

IN THE COURT OF APPEAL, FIJI
[On Appeal from the Magistrates' Court]

CRIMINAL APPEAL NO: AAU0076/2015
[Magistrates' Court Case No.181/2014]

BETWEEN : **PENISONI SAUKELEA** *Appellant*

AND : **THE STATE** *Respondent*

Before : **Hon. Mr. Justice Daniel Goundar**

Counsel : **Appellant in person**
Mr. M. Korovou for the Respondent

Date of Hearing : **24 November 2016**

Date of Ruling : **30 November 2016**

RULING

[1] This is an appeal from the extended jurisdiction of the Magistrates' Court. Following a trial, the appellant was convicted of aggravated robbery and sentenced to 9 years 7 months imprisonment with a non-parole period of 8 years. The appellant seeks leave to appeal both conviction and sentence. The appeal is timely. The appellant further seeks bail pending appeal.

[2] The victim was a businessman. He had a pawn shop at Cumming Street, Suva. On 1 February 2014, at about 10 am, the victim was in his shop with his wife, when he saw two men trying to enter his shop. When he realized that the men were drunk, he did not open the shop door. He said one of the men managed to enter the shop through a gap. He said the man who entered the shop was tall built and was of dark complexion with short hair. The victim said he recognized the man because he had come to his shop on the earlier Friday (31/01/14) to pawn rugby boots.

- [3] After entering the shop, the appellant stole cash, mobiles and jewellery. At trial, the victim identified the appellant as the person who entered his shop and stole from him. The victim said that the other man who was outside punched him and stole cash from his pocket before fleeing the scene.
- [4] At trial the appellant was represented by legal aid counsel. On appeal he elected to represent himself. He has drafted the grounds of appeal himself. As to be expected from an unrepresented appellant, the grounds of appeal lack clarity. The initial grounds of appeal were:

Conviction

Identification evidence was unreliable.

Disputed confession should not have been admitted in evidence.

The trial magistrate was wrong to reject the appellant's alibi.

The trial magistrate used the facts of the acquitted accomplice against the appellant.

Sentence

Minimum term too close to the head sentence.

No reason given for the minimum term.

Relevant matters not taken into account.

Irrelevant matters taken into account.

- [5] On 30 December 2015, the appellant filed the following amended grounds:

Conviction

The trial magistrate erred in the joint enterprise.

The trial magistrate erred in Turnbull guidelines.

The prosecution failed to prove the voluntariness of the confession beyond a reasonable doubt.

The trial magistrate made a wrong assessment in the voir dire ruling.

Defence counsel was incompetent.

- [6] At the leave hearing, the appellant abandoned his sentence appeal. His main complaint is that his trial counsel did not follow his instructions. He has not applied for leave to lead evidence of what his instructions were to his counsel that was not followed at the trial. The appellant did not take any issue regarding his counsel not following his instructions with the trial magistrate. There is no arguable ground to suggest that the appellant's trial counsel was flagrantly incompetent.
- [7] The appellant's trial counsel challenged the admissibility of the appellant's confession. The trial magistrate held a voir dire and admitted the confession in evidence after being satisfied that the prosecution had proved admissibility beyond a reasonable doubt. There is no arguable ground to suggest that the trial magistrate had made a complete wrong assessment of the evidence in his voir dire ruling.
- [8] At trial, the appellant's trial counsel challenged the identification evidence, but the trial magistrate found the identification evidence reliable after applying the Turnbull guidelines. This was not case of a fleeting glance to make the identification unreliable. The victim had recognized the appellant as the same person who had come to his shop a day before the alleged incident to sell rugby boots. The appellant was inside the shop for about 5 minutes and the identification was made in broad daylight. There is no arguable ground to suggest that the trial magistrate's assessment of the identification evidence was wrong.
- [9] Another complaint is that the trial judge was wrong to rely on the principle of joint enterprise after the co-accused was acquitted at the no case to answer stage. This submission is misconceived. The trial magistrate was correct to consider the evidence against each accused separately. The complainant's evidence clearly proved that he was attacked by two men acting together, and therefore, the principle of joint enterprise applied.
- [10] For these reasons, the appeal is unarguable and the application for leave must fail. Since leave is being refused, the application for bail must fail as well.

Result

- [11] Leave refused.
Bail refused.



A handwritten signature in black ink, appearing to read "Daniel Goundar", with a long horizontal line extending to the right.

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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Appellant in person
Office of the Director of Public Prosecutions for the State