

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0019 OF 2001S

IN CHAMBERS

BETWEEN:

NANISE WATI

APPLICANT

AND:

THE STATE

RESPONDENT

Before: Tompkins JA

Hearing: Tuesday 26 August 2003

Counsel: Ms M. Waqavonovono for the applicant
Mr Allan for the respondent

Decision: Tuesday 26 August 2003

JUDGMENT OF TOMPKINS JA

[1] The applicant was jointly charged with Daniel Wali of the murder of Reena Bibi. Both accused pleaded not guilty. Following a trial in the High Court in Suva that commenced 12th August, 1999, both the accused were, on 20th September, 1999, convicted of murder and sentenced to life imprisonment.

[2] The applicant has deposed that on the day of her conviction and sentence she was told by her lawyer that he would lodge an appeal. He did not do so.

[3] The co-accused appealed. The appeal was heard by this Court on 22 May 2001. By its judgment delivered on 24th May, 2001 the appeal was allowed, the conviction and sentence were quashed and a new trial was ordered. The appeal was allowed on the ground that the direction by the trial judge on the corroboration of the evidence of an accomplice was inadequate. At his retrial the co-accused was acquitted on the charge of murder.

[4] The applicant applied to the Legal Aid Commission for legal aid on 6th August, 2001 but was advised by the Commission to seek leave to appeal out of time before her application for legal aid was processed.

[5] In August 2001 (the letter is undated) the applicant wrote to the Chief Registrar of this court asking for leave to appeal out of time. For reasons that are not apparent from the court file, the court failed to act on that letter. Mr Allan for the State accepts that that letter should be taken as an application for leave to appeal out of time.

[6] Since 1997 the applicant has been a psychiatric patient at the St Giles Hospital suffering from an acute psychotic disorder namely schizophreniform psychosis.

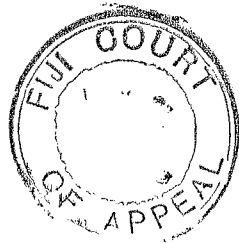
[7] The applicant has now filed a formal application for leave to appeal out of time and affidavit in support. Mr Allan for the State accepts that in the circumstances, leave to appeal out of time should be granted.

[8] Accordingly I make an order granting the applicant leave to appeal out of time on the grounds set out in the draft grounds of appeal. The notice of motion on appeal is to be filed within 14 days of the date of this judgment.

[9] Ms Waqavonovono has indicated that the Commission will be applying to this Court for an order under s 30 of the Court of Appeal Act appointing a counsel to represent the applicant.

[10] This application for the appointment of counsel is to be heard in the first week of the November sittings of this Court following the determination by this Court of the similar application in *Setariki and Masidole v the State* CA No AAU0021 of 2002S and

AAU0058 of 2002S . The applicant's appeal against conviction is to be heard during the second fortnight of the November sittings of the Court.



A handwritten signature in black ink, appearing to read "Tompkins", is written over a horizontal line.

Tompkins JA
Justice of Appeal

Solicitors:

Office of the Legal Aid Commission, Suva for the applicant
Office of the Director of Public Prosecutions, Suva for the respondent