

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 20 of 2014

BETWEEN : **SAMUELA MACEDRU**
Appellant

AND : **STATE**
Respondent

Counsel : Appellant in person
Ms. J. Fatiaki for the State

Date of hearing : 12 September, 24 October and 4 November 2014

Date of Judgment : 12 December 2014

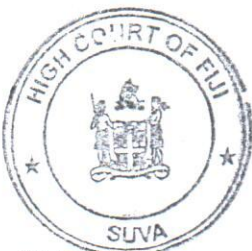
JUDGMENT

1. On the 16th June 2014 the appellant was convicted in the Magistrate's court at Suva of one count of robbery with violence contrary to section 293(i) (b) of the Penal Code. He was charged with robbing one Rajneel Kumar of his mobile phone worth \$600 along with \$40 cash. He was sentenced on the 23rd June 2014 to a term of imprisonment of 5 years and 5 months with a minimum term to be served of 4 years.
2. The appellant appeals his conviction only on the following grounds:
 - (i) That the identification was unreliable.
 - (ii) The Magistrate erred in not accepting his alibi.

3. The facts of the case were that on the 3rd October 2009 Mr. Rajneel Kumar was waiting outside a shop in Milverton Road for transport to take him to his work at about 8.15pm on the day in question. Two men approached him and asked him for money. He said he had none at which one of the men held him from behind with a hand over his mouth and searched his back pocket. He struggled but the other man in front of him punched him on the face and holding his collar banged him on the wall of the shop. This violence continued for about 15 to 20 minutes until the victim was bleeding. They took his phone and about \$40 cash. The victim said he knew one of the men because he lived nearby and he saw him often. He knew his name to be "Samu" because he had heard people call him that and he would see him going to and from the shop over the years. He identified the accused in Court as this "Samu".
4. A policeman had come to the scene and the victim told the officer about the robbery and his identification by recognition of Samu.
5. The appellant in person submits that dock identification after nearly 5 years was unreliable and the learned Magistrate should have warned himself of the need for caution before relying on it.
6. In dealing with this matter the Magistrate said this :

"There was no I.D. parade conducted by the Police and the complainant identified the accused only in Court. It has been held that dock identification is not safe to rely on when the identity of an accused is the main issue in a case. But in this case according to the complainant the accused was not a stranger and he has seen him even before the incident that day. According to him, the accused was from his area and was known as "Samu". Therefore even without an ID parade I would think this Court can consider the evidence of the prosecution witnesses. But as the accused is denying that he was involved in this incident I would have to consider if the complainant has properly identified the accused on that day."
7. It can be seen from that passage taken from the magistrate's judgment that he was certainly alive to the "difficulties" surrounding dock identification but he concluded, quite properly, that it was no identification at all but recognition.

8. In all fairness he then went on to deal with the **Turnbull** circumstances of identification and in taking into consideration all of the suggested parameters of identification he concluded that the identification was "safe".
9. A dock identification of an accused person where there has been no foundation such as an identity parade or identification by photograph previously, is highly undesirable and should be resisted. It is not inadmissible per se (as decided by the Privy Council in **Holland v. H.M. Advocate** [2005] HRLR 25) but the discretion of the tribunal should judge the worth and probity of it. Where identity is in issue, it should not be allowed at all. Wherever it is allowed and a witness has identified the accused then a very strong direction should be given by a Magistrate to himself or by a Judge to the finders of fact. It is essentially a matter of weight to be decided by the fact finders.
10. In this particular case the Magistrate has dealt with the identification most appropriately. There was an underlying long acquaintance with the accused, he allowed the dock identification but being wary of its value, warned himself of the dangers and so went on to examine the identification using the **Turnbull** guidelines. He could have done no more.
11. This ground of appeal cannot be made out and it fails
12. The accused had never given notice of his alibi to the Court as required by s.125(2) of the Criminal Procedure Decree 2009. There had been some suggestion of alibi in his caution interview of an alibi but that was not produced in evidence. So the accused's alibi given as part of his sworn testimony in Court was the first time it was raised. He called no witness to support it. In those circumstances it is perfectly understandable that the learned Magistrate would not give any credence to his alibi.
13. This ground of appeal too fails. The appeal against conviction is dismissed.



At Suva
12 December 2014


P.K. Madigan
Judge