

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 064 OF 2010S

STATE

VS

JOSAIA MURIMURI

Counsels : Ms. Waleen M. George for the State
Accused in Person
Hearing : 7th May 2010
Ruling : 4th June 2010

R U L I N G

1. On 5th January 2010, the accused appeared in the Navua Magistrate Court, on the following charge:

FIRST COUNT

Statement of Offence

ROBBERY WITH VIOLENCE: contrary to section 293(1) (b) of the Penal Code, Act 17.

Particulars of Offence

JOSAIA MURIMURI, on the 31st day of December 2009, at Tokotoko Back Road, Navua in the Central Division, robbed **ASISH CHAND f/n SUHIL CHAND** of cash \$10.00 and at the time of such robbery did use personal violence to the said **ASISH CHAND f/n SUSHIL CHAND**.

SECOND COUNT

Statement of Offence

ROBBERY WITH VIOLENCE: contrary to Section 293(1)(b) of the Penal Code Act 17.

Particulars of Offence

JOSAIA MURIMURI, on the 31st day of December 2009, at Tokotoko Back Road, Navua in the Central Division, robbed **SUSHIL CHAND f/n SHAM BHAGAT** of cash \$75.00 and at the time of such robbery did use personal violence to the said **SUSHILCHAND f/n SHAM BHAGAT**.

2. The matter was then called six times in the Magistrate Courts, on various pre-trial matters. On the 22nd March 2010, the learned Resident Magistrate made the following comments in the court record:

"This is an offence under section 293(1) of the Penal Code. An indictable offence. By an oversight this case has not been transferred to High Court. Acting in terms of section 191 of the Crimes Procedure Decree 2009, this case is transferred to High Court... Mention on 9th April 2010 in High Court."

3. On 9th April 2010, the matter first came before the High Court for mention. The prosecutor sought time to file and serve the information and disclosures. On 23rd April 2010, the matter came before the High Court again. The prosecution advised the court that the learned Resident Magistrate transferred the case to the High Court out of his own motion. The accused said, he wanted to be tried in the Magistrate Court, and asked for the case to be sent back to the Magistrate Court, for trial. The prosecution did not object to that suggestion. The court called for written submission from the prosecution, as an officer of the court, and because the accused was unrepresented. It then heard the parties on 7th May 2010.
4. The accused is now charged in the High Court on two "robbery with violence" offences, contrary to section 293(1)(b) of the Penal Code, Chapter 17. The charges were somewhat similar to the charges in the Magistrate Court. The charges were signed by the Director of Public Prosecution on 20th April 2010. However, since we are now operating under the Criminal Procedure Decree 2009, which came into force on 1st February 2010, the trial court for the present charge will have to be determined in accordance with the terms of the Criminal Procedure Decree 2009.

5. Section 4(1) of the Criminal Procedure Decree 2009 reads as follows:
- 4.—(1) Subject to the other provisions of this Decree—**
- (a) *any indictable offence under the Crimes Decree 2009 shall be tried by the High Court;*
 - (b) *any indictable offence triable summarily under the Crimes Decree 2009 shall be tried by the High Court or a Magistrates Court, at the election of the accused person; and*
 - (c) *any summary offence shall be tried by a Magistrates Court.*
6. Section 298 of the Crimes Procedure Decree 2009 reads as follows:
- 298. *The Criminal Procedure Code [Cap. 21] and the Electable Offences Decree are repealed.***
7. Section 301(1) of the Crimes Procedure Decree 2009 reads follows:
- 301.—(1) *A court hearing any proceeding for an offence which was commenced prior to the commencement of this Decree may apply the provisions of this Decree if no judgment has been made in the case and no sentence has been imposed on the offender prior to the commencement of this Decree.***
8. Section 5(1) and (2) of the Crimes Procedure Decree 2009 reads as follows:
- 5. – (1) *Any offence under any law other than the Crimes Decree 2009 shall be tried by the court that is vested by that law with jurisdiction to hear the matter.***
- (2) *When no court is prescribed in any law creating an offence and such offence is not stated to be an indictable offence or summary offence, it may be tried in the Magistrates Court in accordance with any limitations placed on the jurisdiction of classes of magistrate prescribed in any law dealing with the administration and jurisdiction of the Magistrates Courts.***
9. Section 7(1) and (2) of the Crimes Procedure Decree 2009 reads as follows:
- 7.—(1) A magistrate may, in the cases in which such sentences are authorised by law, pass the following sentences, namely—**
- (a) *imprisonment for a term not exceeding 10 years; or*
 - (b) *fine not exceeding 150 penalty units.*
- (2) A magistrate may impose consecutive sentences upon a person convicted of more than one offence in a trial, but in no case shall an offender be sentenced to imprisonment for a longer period than 14 years.**

