

IN THE COURT OF APPEAL  
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 133 OF 2014  
(High Court HAA 13 of 2014)  
(Magistrates Court No.389 of 2011 at Lautoka)

BETWEEN : SAIRUSI SOKO

*Appellant*

AND : THE STATE

*Respondent*

Coram : Calanchini P

Counsel : Mr J Savou for the Appellant.  
Mr V Perera for the Respondent

Date of Hearing : 6 July 2015

Date of Ruling : 13 July 2015

RULING

[1] This is an application for leave to appeal out of time. The Appellant was convicted on 10 May 2014 on one count of aggravated burglary by the Magistrates Court at Lautoka. He was one of three convicted for the same offence on the same day. One of the other two co-offenders, Pita Nainoka, has also applied for an enlargement of

time. His application was heard at the same time as the present application and is the subject of a separate Ruling.

- [2] The Appellant was sentenced on 20 May 2014 to 2 years imprisonment with a non-parole term of 20 months. A timely appeal to the High Court was dismissed for want of jurisdiction on 17 October 2014. The application before this Court was dated 21 October 2014 although not received by the Court of Appeal Registry until 6 November 2014. Since the appeal process had been commenced within time, albeit in the wrong court, the Respondent did not take issue with the delay. The application proceeded before me as an application for leave to appeal against conviction. Although the Appellant had initially filed grounds of appeal against sentence as well as conviction, Counsel for the Appellant indicated that the leave application in respect of sentence was not proceeding and was to be marked as withdrawn.
- [3] The Appellant and his two co-offenders were convicted of the offence of aggravated burglary at the office of a non-government organization known as the Foundation for Rural Integrated Enterprises and Development (FRIEND). They had with them tools used for burglary and upon entering the premises they had tied the security officer. The office area had been ransacked by the intruders and as a result there was damage to the premises totalling \$782.00.
- [4] The evidence upon which the prosecution relied included the evidence from a witness (Ratudradra) who had travelled by bus with the three co-offenders on the day in question. He claimed to have left them before they entered the premises. His evidence confirmed the identity of the three co-offenders and he stated that he saw them entering the premises. One of the co-offenders called an alibi witness. The Magistrate accepted the evidence of the prosecution witnesses and convicted the Appellant and his 2 co-offenders.
- [5] There were initially six grounds of appeal against conviction filed by the Appellant. At the hearing Counsel for the Appellant informed the Court that the Appellant was not pursuing the first two grounds. The remaining four grounds are:

3. *THAT I did not receive a fair trial by reason of the trial magistrate's failure in not directing himself that PW(1) Kitione Ratudradra was an accomplice to the commission of the offence. By failing to do so, resulted in his worship to direct himself on the dangers of convicting on accomplices' evidence. This has resulted in a serious miscarriage of justice.*
4. *THAT the learned trial magistrate erred in law when his worship failed to make a proper assessment to the voluntariness and admissibility of the confessional materials, whether it was fairly obtained. Failure of the trial magistrate to attach weight and value should be given, resulted in I being denied a fair trial.*
5. *THAT the learned trial magistrate erred in law when his worship did not consider the truth of the confession. By doing so, the confessional statements were wrongly admitted. This has resulted in serious miscarriage of justice.*
6. *THAT the learned trial magistrate erred in law when his worship did not direct himself regarding alibi evidence. By doing so, he failed to give directions in regards:*
- (a) Where the appellant states that he was elsewhere at the time, the burden of proof is on the prosecution to disprove the alibi and not the appellant to prove it.*
  - (b) Should the prosecution conclude the alibi is false they should for that reason alone convict the appellant. Failure to do so, I was denied a fair trial."*

[6] Ground 3 is arguable. The evidence at the trial was to the effect that the fourth person Kitione Ratudradra travelled with the three convicted persons to the premises. Under cross-examination he admitted that the tools were carried in his bag and that he had carried the bag at one stage. It is arguable that the learned Magistrate should have considered that this person was an accomplice and should have acknowledged the requirement for corroboration. This ground is conceded by the Respondent as being arguable.

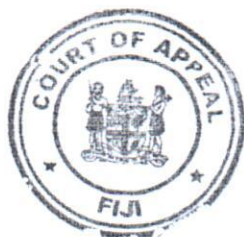
[7] Grounds 4 and 5 relate to the failure of the Magistrate to direct himself in relation to the admissions in the caution interview. Although ruled as voluntary and hence admissible, the Magistrate did not give directions to himself on the issues of truthfulness and weight. The grounds are arguable and are conceded by the Respondent.

[8] Ground six related to the issue of alibi evidence. There were no directions in the judgment to indicate that the Magistrate had considered the onus and standard of proof in relation to alibi evidence. This ground is arguable and is conceded by the Respondent.

[9] As a result leave to appeal against conviction is granted to the Appellant. This appeal is to be listed with AAU 17 of 2015 being the appeal filed by the co-offender Pita Nainoka. There is no need to prepare two separate records. The one record may cover both appeals and both file numbers can appear with the names of both appellants on the one record.

Orders:

1. *Leave to appeal against conviction is granted.*
2. *To be listed with AAU 17 of 2015.*



*W. Calanchini*

**Hon. Mr Justice W. D. Calanchini**  
**PRESIDENT, COURT OF APPEAL**