

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

Criminal Appeal No: AAU0011/07
[High Court Action No: HAC 015/06]

BETWEEN:

RODNEY SILIKULA

Appellant

AND:

THE STATE

Respondent

Coram: Byrne JA
Shameem JA
Scutt JA

Hearing: 13th February 2008

Counsel: Mr. V. Vosarogo for appellant
Mr. W. Kuruisaqila for respondent

Date of Judgment: 7th March 2008

JUDGMENT OF THE COURT

- [1] The appellant was convicted, in the Lautoka High Court, of two counts of robbery with violence, and was sentenced to 5 years imprisonment. He was charged jointly with Orisi Tamani, whose application for leave to file fresh evidence was heard in this session of the court. They were tried together, but appealed against conviction and sentence separately. Orisi Tamani was represented by counsel and the appellant filed his initial notice of appeal and his amended grounds of appeal in person. He is now represented by Mr. Vosarogo for the Legal Aid Commission.

[2] The amended grounds of appeal can be summarized as follows:

1. There was no identification parade;
2. The judge misdirected the assessors on the weight to be given to the confession;
3. The police acted in breach of the Judges rules;
4. The sentence was harsh, excessive and in breach of sentencing principles.

[3] The amended information of the Director of Public Prosecutions contains five separate counts of robbery with violence. The summing up of the learned judge summarises the prosecution case as a joint enterprise by the appellant and Orisi Tamani to rob various people armed with a cane knife and beer bottles. His Lordship's sentencing remarks include the following facts:

"The two accused have [been] convicted after trial of 2 counts each of robbery with violence. The facts are that at about 2.30 on the morning of the 3rd of February 2003, they with about four others, armed with cane knives, pinch bar and beer bottles robbed one of the staff of around \$5000.00 and a guest of the sum of \$245.00. Accused 1 got \$200.00 as his share while Accused 2 got nothing."

[4] At the trial, the evidence of Miriama McComber, receptionist was that the robbery occurred at the Tanoa Hotel in Nadi and that \$4000.00 was taken from the till. She did not identify anyone. The evidence implicating both accused came from their confessions to the police.

[5] The confessions were vigorously disputed, both at the trial within a trial, and during the trial proper. Both accused persons were represented by counsel from the 20th of November 2006, and he cross-examined all the police witnesses on allegations of assault, breaches of the Judges Rules and oppression.

[6] In the course of the evidence Corporal Senitiki Talebula was called to give evidence. He was the witnessing officer for the interview of Orisi Tamani. After giving his evidence, he was released. Counsel for the defence then told the court that he had just realized that Corporal Senitiki had taken the accused persons to the Lautoka Police Station, and he asked for leave to recall the witness and cross-examine him further. Leave was granted.

[7] On the 21st of November 2006, the witness was cross-examined further, and it was specifically put to him that Orisi Tamani had not been admitted at Natabua Prison because the magistrates' court had ordered his medical examination and because there were visible injuries on Tamani. This was denied by Corporal Senitiki, who said that the accused had been refused entry at the prison because it was after 5pm and too late in the day for prisons admission.

[8] Detective Corporal Elia Waqanidrola gave evidence and he said:

“Escort Accused 1 to Nadi Magistrates Court on 7.2.03. About 2.00pm from Nadi to Natabua Prison. Between 4.30 to 5pm. At Natabua prison did not accept remand prisoners. Reason given was that we arrived late. Do not accept prisoners after. Took them to Lautoka Police Station.”

[9] It was suggested to him also that the real reason Tamani had been turned away was because he had injuries on him and there had been non-compliance of a court order for medical examination. It was not in dispute that the appellant Rodney Silikula, was admitted to the Natabua prison. However, in cross-examination of the police witnesses, and in his own sworn evidence he also alleged police assault and threats.

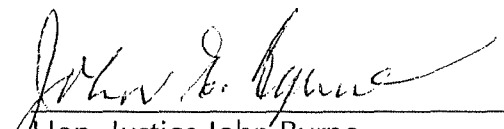
[10] In *Orisi Tamani v. The State* Crim. App. AAU00014/07, the appellant asked for leave to adduce fresh evidence from the officer-in-charge of the Natabua prison that the reason for his initial non-admittance was indeed the presence of fresh injuries on him, and the failure of the police to ensure that he was medically examined. This court has granted him leave to adduce that evidence because it is apparently credible, relevant and potentially capable of affecting the result of the case.

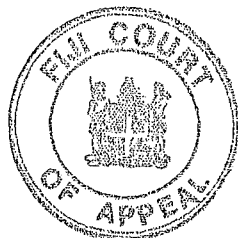
[11] That finding affects this appellant's case. Counsel for the appellant invites us to adjourn the hearing of the appeal to the April session of the court, because the fresh evidence affects the appellant's appeal as well.

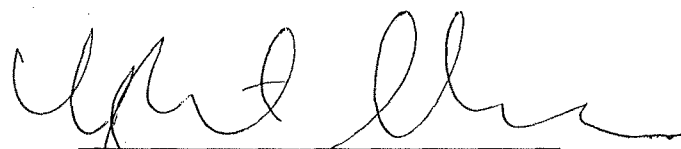
[12] We accept that. Although this appellant did not apparently have injuries on the 7th of February 2003, and although he was admitted to the prison, the fresh evidence will have (potentially) significant impact on his case also. This is because he also alleged assault, and the substance of the prisons memorandum would have some impact on the credibility of the police witnesses, all of whom denied assault. In a case which rested solely on the admissibility and weight of the confessions made to

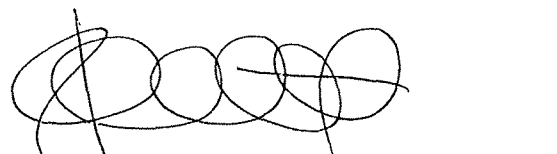
the police, evidence which would have affected the credibility and weight of the police evidence, would affect both accused.

- [13] In these circumstances both appeals should be heard together, and the fresh evidence, held admissible in AAU0014/07 may also be considered in the appellant's appeal.
- [14] This appeal is adjourned to the April session so that it can be considered with the fresh evidence adduced in **Orisi Tamani v. The State**. We so order.


Hon. Justice John Byrne
Judge of Appeal




Hon. Justice Shameem
Judge of Appeal


Hon. Justice Scutt
Judge of Appeal

Solicitors:

Legal Aid Commission for the appellant
Director of Public Prosecutions Office for the respondent