

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

CRIMINAL APPEAL NO. AAU 6 OF 2016
(High Court HAC 89 of 2010)

BETWEEN : **SIRELO LILO** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Calanchini P**

Counsel : **Mr M Fesaitu for the Appellant**
Mr S Babitu for the Respondent

Date of Hearing : **8 August 2019**

Date of Ruling : **30 August 2019**

RULING

[1] Following a trial in the High Court at Suva, the appellant was convicted on the alternative count of manslaughter and one count of aggravated robbery. He was one of five accused tried on counts of murder and aggravated robbery. Each was convicted on at least one

count and each has applied for leave to appeal against conviction and or sentence. There are five separate rulings in respect of their applications.

- [2] On 1 December 2015 the appellant was sentenced to 4 years 4 months imprisonment for manslaughter and 14 years imprisonment for aggravated robbery. These sentences were ordered to be served concurrently together with any term presently being served with a non-parole term of 13 years.
- [3] The appellant filed a timely typed notice of appeal against conviction and sentence dated 24 December 2015. On 8 August 2019 he applied in writing to abandon his appeal against sentence. That application is to be heard at the same time as the appeal against conviction in the event that leave is granted or alternatively on a date to be fixed.
- [4] This is the appellant's application for leave to appeal against conviction pursuant to section 21(1)(b) of the Court of Appeal Act 1949 (the Act). Section 35 of the Act gives to a single judge of the Court of Appeal 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, 20 November 2013.
- [5] On 12 July 2019 the appellant filed an amended notice of appeal relying upon the following grounds of appeal against conviction:
- “1. **THE** Learned Trial Judge failed to direct the assessors and himself in terms of the weight to be given to the admission contained in the caution interview.
 2. **THE** Learned Trial Judge's directions on circumstantial evidence and the test when relying on circumstantial evidence lacked fairness and objectivity required for a fair trial.
 3. **THE** Learned Trial Judge caused a grave miscarriage of justice by lacking the fairness when accepting the truthfulness and voluntariness of Appellant's confession in the Caution Interview Statement.

4. ***THE** Learned Trial Judge failed to put to the assessors the Appellant's case in a fair, balanced and objective manner.*
5. ***THE** Learned Trial Judge erred in law in not considering the locality to which the offence was committed, contrary to section 35(1) and 37 of the Criminal Procedure Act.*
6. ***THE** Learned Trial Judge erred in law in admitting the confession contained in the caution and charge interview statements."*

[6] Ground 1 is concerned with the directions in the summing up on the weight that should be attached to the admissions contained in the caution interview. However in his judgment the learned Judge has indicated in paragraph 10 that he accepted that the admissions made by the appellant in his caution interview and charge statement were truthful and voluntary. The Judge rejected the denials made by this appellant in his oral testimony at the trial. In my view there is no basis for challenging the approach of the trial Judge when he accepted the prior admissions made by the appellant in his out of court caution interview and charge statement.

[7] Ground 2 refers to the directions in the summing up on circumstantial evidence. The issue of circumstantial evidence arises as a result of the directions in paragraph 50 of the summing up. There is no reference to circumstantial evidence in the judgment. This is not surprising since the trial Judge has based his verdicts of guilty on the admissions in the caution interview and charge statement both of which he had found to have been made voluntarily and to be truthful. This ground is not arguable.

[8] Ground 3 raises an issue that is similar to the issue raised by ground 1. It is not necessary to say anything further on this ground.

[9] Ground 4 alleges that the trial Judge did not fairly consider the appellant's defence. His defence was simple. Counsel informed the Court that the defence was that he was not

present at the scene of the robbery or murder. In other words a flat denial. That has been stated by the trial Judge and the ground is not arguable.

- [10] Ground 5 relates to the place of trial and relies on section 35 and 37 of the Criminal Procedure Act 2009. However section 278 of the Criminal Procedure Act requires the appellant to establish that as a result of alleged non-compliance there has been a failure of justice. The appellant has not indicated a specific matter leading to a failure of justice and instead has urged that leave be granted to determine if a matter can be found in the record. The ground is not arguable.
- [11] The final ground of appeal challenges the admission into evidence of the appellant's caution interview and charge statement both of which the appellant claim were induced by violence and threats. The ground appears to be based on the claim that the trial judge has considered whether the appellant was assaulted but has failed to consider the issue of threats made by the police. However in paragraph 46 of the summing up the learned Judge has referred to the appellant claiming that "*he was repeatedly assaulted and threatened by the police when arrested and when caution interviewed.*" Furthermore it appears that this ground may be regarded as frivolous as the Judge has on many occasions in his summing up and in his judgment referred to the claims of violence alleged by the appellants against the police. This ground is not arguable.
- [12] Although not expressly raised, the appellant's conviction for manslaughter raises the issue of inconsistent verdicts. The third appellant Vakabua was one of the group present and involved (as a look out who remained outside the house) in the aggravated robbery. He was part of the group engaged in prosecuting an unlawful purpose. The verdict of not guilty (of murder or manslaughter) for the appellant Vakabua is inconsistent with the findings of guilty for either murder or manslaughter for the other members of the group and hence in the case of this appellant the verdict of guilty of manslaughter is arguably unreasonable.

[13] As a result the application for leave to appeal against the manslaughter conviction is granted. The application for leave to appeal the aggravated robbery conviction is refused.

Orders:

- 1). *Leave to appeal against the manslaughter conviction is granted on the basis inconsistent verdicts.*
- 2). *Leave to appeal against the aggravated robbery conviction is refused.*
- 3). *Application to abandon the appeal against sentence is to be listed before the Court of Appeal with the appeal against conviction.*



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