

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO: HAA 005 OF 2009**

**BETWEEN:**

**OLE JITOKO**

***Appellant***

**AND:**

**THE STATE**

***Respondent***

**Counsel:** Appellant in person  
Ms. J. Cokanasiga for State

**Date of Hearing:** 9<sup>th</sup> April 2009

**Date of Judgment:** 1<sup>st</sup> of June 2009

## **JUDGMENT**

[1] Following trial in the Magistrates' Court, the appellant was convicted of robbery with violence and sentenced to 4 years imprisonment. He appeals against conviction on two main grounds:

- (i) That the learned Magistrate erred in relying on the dock identification evidence of the complainant; and
- (ii) That the learned Magistrate denied the appellant his right to cross-examine the prosecution witnesses.

- [2] At trial, the prosecution called two witnesses, namely, the complainant and an off duty police officer who witnessed the alleged incident.
- [3] The complainant said on 1 August 2008 at 3.40pm, four men hired his taxi to go to Tamavua. Upon reaching their destination, two of them got out and snatched his car key. The passenger sitting at the back seat grabbed his throat from behind and punched him on the head. The robbers fled after stealing the taxi meter and \$150.00 cash from him. A police officer came to his rescue and apprehended the appellant after a chase. They took the appellant to a police post.
- [4] PC Vakacagicagi gave evidence. He said on 1 August 2008 at around 3.40pm he was standing outside when he saw a taxi stopped near his house. He saw a commotion between the driver and the passengers. He suspected something was wrong and so he ran to the taxi. He saw the driver's shirt was torn and he was bleeding. When PC Vakacagicagi arrived at the scene, the appellant was getting out of the taxi. When he told the appellant that he was under arrest, the appellant pushed him and fled. PC Vakacagicagi chased the appellant and apprehended him.
- [5] At trial the appellant elected to remain silent, which of course, was his right.
- [6] The appellant's main contention is that the complainant was mistaken about the identification and that the Magistrate was wrong to accept his identification evidence to convict him.

[7] The manner in which the learned Magistrate considered the identification issue is contained in the following passages of the judgment:

“The Court must warn itself of the special need for caution before convicting the accused in reliance on the correctness of the above identification, because an honest and convincing witness could be mistaken. The circumstances of the identification must be closely examined. How long did the witness have the accused under observation? At what distance? In what light? Was the identification impeded in any way? Has the witness seen the accused before? How often? Is there any special reason for the witness to remember the accused? Was there any Police identification parade thereafter? Are there any special weakness in the witness evidence? ***R -v- Turnbull*** [1977] Q.B. 224.

When cross-examined by the accused, the complainant said, “... I am sure the accused is the person who stopped my taxi at Beaumont Road, Narere. I saw his face, when he stopped my taxi. It was daylight. It was 3.40pm. He was about 16 footsteps away when he stopped my taxi. He then came into my car. As he walked to my car, I saw his face. He was not wearing a cap or hat. I saw him sit in the middle of the car back seat. I observed the accused through my rear vision mirror. I had the passenger in my car for 10 to 15 minutes. During that time, I observed the accused’s face. There was no obstruction in my view of the accused’s face. That was the first time I met him. Because I was robbed by them, I remembered his face. I am not mistaken about his face. I did not attend a Police identification parade afterwards...”

When it was put to the complainant, in cross-examination that, accused did not rob him, that he was mistaken, that he was lying, and he identified the wrong person, he denied all the above. He said, the accused robbed him, he was 100% sure it was the accused who robbed him, and he is not lying.

In my view, the complainant's identification evidence against the accused were of a good quality in terms of the ***R v Turnbull*** test. He saw his face in daylight. He sat in his taxi in the back seat. He observed his face for about 10 to 15 minutes. There was no obstructions in the way. Although it was the first time he saw the accused's face, he couldn't forget it, given the shock associated with the robbery, against him.

Although there was no Police identification parade so soon thereafter, this weakness lost its effect, given that PW2, an off-duty Police Officer, caught the accused red-handed during the commission of the offence. PW2 saw the crime taking place, warned the accused he was going to arrest him, chased and caught him, when he fled. He later took him to Dokanaisuva Police Post.

I accept the complainant's and PW2's evidence. Given the above, and on the evidence, I find as a matter of fact that, the accused was part of a group of Fijian youths that, violently robbed the complainant of his taxi meter, car stereo and \$150, on 1<sup>st</sup> August 2008, at Princess Road, Tamavua."

- [8] I find no error in the manner the learned Magistrate considered the identification issue. The issue was correctly dealt by the learned Magistrate in accordance with law and I am satisfied no miscarriage of justice has occurred.
- [9] As regards to the second ground of appeal, the court record states that the learned Magistrate summarized the complainant's evidence to the appellant and invited him to cross-examine the complainant. Similarly, when PC Vakacagicagi gave evidence, the appellant was afforded an opportunity to cross-examine him and I am satisfied the appellant competently exercised his rights and was not prejudiced by lack of legal representation. The second ground of appeal fails.

## **Result**

[10] Conviction confirmed. Appeal dismissed.

.....  
Daniel Goundar  
**JUDGE**

At Suva  
1<sup>st</sup> June 2009

**Solicitors:**

Office of the Director of Public Prosecutions for State  
Appellant in person