

**IN THE COURT OF APPEAL**  
**AT SUVA**

**CRIMINAL APPEAL NO. AAU 75/12 & 82/12**  
**(High Court HAC 251 of 2011)**

**BETWEEN** : TILA WILLIAMS  
ISOA KOROIVUKI

*Appellants*

**AND** : THE STATE

*Respondent*

**Coram** : Hon. Justice Suresh Chandra

**Counsel** : Mr. S. Sharma for the Appellants  
Mr. P. Madanavosa for the Respondent

**Date of Hearing** : 12 June 2015

**Date of Ruling** : 2 March 2016

**RULING**

- [1] This is an application for leave to appeal against conviction and sentence by the two Appellants.
- [2] The Appellants were jointly charged with one count of Aggravated Robbery contrary to section 311(1)(A) of the Crimes Decree, 2009.

- [3] Both Appellants were found guilty after trial and convicted by the Magistrate's Court acting with extended jurisdiction. The First Appellant was sentenced to 9 years and 7 months and the Second Appellant was sentenced to 9 years and 1 month, with a non-parole period of 7 years for each of them.
- [4] In their amended grounds of appeal they set out the following grounds of appeal against conviction:

*“(i) That the learned trial Magistrate erred in law and in fact when he did not direct his mind to the offence of receiving stolen property which was available on the evidence adduced.*

*(ii) That the learned trial Magistrate erred in law and in fact when he did not disregard the answers contained in the caution interview of the First Appellant implicating the Second Appellant which was not evidence against the Second Appellant.*

*(iii) The learned trial Magistrate erred in law and in fact when he did not caution himself about the disputed confession contained in the interview statement of Mr. Koroivuki.*

*(iv) That the learned Trial Magistrate erred in law and in fact when he did not consider that the circumstantial evidence against Mr. Williams the Second Appellant was too weak to prove the charge beyond reasonable doubt.*

*(v) That the learned trial Magistrate erred in law and in fact when he allowed dock identification in the absence of compliance of Turnbull guidelines which was prejudicial to the Appellants.*

*(vi) That Appellants were prejudiced due to lack of legal representation.”*

- [5] The Appellants set out the following grounds of appeal against sentence:

*“(i) That the learned trial Magistrate erred in principle and also failed to take into account the following relevant considerations:*

*a) Further reduction in sentence was not given considering the following mitigating factors:*

*(i) recovery of items*

*(ii) no weapons used*

*(iii) Complainants not harmed.*

*b) Remand period of about 1 year 16 days for Mr.Koroivuki and 1 year and 13 days for Mr.Williams were not taken into account as a separate mitigating factors in reducing the sentence. The trial Magistrate erred in only considering 11 months as remand period which was less than the actual remand period."*

- [6] In terms of section 21(1) of the Court of Appeal Act (Cap.12) the Appellant has to establish an arguable point which warrants the consideration of the Court of Appeal. **Simeli Bili Naisua v. The State** Crim. Appeal No. AAU 0014 of 2011.
- [7] In terms of section 21(1) (c) of the Court of Appeal Act the Appellant appealing the sentence has to establish that there are arguable points as set out in **Simeli Bili Naisua v The State** (supra) being that if the trial Judge had :
- (i) acted upon a wrong principle;
  - (ii) allowed extraneous or irrelevant matters to guide or affect him;
  - (iii) mistook the facts;
  - (iv) failed to take into account some relevant considerations.
- [8] Regarding ground 1 in the grounds of appeal against conviction it was submitted on behalf of the Appellant that the evidence in Court created a doubt on the actual robbery but pointed to the allegation of receiving stolen property. The learned Magistrate in his judgment had considered all the evidence and arrived at the conclusion that the Appellants were guilty. In arriving at such conclusion the learned Magistrate had considered the caution interview statement of the 1st accused and the evidence he had given in court to the effect that only he was telling the truth and the other witnesses who gave evidence in court were lying. In those circumstances, it is not possible to comprehend that the learned Magistrate erred in law and therefore this ground has no merit.

- [9] Ground 2 is in respect of the caution interview of the First Appellant where he had implicated the Second Appellant and that the learned Magistrate had failed to disregard the answers in the caution interview of the First Appellant to that effect. This was not the only item of evidence against the 2<sup>nd</sup> Appellant. There was other evidence involving the 2<sup>nd</sup> Appellant to the offence. Therefore this ground too lacks merit.
- [10] The third ground of appeal is to the effect that the learned Magistrate erred in law and in fact when he did not caution himself about the disputed confession contained in the caution interview statement of the First Appellant. The learned Magistrate after holding a voir dire inquiry decided that the statement of the First Appellant could be tendered as evidence. In his judgment he has adverted to this fact and he has also considered the evidence given by the First Appellant and concluded that his evidence in Court cannot be believed. In view of this position this ground of appeal too lacks merit.
- [11] The fourth ground of appeal relates to lack of evidence against the Second Appellant. There was sufficient circumstantial evidence which linked the Second Appellant with the First Appellant in the commission of the offence and the learned Magistrate has considered all the circumstantial evidence before convicting the Second Appellant. This ground also lacks merit.
- [12] The Fifth ground of appeal is in relation to the dock identification and the absence of compliance of Turnbull guidelines by the learned Magistrate. The learned Magistrate in his judgment has not referred to the Turnbull guidelines. He had allowed dock identification during the trial. The identification of the Appellants was through the Prosecution Witness No.2 who had known them earlier. There was no identification parade. In those circumstances the failure to follow the Turnbull guidelines being prejudicial to the Appellants is a matter that is arguable and leave is granted on this ground.
- [13] The Sixth ground of appeal is regarding the lack of legal representation for the Appellants. At the trial the Appellants had cross examined the witnesses for the prosecution and no prejudice has been caused to them. Therefore this ground is not arguable.


[14] The first ground of appeal regarding sentence is that the learned Magistrate did not consider the facts of the items being recovered, weapons not being used and complaint not being harmed as mitigating factors. Although no weapons were used, the Appellants had pounced upon the complainant a young girl who was alone in the shop from where the items were robbed, tying her up after gagging her which factors militate against them. The learned Magistrate had given a discount to other mitigating circumstances and therefore this ground is not arguable.

[15] The second ground of appeal against sentence is on the question of reducing the period that the Appellants were in remand. The learned Magistrate had deducted 11 months from the sentence of both Appellants whereas the First Appellant had been in remand for 1 year and 16 days while the Second Appellant had been in remand for 1 year and 13 days. When imposing sentences, an accused is entitled to a full discount of the period in remand (Simeli Bili Naisua v. State (Supra) which the two Appellants have not benefitted in the sentence passed down to them by the learned Magistrate. Therefore leave is granted on this ground.

### *Orders of Court*

- (1) Leave to appeal against conviction is granted on ground 5 of the grounds of appeal against conviction ;
- (2) Leave to appeal against sentence is granted on ground 2 of the grounds of appeal against sentence.



  
**Hon. Justice Suresh Chandra**  
**RESIDENT JUSTICE OF APPEAL**