

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 69 OF 2019

BETWEEN : **TEVITA QAQANIVALU**
APPELLANT

A N D : **STATE**
RESPONDENT

Counsel : ***Appellant in Person.***
: ***Ms. L. Latu for the Respondent.***

Date of Hearing : ***28th of July, 2020***
Date of Judgment : ***28th of August, 2020***

JUDGMENT

- a). The Appellant (will be referred to as the accused sometimes) was charged in the Magistrates' Court of Lautoka with a count of 'Escape from Lawful Custody'. The accused had pleaded not guilty to the said count and proceeded to trial. At the conclusion of the trial, Learned Magistrate of Lautoka has found him guilty and convicted of the same. Being aggrieved by the said conviction, the accused has submitted this appeal.
- b). The grounds of appeal submitted by the Appellant are;
- i. The Learned Trial Magistrate erred in law and in facts in not firstly considering whether the prosecution has proved their case beyond reasonable doubt.

- ii. That the Trial Magistrate highly failed in law and had further erred in not reminding himself that both prosecution witnesses could not prove any bail papers or remand warrant during trial according to their evidence in court.
 - iii. That the Learned Trial Magistrate was swayed and biased in not adequately observing or fairly analyzing the accused and his mother's evidence which surely corroborated at the trial.
 - iv. The Trial Magistrate erred in law and in fact when unfairly assessing the evidence of DW3 Jolame Vunituraga in stating he cannot recall the time while he reached the Lautoka Magistrates' Court.
 - v. That the Trial Magistrate also failed in rejecting DW4 (Accused's wife) to relate her evidence in court and had caused injustice in the trial of the Accused.
- c). The petition of appeal is filed within the allowed time, as the judgment is delivered on the 30th of September, 2019 and this appeal is submitted on the 04th of October 2019.
- d). When looked at the first ground urged above, it needs some analysis.

I am well aware that in deciding the facts of a case the trial Judge/Magistrate would be in a better position than an Appellate forum. However, in this case, the evidence of the first two witnesses was taken before a learned previous magistrate and the prosecution has moved to call further evidence when the said magistrate has gone on promotion. Then after many adjournments, this matter was taken up before the Learned Magistrate who decided the case (Trial Magistrate) and the prosecution has closed their case without calling any further evidence. The defence case was heard by the Learned Magistrate who delivered the judgment.

Accordingly, I accept that in deciding the merits of the defence case the Learned Trial Magistrate would be in a better position than this court. Therefore, I refrain from commenting on the defence case.

However, when it comes to the merits of the prosecution case, the Learned Trial Magistrate is not in any better position than this court as none of the prosecution witnesses were heard or observed by him.

e). This warrants me to analyze the prosecution case.

The 1st witness called by the prosecution was SC 4397 Douglas Duikoro. His evidence is by the time he gave evidence in 2018, he has served for 7 years and he is in Lautoka since 2014. The alleged incident has happened on the 10th of March 2015. On that day he was serving attached to the escort team and has escorted the appellant to the Lautoka Magistrates' Court No. 3. The Court has granted bail to the appellant and was directed to escort the appellant to the registry. He has escorted the Accused to the registry and while liaising with the Clerk Osea, the accused has sneaked out. He has seen the accused sneaking out and followed him. The accused has been on the passage by the Family Court and the witness has run after him. The accused has run towards R.B. Patel and boarded a taxi and gone towards Natokowaqa. The witness has gone after him on another taxi and when they reached Natokowaqa he has come across the taxi taken by the accused. He has stopped that taxi and when asked, told that he dropped the accused at Natokowaqa roundabout. At there, it is unclear whether they have seen the accused running towards a drain or whether he was informed that the accused ran towards a drain. In any event having searched for 1 ½ hours, he could not find the accused.

The witness states that on that day Clerk Osea informed him that the accused is remanded for a case in Suva. It should be noted that the accused challenges this position. He has informed the court that he had no other matters for which he was remanded. Though it may have little bearing on deciding the final outcome of this case, it would clearly establish a motive for the accused to have escaped, which would substantiate the credibility of the prosecution case. No evidence was tendered to confirm such.

In cross examination by the accused, this witness states that he brought the accused to the registry in handcuffs. He has removed the handcuffs for the accused to sign the bail bond. However, without signing the bail bond the accused has gone and been with his family, and sneaked out from there, as for this witness. If the witness has removed the handcuffs from a handcuffed accused it would be his duty to guard him properly. Furthermore, if a prisoner has escaped, it would have caused a huge commotion in the entire court complex. The prosecution has failed to substantiate them by producing the appropriate evidence.

- f). When looked into the evidence of the PW2, Clerk Osea, he has been unaware of the accused running away until been informed by another Clerk. If the accused has escaped from the registry, he would have noticed it immediately. Furthermore, as for his evidence, by the time he was informed by the Suva registry, the accused has already escaped. This is much inconsistent with the evidence of the PW1. The learned Trial Magistrate, having a good understanding of the given circumstances of this case, decides that the prosecution has proved the alleged offence, beyond reasonable doubt. I regret that I cannot agree with the decision of the Learned Magistrate. When scrutinized the evidence led by the prosecution, I cannot prevent a huge doubt arising on my mind of the credibility of the witnesses and of the alleged incident. Therefore, I allow and uphold this ground of appeal.
- g). As the appellant has succeeded on his 1st ground of Appeal, it would not be necessary to analyze the rest. Accordingly,
- (1) The appeal is allowed.
 - (2) The conviction is quashed and set aside.
 - (3) The Accused is acquitted.



Chamath S. Morais
Judge

At Lautoka
28th of August, 2020

Solicitors: *Appellant appeared in Person*
Office of the Director of Public Prosecutions, Lautoka, for the Respondent