IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

CRIMINAL APPEAL AAU 0052 OF 2007
[High Court Criminal Appeal No. HAA
113 of 2006S]

BETWEEN: KINIJOJI VUDA

APPELLANT

AND: THE STATE

RESPONDENT

Coram   :   D. Goundar, JA
                     W. Calanchini, JA
                     S. Temo, JA

Counsel   :   Appellant in Person
                     Ms. A. Tuiketei for the Respondent

Date of Hearing   :   28th May, 2010

Date of Judgment :   25th November, 2010

JUDGMENT OF THE COURT

[1]   On 11th October 2005, at the Suva Magistrate Court, the appellant pleaded guilty to
        three "robbery with violence" offences, contrary to section 293(1) of the Penal
        Code, Chapter 17, and one "unlawful use of motor vehicle", contrary to section 292
        of the Penal Code. He was sentenced to 7 years imprisonment on each "robbery
        with violence" charge, and 6 months imprisonment on the "unlawful use of a motor

vehicle" charge, all to run concurrently with each other, a total sentence of 7 years imprisonment.

[2]   The "robberies with violence" were committed on 9th April 2003 after 7pm. The appellant and others first used violence to rob Sanjay Kumar, a taxi driver. They stole $60 from him, and took his taxi registration No. DZ 386. Thereafter, they used the taxi as a getaway vehicle in robbing two service stations. First, they attacked Etuate Mairewa of Marina Service Station, and stole $855 from him. Then, they attacked Lurenda Whippy of Kundan Singh Service Station and stole $500 from her. The appellant was arrested on 4th June 2003, and he admitted the offences.

[3]   When sentencing the appellant, the Magistrate Court record noted the following:

"Accused 1 sentenced to 7 years imprisonment to be served consecutive to sentence in CF 204/04 and consecutive to present term serving"

It was found that the appellant, as a result of the above sentence, was to serve a total of 14 years imprisonment. He appealed to the High Court on the ground, that the sentence was harsh and excessive.

[4]   In the High Court, it was held that the procedures the Magistrate Court followed in sentencing the appellant was correct in principle. However, it found that the total sentence of 14 years imprisonment was excessive. The High Court allowed the appeal on sentence and reduced the total sentence by 7 years, leaving a balance of 7 years imprisonment, to run from 10th February 2006.

[5]   The appellant now appeals to the Court of Appeal claiming that the 7 years imprisonment from 10th February 2006 was harsh and excessive.

[6]   The power of the Court of Appeal on appeals from the High Court sitting in its appellate jurisdiction are set out in section 22(1) and (1A) of the Court of Appeal Act, which reads as follows:

>"...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:
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>(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground:-
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>(a) that the sentence was an unlawful one or was passed in consequence of an error of law..."

[7] Was the sentence passed in the High Court "an unlawful one or was it passed in consequence of an error of law"? We have carefully examined the court record, and we find nothing to say that the sentence passed in the High court was "an unlawful one or passed in consequence of an error of law". If anything, the High court had been lenient on the appellant by reducing his total 14 years imprisonment to 7 years imprisonment, effective from 10th February 2006.

[8] In summary, the appellant's appeal against sentence is without merit, and we dismiss it accordingly.

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Hon. Mr. Justice D. Goundar
Judge of Appeal

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Hon. Mr. Justice W. Calanchini
Judge of Appeal

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Hon. Mr. Justice Salesi Temo
Judge of Appeal

Solicitors:
Appellant in Person
Office of the Director of Public Prosecutions for State