

IN THE HIGH COURT OF FIJI

APPELLATE JURISDICTION

AT SUVA

CRIMINAL APPEAL CASE NO: HAA 104 OF 2008

BETWEEN

SAINIVALATI VEITOGAVI

AND

THE STATE

Appellant in Person

Ms Cokanasiga for the State

Date of sentence: 20 February 2009.

RULING

1. Sainivalati Veitogavi, you were charged with others with one count of Robbery with Violence, contrary to section 293(1)(b) of the Penal Code Cap 17 and one count of Unlawful Use of Motor Vehicle, contrary to section 292 of the Penal Code Cap 17.
2. The particulars of the Robbery With Violence charge is: that you with others on 7 August 2003 at Lami in the Central Division, robbed Rakesh Pal s/o Madan Pal of \$64,759.17 cash the property of J.S.Hill & Associates and immediately before and after such robbery used personal violence on the said Rakesh Pal s/o Madan Pal.

Background facts

3. You were charged on 14 September 2004. You appeared with your co-accused before the Suva Magistrates Court on 21 September 2004. On that day when the charges were read and explained to you, you advised the court that you understood the charge. You deny the charges against you. You also told the court that you elect Magistrates Court trial. You were remanded in custody until 15 October 2004. You were not bailed until the court hearing on 2 November 2004.
4. On 26 March 2007 the charges were put to you again. You again pleaded not guilty to both counts in the charge, after advising the court that you understood them. The trial of the charges started on 26 March 2007 and after many more adjournments were finally concluded with judgment delivered, finding you guilty as charged on 28 July 2008.
5. In your caution interview statements you admitted that you knew of the robbery and that your part, was as a 'drop-off and pickup driver' and you knew of the plans for the robbery.
6. You were convicted and sentenced to 3½ years imprisonment for the robbery with violence count and 4 months imprisonment for the Unlawful Use of Motor Vehicle. Both sentences were ordered to be served concurrently effective from 28 July 2008.
7. You now appeal against conviction and sentence.
8. By letter dated 2 January 2009, you submitted Amended Appeal Grounds. When asked by the Court what your position was with regard to the grounds you earlier submitted, you advised that all grounds submitted earlier are to be withdrawn and the Court should now determine your appeal on the basis of the grounds you have submitted in your letter dated 2 January 2009.
9. You also by another letter dated 2 January 2009 purported to submit 6 questions which you want your police interviewing and witnessing officers to answer as part of this appeal. These were questions that were that were not asked of these officers during the viore dire hearing in your magistrate

court's trial. I had advised you that these were highly irregular requests and cannot be entertained. Nor can the court now purport to review that voire dire hearing on the basis of the questions you submit as part of your appeal. These questions were not asked during the voire dire and therefore they cannot now be considered by this court.

10. Despite your being granted leave to amend your ground of appeal on 16 January 2009 when you last appeared in court, you again submitted another letter dated 7 January 2009, which was received on the 4 February 2009 by the registry. This letter submits 7 appeal grounds against convictions and 3 grounds against sentence.

11. On that basis the hearing date for your appeal was set for 6 February 2009 and the State was asked to respond to your written submission no later than 3 February 2009.

Grounds of Appeal

12. Your amended grounds of appeal are: [court summary]

- i) There was no identification parade held to prove that your taxi or you took part in the offences charged. The court relied on information provided to the police that your taxi were at Nadonumai on 7 August 2003;
- ii) The Unlawful Use of Motor Vehicle charge was wrong because you were driving your own taxi and he was being hired by Apolosa to take him to Nadonumai and pick his brother Waisea Soata;
- iii) That all the statements you gave the police were unlawfully obtained by police, as you were physically, emotionally and mentally tortured throughout the investigation and I gave my statement under fear;

- iv) There was no material evidence found in your possession to prove the charge against me. There are no eye witness who saw me or my taxi at the crime scene.

13. Each of the above ground, the appellant would claim to be errors of law and fact committed by the trial Magistrate justifying the quashing of his conviction and sentence.

