

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 33 OF 2009
(High Court No. HAC 121 of 2008)

BETWEEN : SAKIUSA ROKONABETE
Appellant

AND : THE STATE
Respondent

Coram : Calanchini P
Gamalath JA
Wengappuli JA

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

Date of Hearing : 5 May 2016

Date of Judgment : 27 May 2016

J U D G M E N T

Calanchini P

[1] I agree that the appeal should be dismissed.

Gamalath JA

- [2] The appellant, who is presently serving a sentence of imprisonment of 15 years, for having been convicted on a charge of 'robbery with violence', contrary to section 293(1)(b) of the Penal Code; an offence allegedly committed on 25th April 2014 at Nasinu, wherein he with others have robbed one Intiaz Ali Maqbool, of \$1800 cash, a video camera worth \$1,400, a grinder worth \$340 and a black leather coat worth \$200, after exerting violence on Intiaz.
- [3] In this appeal also, as in the entire process relating to the protracted, circuitous route the trials against the appellant had traversed, he had not been able to obtain the assistance of legal counseling. Thus, he is appearing in person before us.
- [4] Interestingly, it is the very fact of non-availability of Legal Representation at the trial, upon which the appellant is relying heavily as the only ground of appeal presently. It is his contention that by denying him of having any legal representation, he had been deprived of right to fair trial.
- [5] Before dealing with this ground of appeal, it is important to note that in his handwritten petition of appeal and the submissions, filed of record on 15th January 2016, the appellant had raised a catalogue of grounds of appeal against the conviction and sentence.
- [6] Taking abundance of caution, we inquired from the appellant whether he wished to pursue the appeal on any of those other grounds and his response had been that the sole ground of appeal which he relied on was the one already referred to, namely the denial of right to fair trial consequent to the non availability of legal representation at the trial.

The Trial

- [7] As already stated, the trial against the appellant had been a circuitous one, originally instituted in the Magistrate's Court in 2005, on the charges referred to above. On examining the Court record, one can find the following facts relating to this case;
- (i) The appellant appealed to the High Court in June 2005, against the conviction at the Magistrate's Court.
 - (ii) Against the decision of the High Court, he had appealed to the Court of Appeal by way of a second appeal in July 2006.
 - (iii) On 14th July 2006, the Court of Appeal had ordered a retrial in the Magistrate's Court.
 - (iv) When the trial in the Magistrate's Court was about to commence on 9 July 2008, the Appellant changed his mind and informed the learned Magistrate that he wished to be tried in the High Court.
 - (v) He first appeared in the High Court on 23 July 2008.
 - (vi) At the conclusion of the trial in the High Court, on 16 September 2009 he was convicted by the trial Judge who agreed with the majority opinion of the assessors. It is that conviction the appellant is seeking to assail presently.

The Facts

- [8] Since the facts of the case are not in dispute, stating briefly, it is alleged that the appellant, along with four or five others forcibly entered the house of one Mr and Mrs Maqbool, in the dead of night around 3:00am when the couple was fast asleep.
- [9] It was alleged that the intruders had punched Mr. Maqbool in the face and a pillow was pressed against the face. The intruders having ransacked the house, went away with some money. Whilst this was unfolding, the intruders threatened to kill the couple and had allegedly used a pinch bar to drive fear.

[10] The main piece of evidence against the appellant came from his own confession which was admitted in the trial.

[11] This in brief has been the sum total of evidence against the appellant.

The Ground of Appeal

[12] As referred to earlier, the appellant claims that there was no legal representation made available to him throughout the whole process and thus he has been denied of having a fair trial.

[13] However, delving into the issue closely through the proceedings of this case, it is easy to find that the sole and exclusive responsibility for the non-availability of legal representation for the appellant should be attributed to neither the State nor to any extraneous element, but to the appellant himself, who in a rather strange manner, seemingly with a certain degree of obstinacy, refused to obtain this facility, despite the fact that the Learned Judges who heard his case had informed him repeatedly that he was entitled to Legal Counselling through the Legal Aid.

[14] Having perused the court record, to which we are privy, we find the following information which negate the claim of the appellant that he was denied the right to Legal Counselling. Under the "Ruling on Representation" the Hon. Acting Judge on 15 September 2009, had laid bare the following narration;

- (a) On 15 September 2009, the appellant informed the trial Court that the Court "had forced him to go to trial unrepresented".
- (b) On 18 April 2008, the High Court had explained to the appellant his right to legal representation.

- (c) On 9 July 2008, when the prosecution informed the Magistrate that the trial was ready to commence, the appellant informed that he decided to be tried in the High Court.
- (d) The appellant, accordingly, first appeared in the High Court on 23 July 2008.
- (e) In the High Court, the Hon. Judge had clearly informed the appellant to apply for Legal Aid, with no delay.
- (f) Again on 15 August 2008, another Hon. Judge, before whom the case came up advised the appellant to obtain Legal Aid prior to the commencement of the trial. The record does not bear any information to show that he paid any heed to it.
- (g) Again on 14 September 2009, he was explained by Court that he was entitled for Legal Aid and could apply for it. Notwithstanding the repeated judicial guidance for the appellant to apply for Legal Aid, the appellant had shown no interest to pursue the course.

[15] In the backdrop of the events narrated above, it is amply clear that the sole ground of appeal upon which the appellant is placing reliance is not well founded and on a factual basis, his claim is furthest from the truth.

[16] Out of curiosity the Court inquired the appellant as to the reason for this behavior; and his prompt answer was that it was the persuasion coming from a prison mate that convinced him to look after his own defence and not to rely on the available benevolent facility of the Legal Aid, which in fact for the first time came into existence in the civilized world in Scotland in 1424, with the preamble to the statutory instrument that “if there be any poor creature for default of cunning or means that cannot or may not follow his course, free legal assistance should be given to him.” [The Rule of Law; Tom Bingham pg 87].

[17] Here in Fiji, adhering to the universal principle of good governance, democracy and justice since 1968, the statutory provisions have been in existence for the poor to seek Legal Aid, whenever they find themselves having infractions with the existing system. The Ordinance 55 of 1968 as repealed by Legal Aid Act 1996 provides for the grant of Legal Aid to Poor Persons as set out in its preamble.

[18] Any intransigent refusal to seek such assistance through the State apparatus is a misfortune that has been brought upon oneself by the individual concerned himself and it indeed is a reminder of the age old Latin Maxim '*Vigilantibus Et Non Dormienti bus Jura Subreniunt*'. "*The law assists those that are vigilant with their rights and not those that sleep thereon.*"

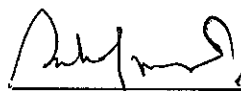
[19] For the foregoing reasons, this Appeal is dismissed.

Wengappuli JA


[20] I have read the judgment of Gamalath JA and agree that the appeal should be dismissed.



Hon. Mr Justice Calanchini
PRESIDENT, COURT OF APPEAL



Hon. Mr Justice Gamalath
JUSTICE OF APPEAL



Hon. Mr Justice Wengappuli
JUSTICE OF APPEAL