

IN THE COURT OF APPEAL

SUVA, FIJI ISLANDS

APPELLATE JURISDICTION

Criminal Appeal No. AAU0037 of 2009

[HAC 24/07]

BETWEEN: MESAKE SINU

Applicant

AND: THE STATE

Respondent

Coram: Fernando JA

Counsel: In Person For applicant

Ms. S Puamau For Respondent

Date of Hearing: 2nd March 2010.

Date of Ruling: 21<sup>st</sup> May 2010

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## RULING

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The applicant was charged with one count of Robbery and after trial he was convicted and sentenced to 8 years imprisonment.

Applicant by a letter dated 13<sup>th</sup> October 2009 (which was received by this court on 25<sup>th</sup> November 2009) now wishes to appeal against the said conviction.

Although the applicant is 55 days out of time state did not object considering that he was serving the sentence in prison.

The proposed grounds of appeal (as summarized by the respondent) are as follows.

1. The learned Trial Judge erred in fact and law in failing to adequately direct on the law relating to circumstantial evidence.
2. The applicant was prejudiced by lack of legal representation as it was his first time to undergo a trial in the high court.
3. The learned trial judge failed to adequately protect his rights/direct on his rights during the summing up.
4. The learned trial Judge failed to adequately direct on identification evidence.

The facts of the case were that the applicant with 4 others robbed Peceli Qasevakatini of 100 dollars, while she was manning 5 Princess Road Hotel on 17<sup>th</sup> June 2006 at about 5 am.

The prosecution case in the High Court was solely based on identification evidence and not on circumstantial evidence.

Prosecution witness no. 1 is an aunt of the applicant. Therefore the 1<sup>st</sup> ground of appeal has no merit and has no prospect of success.

The right to counsel was explained to applicant by the Trial Judge and he opted to represent himself. Therefore the Learned Trial judge has adequately protected the rights of the applicant. Although the applicant states that this was the first time he underwent a trial in High Court the applicant admitted having 29 previous convictions and he is not new to the court procedure as to the right of counsel. Therefore Grounds no. 2 and three have no prospect of success.

The final ground proposed by the applicant is that the learned trial Judge failed to adequately direct on identification evidence.

Learned Trial Judge in paragraphs 18 to 23 of his summing up adequately warned and directed the assessors on identification evidence. The Turnbull warnings were given to the assessors adequately in the summing up. Counsel for respondent (State) has submitted in the written submissions the grounds 2, 3, and 4 are arguable and that they concede that leave should be granted which I refuse to accept for the reasons aforesaid.

For the reasons above I grant the applicant leave to appeal out of time, but decline his application for leave to appeal to full court.



**Priyantha Fernando**  
**Judge of Appeal**