Respondent's submission

14. The State filed extensive submissions in reply to each of the appeal grounds you have submitted. In summary counsel for the respondent submits as regards each appeal ground as follows:

- i) There was no error of law and fact in the decision of the trial magistrate to convict the appellant on the evidence in the case.
- ii) There is no gap in the prosecution evidence nor is there error in the trial magistrates ruling that the prosecution has discharged the burden of proof required in the case;
- iii) There is an unspecified claim to the trial being unfair and as it stands it has no merit;
- iv) It evident from the judgment that the trial magistrate had considered the fact that the prosecution had to prove their case beyond reasonable doubt because he held that the prosecution has proven their case to that standard.
- v) There was no need for finger print evidence to identify the appellant because he admitted his part in the robbery in his caution interview statements to the police which was admitted in evidence after voire dire hearing;
- vi) Caution interview statements of the accused in which he admitted taking part in the robbery, was admitted following voire dire hearing. His claim for assault was made late but the

court considered it and did not agree that appellant was assaulted during his caution interview. The statement was admitted as evidence in the trial.

Appeal Determination

15. I have reviewed each of the grounds of appeal submitted by the appellant in this appeal. I find that they all have no merit. I dismiss this appeal accordingly. I set out briefly the basis of my rejecting the grounds.
16. Grounds 1 and 2 advanced by the appellant alleges that the trial magistrate in his judgment erred in law in not evaluating the evidence of the prosecution to ensure that there are no gaps in the evidence required to prove the prosecution case against the appellant and also that the evidence fell below the standard of proof required of beyond reasonable doubt. These allegation by the appellant were baldly made without any reference to passages of the learned trial magistrate's ruling that may support his claim. Be that as it may, this court has reviewed the ruling in question and noted the following passage from it:

'Upon considering the whole of the evidence, I find the accused took a greater part in the robbery than an innocent taxi driver who was merely hired for a job for the following reasons [seven specific reasons given] ...

I find the prosecution has proved beyond reasonable doubt that this accused was together in the planning and robbery with others.'

[Court Record Pages 95 -96]

17. It is plain from the above passage of the trial Magistrates ruling that he considered the standard of proof required and he found that there was no gap in the evidence. I agree with the trial magistrate. I dismiss these grounds as having no merit.
18. The appellant also allege that he was not identified as one of the accused person in the commission of the crime charge against him. He

base his claim on the fact that there was no identification parade held nor was there any fingerprint evidence from his taxi to prove, that he took part in the robbery. On the basis of the evidence led by the prosecution, it was not necessary for them to conduct an identification parade or to show fingerprint evidence. The appellant was largely convicted on his own admission of his role in the crime in question as contained in his interview statement to the police. This ground has no merit and is dismissed.

19. As regards the claim by the appellant that his caution interview statements should not have been admitted because of his claim that he was assaulted to give it. The trial magistrate took this claim seriously and held a *voire dire* to determine the claim of the appellant. Having heard the witnesses called he found that there were no assault made and that the circumstances were not oppressive. He admitted the caution interview statements of the appellant. I find not error of law or fact in the procedure and decision of the trial magistrate in this regard. This appeal ground fails.
20. There claims of unfairness made by the appellant against his trial, without any specific reference to any thing said or done by the trial magistrate in the course of the trial. This ground is not made out and I dismiss it.
21. The appellant also claims that all the statements he gave the police were unlawfully obtained and the court should not have used them as evidence against him in the trial. Again this claim is simply made without specific reference to which statements he made to the police apart from his caution interview statement, that were used in evidence against him during the trial. I find that in his judgment the trial magistrate confined himself only to the evidence adduced by witnesses and the caution interview statement of the appellant in finding the appellant guilty as charged. There was no error committed by him. This ground of appeal is dismissed.
22. In the light of the above findings, this appeal is dismissed as having no merit.

23. I make some general observation about grounds of appeal submitted in this case:

- i) It lacked particularity, which is required under section 311 of the CPC. Vaguely worded grounds of appeal are insufficient. They do not assist the court or counsel for the respondents both of whom are entitled to be properly apprised of the matters complained of: see Gates J[then was] in State v Flour Mills of Fiji Ltd [2002] FJHC 310;HAA 009 of 2001.
- ii) Most of the claim by the appellant's were based on matters not even raised in the trial in the magistrates court. It should be clear to appellants that the High Court will rarely consider evidence not led in the trial, in the court below. A High Court sitting as an appellate court is a court of review based on the written records of the trial in the Magistrates' Court. It does not and will not entertain material not adduced as evidence in the court below: Suren Prasad v State [2002]FJCA 85 ; AAU 0052 of 1999.

ORDER

24. I make the following: I dismiss the appeal in this case as having no merit.

Isikeli Mataitoga

JUDGE

20 February 2009.