitutional rights and causing him severe physical injuries and that as a consequence the confession statement was wrongly admitted by the trial judge. In the alternative, given the injuries he had suffered, the sentence of nine years imprisonment was manifestly excessive.

[12] On 14 June 2005 the President of this Court, exercising the powers conferred upon him by Section 35 (1) (a) of the Act

(Cap. 12) refused leave to appeal against the conviction. The Appellant's grounds of appeal were found to hinge "solely on the learned judge's findings of fact" and accordingly did not raise a question of law as required by Section 21 (1) (a) of the Act. The Appellant was however given leave to appeal against his sentence.

[13] Under the provisions of Section 35 (3) the Appellant now seek a determination by the full Court of his application for leave to appeal against his conviction. He also appeals against his sentence.

[14] As has been seen, it is not disputed that the Appellant received some moderately unpleasant injuries at Votua and that the next day at Lautoka Police Station he made a full and detailed confession to having been a member of the gang which robbed the Bank of Baroda. In these circumstances, the two principal questions which the judge had to answer were first, whether the injuries which the Appellant received were as a result of gratuitous violence inflicted upon him by the police or whether he suffered his injuries while trying to evade arrest. The second question was whether further injuries were threatened by the police and that as a result of such threats the Appellant was induced to make his confession. A third, but separate question was whether the Appellant had been deprived of his right to consult a lawyer.

[15] The question which the assessors had to answer was very similar. It was whether they had any reasonable doubt that the

value of the confession made by the Appellant had been undermined by the circumstances in which the Appellant received his injuries and whether any further threat of injury was made.

[16] Each of these questions was in our view purely a question of fact to be answered after proper evaluation of the evidence. Both the judge and the assessors saw and heard the witnesses. The judge's directions, both to himself and to the assessors, are not said to have been in any way wrong in law and seem to us to be faultless. In the absence of misdirection, an appellate court will seldom interfere with findings of fact reached at first instance. We find no reason to interfere on this occasion. The application for leave to appeal against conviction is dismissed.

[17] The maximum sentence for the offence of robbery with violence being armed with an offensive weapon in Fiji is life imprisonment. In Raymond Sikeli Singh and Others v. The State (AAU 8/00 – FCA B/V 04/93) this Court, after explaining in detail the proper approach to be taken to the sentencing of offenders such as the Appellant, upheld a term of ten years imprisonment imposed on four men who had robbed a bank at Namaka, also getting away with a substantial sum of money. It is plain to us that the sentence imposed in the present case was not manifestly excessive. The moderate injuries suffered by the Appellant, howsoever they may have occurred, do not, in our view, effect the outcome. The appeal against sentence is dismissed.

Result

1. Leave to appeal against conviction refused.
2. Appeal against sentence dismissed.



R. J. Barker

Barker J. A.

J. Henry

Henry J. A.

Scott J. A.

Scott J. A.

Office of the Director of Public Prosecutions, for the Respondent