

IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE MAGISTRATES COURT
Exercising extended jurisdiction

CRIMINAL APPEAL NO. AAU 98 OF 2015
(Magistrates Court No. 714 of 2010 at Suva)

BETWEEN : **ASAELI VEIYAGAVI**
Appellant

AND : **THE STATE**
Respondent

Coram : **Calanchini P**

Counsel : **Mr T Lee for the Appellant**
Mr L Burney for the Respondent

Date of Hearing : **15 July 2019**

Date of Ruling : **16 August 2019**

RULING

[1] Following a trial in the Magistrates Court at Suva exercising extended jurisdiction the appellant together with two others (Sailoama Vodo and Mikaele Waqa) was convicted on

two counts of aggravated robbery. The appellant was subsequently sentenced to 7 years 6 months imprisonment with a non-parole term of 6 years.

[2] This is the appellant's timely application for leave to appeal against conviction pursuant to section 21(1)(b) of the Court of Appeal Act 1949 (the Act). Section 35(1) of the Act gives to a single judge of the Court power to grant leave. The test for granting leave to appeal against conviction is whether the appeal is arguable before the Court of Appeal: **Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 30 November 2013.

[3] On 2 February 2018 the appellant filed an amended notice of appeal against conviction relying on the following 2 grounds of appeal:

- “1. *The learned Magistrate erred in law and in fact when he admitted the confession in the record of interview when there was evidence by the prosecution itself that he was taken to hospital and no medical report was produced.*
2. *The learned Magistrate erred in law when he failed to consider the reliability of the confession contained in the record of caution interview.”*

[4] The first ground challenges the decision to allow the confession in the caution interview to be admitted as evidence. The only evidence against the appellant was the confession in the caution interview as neither the complainant nor his witness were able to identify the appellant. The court must be satisfied beyond reasonable doubt that the confession was made voluntarily.

[5] This is a question of law. Once the prosecution witness had admitted that the appellant had been taken to hospital following the caution interview the failure of the prosecution to produce a medical report is, at this stage, sufficient to allow the matter to go before the Court of Appeal.

[6] The second ground alleges that the issue of the reliability of the confession was not assessed. This is an issue that arises at the trial since it is essentially concerned with the truthfulness of the confession. However the appellant did not give evidence at the trial and nor did he call any witnesses. The only material before the Court was the evidence of the prosecution witnesses given at the trial. In the absence of contradictory evidence at the trial there was no apparent reason put forward why the Magistrate should not have considered the confession to be truthful and reliable. This ground is not arguable.

Order:

Leave to appeal against conviction is granted on ground 1 only.



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL