

IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CRIMINAL PETITION NO. CAV 0018 of 2023
Court of Appeal No. AAU 0077 of 2018

BETWEEN : **TUI LESI BULA**

Petitioner

AND : **THE STATE**

Respondent

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

The Hon. Justice Terence Arnold
Judge of the Supreme Court

The Hon. Justice Lowell Goddard
Judge of the Supreme Court

Counsel : **The Petitioner in Person**
: **Mr. R. Kumar and Mr. H. F. Nofaga for the Respondent**

Date of Hearing : **14 August, 2024**

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

JUDGMENT

Temo, AP

[1] I entirely agree with his Lordship Mr. Justice Arnold's judgment.

Arnold, J

Introduction

- [2] Following a joint trial in the High Court the Petitioner, Tui Lesi Bula, was convicted of one count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act 2009. It was alleged that he was one of four men who had committed a home invasion robbery and stolen a vehicle, jewellery, liquor, perfume, a wallet containing cash and credit cards and various other items, having a total value of almost \$94,000. Two of his alleged accomplices were tried with him, although one had absconded before trial and was tried in absentia.
- [3] Given the circumstances of the robbery, the victims were unable to identify the robbers, other than to say they were iTaukei men. Accordingly, the case against Mr Bula was based substantially on circumstantial evidence, the doctrine of recent possession in particular.
- [4] Mr Bula sought leave to appeal his conviction, raising 11 grounds of appeal. A single Judge of the Court of Appeal refused leave, on the basis that none of the grounds raised had a reasonable prospect of success.¹ Mr Bula then applied to renew his application for leave to appeal, on the basis of seven new grounds of appeal. Mr Bula said that at the time he filed these grounds, he did not have access to the Court record. Once he had access to that, he substituted three grounds for the previous seven.
- [5] The Court of Appeal dismissed Mr Bula's appeal.² Mr Bula petitions this Court for leave to appeal, one of his complaints being that the Court of Appeal addressed the seven grounds rather than the substituted three grounds. In terms of relief, Mr Bula appears to raise two alternatives, either that his conviction be quashed or that the matter be remitted to the Court of Appeal for argument on any outstanding grounds of appeal.

¹ *Bula v State* [2020] FJCA 37.

² *Bula v State* [2023] FJCA 78.

Jurisdiction

[6] Section 7(2) of the Supreme Court Act 1998 provides that the Court must not grant leave to appeal in a criminal case unless a question of general legal importance, or a substantial question of principle affecting the administration of justice, is involved, or a substantial and grave injustice may otherwise occur. I will consider the three grounds of appeal advanced by Mr Bula to see whether one or more of them meets any of the three criteria.

Brief factual background

[7] At around 2 am on 11 October 2015, four iTaukei men broke into the home of a young Indo-Fijian couple at Sigatoka. They gained access to the property by cutting through a chain link fence. The men had knives and golf clubs, with which they threatened the couple. The men told the couple they would not be harmed if they cooperated and questioned them about where their valuables were. The wife, who was pregnant, was taken to various rooms to assist in locating the valuables. The offenders were in the couple's house for about an hour and, after tying the couple up, left in the couple's vehicle with a range of stolen material. Once the offenders had left, the couple untied themselves and called the police, who responded promptly.

[8] The prosecution case was that the men had driven away in the couple's vehicle, which they ultimately abandoned. At around 8.30 – 9 am on 11 October, they were taken by boat to Nabukadra Village, where one of the offenders had relatives. Several villagers gave evidence that the men were carrying bags and one had a set of bolt-cutters wrapped in a coat. For much of the remainder of the day, the men sat with various villagers drinking Johnnie Walker Black Label whisky and gin, bottles of which they had brought with them. (Bottles of Johnnie Walker Black Label whiskey and of gin had been taken in the robbery.) Around 7 pm, the men left by boat for another village. Soon after, they were intercepted by police and arrested.

[9] Several of the villagers gave evidence at trial that the four men were carrying bags, in particular a black Canterbury bag and a blue Canterbury bag. They identified Mr Bula as one of the four men and said he was carrying the black Canterbury bag. Among the items found in the black Canterbury bag by police were two bottles of perfume

identical to two taken in the robbery. The female victim identified them as belonging to the couple. Another of the four men was wearing a pair of black canvas shoes with white marks, which were identified by the male victim as his. Further, the male victim's wallet was found on another of the four men.

Basis of Petition

[10] The three matters which Mr Bula raised are:

- (a) the prosecution failed to establish his guilt beyond reasonable doubt through the doctrine of recent possession;
- (b) the way in which the search list was tendered at trial was prejudicial to Mr Bula; and
- (c) the trial Judge erred in fact and law when he found that Mr Bula was involved in a joint enterprise.