10. The repeal of the Criminal Procedure Code, Chapter 21, and the Electable Offence Decree, from the 1st February 2010, meant that the old ways of doing things under those procedural laws have now changed. In terms of procedure, all criminal offences will now have to conform with the requirements of the Criminal Procedure Decree 2009.
11. The Criminal Procedure Decree 2009 categorized criminal offences into two subgroups. First, are those offences emanating from the Crimes Decree 2009. For these types of criminal offences, the courts in which they would be tried are those determined by the terms of section 4(1) and (2) of the Crimes Procedure Decree 2009.
12. The second category of criminal offences were those that fell outside the Crimes Decree 2009. This arguably, would include offences under the Penal Code, Chapter 17, after the 1st of February 2010. It would also include, arguably, other criminal offences, arising under other legislations. The courts in which the offences are to be tried, are those outlined in Section 5(1) and (2) of the Criminal Procedure Decree 2009.
13. Section 5(2) of the Criminal Procedural Decree 2009, envisaged a criminal offence, created outside the Crimes Decree 2009, before or after the 1st February 2010, which fall within the jurisdiction of the Magistrate Courts. The jurisdiction of the Magistrate Court per count is outlined in section 7(1) of the Criminal Procedure Decree 2009, and for more than one count, in section 7(2) of the above 2009 Decree. In other words, in terms of imprisonment, the Magistrate Court is empowered to pass a maximum sentence of 10 years imprisonment per count, or 14 years imprisonment for more than one count.
14. Criminal cases, outside the Crimes Decree 2009, whose penalties goes beyond the powers of the Magistrate Court, as outlined above, will have to be dealt with under

Section 5(1) of the Criminal Procedure Decree 2009. Arguably, in most cases, this will be in the High Court.

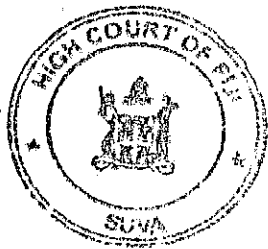
15. So in terms of a criminal offence outside the Crimes Decree 2009, a Magistrate, when exercising her or his power to transfer a proceeding to the High Court, pursuant to section 191 of the Criminal Procedure Decree 2009, must carefully consider the terms of section 5(1) and (2) of the Criminal Procedure Decree 2009. They must take on board Lord Parker's C.J. observation in R v King's Lynn Justices, Ex parte Carte and Others [1968] 3 ALL E. R. 858, at p. 859:

"If at any time during the inquiry into the offence [and I pause there to add 'inquiry into the offence as examining magistrates'] it appears to the court, having regard to any representations made in the presence of the accused by the prosecutor or made by the accused, and to the nature of the case, that the punishment that the court has power to inflict under this section would be adequate and that the circumstances do not make the offence one of serious character and do not for other reasons require trial on indictment, the court may proceed with a view to summary trial".

16. Take for example, this case. The two "robbery with violence" offences (Count No.1 and 2) allegedly occurred on 31st December 2009. The accused was first brought to the Magistrate Court on 5th January 2010. The Criminal Procedure Code, Chapter 21, and the Electable Offence Decree were still applicable for the next 26 days. The case was called on 13th and 27th January 2010 for some pre-trial matters. The case was next called on 10th February 2010. By then, the Criminal Procedure Code and the Electable Offence Decree have been repealed on 1st February 2010. The two counts were therefore criminal offences outside the ambit of the Crimes Decree 2009, and therefore sections 301(1) and sections 5(1) or 5(2) of the Criminal Procedure Decree 2009 becomes applicable.
17. At this point, the Magistrate must take into account what Lord Parker C.J. said above: R v King's Lynn Justices, Ex Parte Carte and Others (supra). Count No.1 involved a robbery involving \$10. Count No.2 involved a robbery involving \$75. The victim was not seriously injured during the offence. If found guilty after a trial,

the accused is not likely to get a prison sentence beyond 10 years, given present case precedents. A fine and a suspended prison sentence is not remote, if the accused is a first offender. The accused wanted trial in the Magistrate Court. The prosecutor did not object to that. In terms of section 5(2) of the Criminal Procedure Decree 2009, and even section 5(1) of the same Decree, the Magistrate is empowered to deal with the matter summarily. Only in extremely serious and complex cases, should the Magistrate use his powers under section 191 of the Criminal Procedure Decree 2009 to transfer cases, outside the Crimes Decree 2009, to the High Court. Note that the powers of the accused and/or the prosecutor to demand a High Court trial, as previously available before the 1st February 2010, no longer exist. An application by the prosecutor is now subject to the Magistrate's decision, pursuant to section 188(2) of the Criminal Procedure Decree 2009.

18. In this case, the nature of the case and its surrounding circumstances were not of a very serious character, to require trial with the aid of assessors. In my view, pursuant to section 5(2) of the Criminal Procedure Decree 2009, this case ought to have been tried summarily in the Magistrate Court. In my view, the learned Resident Magistrate erred when he transferred the same to the High Court for trial, on 22nd March 2010. I direct that this case be sent to the Magistrate Court to be tried summarily, as soon as possible, in accordance with section 5(2) of the Criminal Procedure Decree 2009.



AT Suva
4th June 2010

Salesi Temo
ACTING JUDGE