

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

Appellate Jurisdiction

CRIMINAL APPEAL NO. AAUOO38 OF 2007

BETWEEN : EPI BATIREREGA Appellant

AND : THE STATE Respondent

Before the Honourable Judge of Appeal Mr Justice John E Byrne

Counsel : Appellant - In Person
P. Bulamainaivalu for the Respondent

Date of Hearing &
Ruling : 3rd June 2008

R U L I N G

- [1] The Appellant seeks leave to appeal against his conviction by the High Court in Lautoka on the 15th of March 2007 on a charge of ***Robbery With Violence***. By Section 21(a) of the Court of Appeal Act the appeal lies only on a question of law. The appellant argues that the learned Trial Judge misdirected the assessors on identification and seeks leave to appeal on that ground.
- [2] An identification parade was conducted and the principal witness for the Prosecution pointed out the Accused. The Judge told the assessors that there was evidence of no coaching of the complainant nor could the complainant from where he was

brought, have had a view of the Appellant being brought to the line-up. This was a summary of the evidence of Inspector Shanti Lal who conducted the identification parade. The victim of the robbery also identified the Appellant from about 200-300 photographs some three days later after the arrest and later at the identification parade. The learned Judge said that of course, his subsequent identification from the photographs and his identification in the parade would be based on his original identification and he told the assessors that this is what they had to scrutinize with care.

- [3] The learned Judge in charging the assessors said that the evidence that the Appellant was the main perpetrator came from Shan Ali, the victim, himself. Shan Ali had given evidence that when the Appellant turned his face up in the van, he saw his face from one foot away and had a good look at him for about a minute. He said it was the Appellant who was a tough looking person and wore grey around his neck.
- [4] The Judge then said that in any matter that involved identification he was required to give the assessors certain directions and he then did so. It was what lawyers call a normal Turnbull direction. This is a reference to the case of R -v- Turnbull [1977] Q. B. 224 which was a Decision of a five-member Court of Criminal Appeal in England in July 1976. The Court was what lawyers call a Strong Court, consisting of Lord Widgery, C. J. Roskill and Lawton and L. J J, and Cusack and May J J.
- [5] Raymond Turnbull was one of five other Defendants convicted between the 13th of November 1974 and 11th February 1976 on

various charges. They appealed to the Court of Criminal Appeal on the ground that the identification evidence against each of them was unsafe and that therefore their convictions should be quashed.

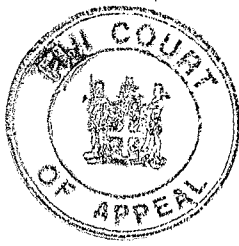
- [6] Because of the importance of this question and for the guidance of Judges directing juries and the legal profession, the Court of Criminal Appeal laid out certain guidelines which have since become known as Turnbull guidelines.
- [7] **R -v- Turnbull** did not purport to change the law but it provides a most valuable analysis of the various circumstances which common sense suggests or experience has shown may affect the reliability of a witness's evidence of identification and make it too dangerous in some of the circumstances postulated to base a conviction on such evidence unless it is supported by other evidence that points to the Defendant's guilt.
- [8] At page 6 of his directions the learned Trial Judge gave a Turnbull direction and said that there is a special need for caution before accepting identification evidence. He said this is because mistakes have been made even by relatives in the matter of identification and honest witnesses can be mistaken. He told them that they had to examine closely the circumstances of the identification of the Appellant and were to ask themselves such questions as:

- a) How long did the witness observe the Accused?
- b) In what light?

- c) Was there any obstruction between the Accused and the witness?
- d) Did the witness have any special reason for noticing the Accused?
- e) How much time elapsed between the original sighting and the subsequent identification to the police?
- f) Was the identification that of a stranger or had the witness seen or known the Accused before?

[9] I can find no fault in this direction. Having received it the assessors considered their opinion and found the Appellant guilty.

[10] The Appellant questioned the credibility of the victim of the robbery on the ground that he had attended the same school in Lautoka but at different times from that alleged by the victim. In my Judgment even if these dates were different, they have no bearing on the evidence given at the trial. There was ample evidence in my Judgment on which the assessors could believe the victim's evidence and disbelieve the Appellant. I am therefore satisfied that the conviction was correct and I refuse leave to appeal.



John E. Byrne
[John E Byrne]
JUDGE OF APPEAL

At Suva

3rd June 2008