Discussion

[11] I will deal with each proposed ground in turn.

(i) Recent possession

[12] The doctrine of recent possession is a form of circumstantial evidence. Under it, a person's possession of recently stolen property is, in the absence of a plausible explanation negating guilt, sufficient evidence from which a fact-finder *may* (but not must) infer that the person either stole the property or is a receiver of it. While in some cases the surrounding circumstances may indicate whether the person is a thief or a receiver, in others the fact-finder may find it difficult to decide which the person is.

[13] The Court of Appeal set out the passages from the summing up in which the trial Judge addressed the doctrine of recent possession.³ I will not repeat them here. It is

³ See *Bula v State*, above n 2, at para [20]. The Judge also gave directions on circumstantial evidence more generally.

sufficient to note that the Judge emphasised that the prosecution had to prove that an aggravated robbery had occurred, and that the accused had been found in possession of items stolen within a few hours of the commission of the offence. If those elements were established, the accused had to explain how they came to possess the stolen goods.

[14] In his evidence at trial, Mr Bula denied that he had played any part in the robbery. He said that he had spent 10 October 2011 with his family and, early on the morning of 11 October, had gone with his boss to pick up fish from several villages. When they were unable to buy all the fish they needed, his boss told him to go to Nabukadra Village and talk to the headman about buying fish. When he was there, he had joined some young men who were drinking, had overlooked meeting up with his boss again and was ultimately arrested. He denied that he was carrying a black Canterbury bag.

[15] At trial, the evidence that four iTaukei men had committed the robbery over the course of about an hour from 2 am on 11 October was not challenged. Various villagers gave evidence that Mr Bula had arrived at the village around 8.30 – 9 am on 11 October in the company of three other men. They were carrying Canterbury bags and some bolt cutters wrapped in a coat. Several villagers identified Mr Bula and gave evidence to the effect that he was carrying a black Canterbury bag and had it with him later in the day. They also gave evidence that the men supplied liquor (identical to that stolen in the robbery) for the group to drink. The police gave evidence of several items found in the black Canterbury bag that were identified as proceeds of the robbery. If that evidence was accepted, the doctrine of recent possession meant Mr Bula needed to give a plausible explanation of how he came to be in possession of the items innocently. He did not attempt to do so.

[16] Accordingly, I see nothing in this ground of appeal that meets the criteria in section 7(2).

(ii) Late disclosure of search list

[17] The search list recorded items found by police in the black Canterbury bag carried by Mr Bula. This list was not disclosed as part of the prosecution's pre-trial disclosure

(apparently inadvertently), with the result that the prosecution sought to disclose it at trial. Mr Bula objected on the ground that its absence had affected his preparation for trial. The trial Judge rejected this, finding that there was no prejudice, and allowed late disclosure of the search list.

[18] Mr Bula argues that the late disclosure of the list breached section 14(2)(e) of the Constitution of the Republic of Fiji 2013 and prejudiced the preparation of his defence. He did not explain, however, how it prejudiced his preparation.

[19] While the search list should have been part of the pre-trial disclosure, its late disclosure did not prejudice Mr Bula. He was well aware before trial of the case against him. The witness statements of the villagers and the police had been provided as part of the pre-trial disclosure and they addressed who had possession of the black Canterbury bag, who examined it and what its contents were. Mr Bula was able to, and did, cross-examine witnesses.

[20] Accordingly, I see nothing in this ground of appeal that engages any of the section 7(2) criteria.

(iii) Joint enterprise finding unjustified

[21] Mr Bula argued that the trial Judge erred in fact and law when finding that he was part of a joint enterprise.

[22] In his summing up, the Judge described the concept of joint enterprise, stated that the burden was on the prosecution to prove beyond reasonable doubt in relation to each of the accused that they together threatened the use of force and stole the couple's property. The Judge then summarised the evidence and the prosecution and defence cases. In his judgment, the Judge set out his findings in a way that clearly identified how he concluded that there was a joint enterprise.

[23] I see no substance to this ground of appeal either.

Determination

[24] For the reasons set out above, I would refuse leave to appeal, on the ground that none of the criteria in section 7(2) of the Supreme Court Act is met.

Goddard, J

[25] I agree with and accept the reasoning and outcome.

Orders of the Court

The application for leave to appeal is refused.



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



The Hon. Justice Terence Arnold
Judge of the Supreme Court



The Hon. Justice Lowell Goddard
Judge of the Supreme Court