

IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CRIMINAL PETITION NO. CAV 0013 of 2023
Court of Appeal No. AAU 122 of 2015

BETWEEN : **MOHAMMED SHAHEED KHAN**

Petitioner

AND : **THE STATE**

Respondent

Coram : **The Hon. Acting Chief Justice Salesi Temo**
Acting President of the Supreme Court

The Hon. Justice Lowell Goddard
Judge of the Supreme Court

The Hon. Justice William Young
Judge of the Supreme Court

Counsel : **Mr. I. Fa (Jnr) for the Petitioner**
Ms. R. Uce for the Respondent

Date of Hearing : **15 August, 2024**

Date of Judgment : **29 August, 2024**

JUDGMENT

Temo, AP

[1] I agree entirely with the judgment of his Lordship Mr Justice William Young.

Goddard, J

[2] I too agree with the judgment of William Young J.

Young, J

[3] The petitioner, Mohammed Shaheed Khan, and Ethan Kai were tried on charges associated with the importation into Fiji of 29.9 kilograms of heroin. In the result, the petitioner was found not guilty and Mr Kai guilty on the charges they faced. This was pursuant to a fully reasoned judgment by the Judge.

[4] The acquittal of the petitioner and the conviction of Mr Kai were later both set-aside by the Court of Appeal and a new trial was directed. This was primarily on the basis that the verdicts arrived at by the trial Judge were unacceptably inconsistent. The petitioner sought leave to appeal.

[5] At the commencement of the hearing, we were told that the State will be entering a nolle prosequi in respect of both the petitioner and Mr Kai. In those circumstances, counsel for the petitioner asked to withdraw the petition. This was not opposed by counsel for the State. Both parties agreed that the petition should be dismissed by consent. I would so dismiss it. There is, however, one aspect of the case on which I wish to comment.

[6] In concluding that the petitioner's acquittal and Mr Kai's conviction were unacceptably inconsistent, the Court of Appeal relied primarily on principles that appellate courts have developed in relation to jury verdicts. In such a case, the pattern of verdicts may allow an appellate court to draw inferences as to the reasoning process of the jury and, perhaps, to conclude that something must have gone wrong.

[7] I see little or no need to resort to these principles when dealing with an appeal against the reasoned judgment of a professional Judge.¹ Such a judgment should make clear the basis on which the Judge has acted. Any later challenge to the verdict or verdicts should

¹ I am aware that the trial was before assessors. But the ultimate decisions to acquit the petitioner and convict Mr Kai were made by the Judge.

be directed to the reasons of the Judge. In this case, the reasons given by the Judge provided a clear and rational basis for his verdicts.

[8] It follows that I do not agree with Court of Appeal's approach to what it saw as the inconsistency between the acquittal of the petitioner and the conviction of Mr Kai. For this reason, the dismissal of the petition by consent should not be taken as an endorsement of the reasoning of the Court of Appeal.

Order of the Court:

The petition is dismissed by consent.



The Hon. Acting Chief Justice Salesi Temo
Acting President of the Supreme Court



The Hon. Justice Lowell Goddard
Judge of the Supreme Court



The Hon. Justice William Young
Judge of the Supreme Court