

IN THE COURT OF APPEAL, FIJI ISLANDS

CRIMINAL APPEAL NOS. AAU0004
& AAU0005 OF 2006
(High Court Criminal Action HAC029 of
2005L)

BETWEEN:

ALESI NALAVE
KELERA MARAMA

Applicants

AND :

THE STATE

Respondent

Counsel: Appellants in person
A Prasad for respondent

Hearing: 9 January 2007

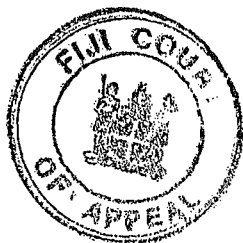
Ruling: 11 January 2007

R U L I N G

- [1] On 6 September 2005, the appellants were convicted, on their pleas of guilty, of a murder committed on June 2004. It appears Notices of Appeal were sent from the prison to the High Court on 15 September 2005 but received no response. They next wrote to this Court and it was received on 18 January, 2006. I first received the file on 20 January 2006 and, the same day, requested that the High Court file and a copy of the summing up be attached and returned. The request for the summing up was based on the grounds of appeal which, although stated to be against sentence only, included grounds clearly challenging the conviction.

- [2] It would appear my instruction was taken as a request for the record so it was set aside for transcription. On 15 May 2006, the Director of Public Prosecutions wrote to the Court registry asking the status of the case and was advised that the file had been requested but had still not been received. The file and the transcribed notes were received by the Court on 4 December 2006. These delays should not have occurred and are regretted.
- [3] The record shows that the case had been called before Connors J on 1 October 2004 and the appellants pleaded not guilty. They were represented by Ms Nair and Mr Naivalu respectively and were both released on bail. After a number of adjournments before Govind J, the trial was listed before Connors J for hearing on 31 August 2005. The appellants were still represented by the same counsel and the charges were amended by changing the date and the name of the victim. The appellants pleaded not guilty to the amended charge and the hearing commenced with a trial on the voir dire apparently before the assessors were sworn.
- [4] The prosecution called nine witnesses on that day and two more the following day. Both appellants then gave evidence and the record shows the ruling on the voir dire was given the same day although it is dated 2 September 2005. Counsel for the first appellant immediately sought leave of the court to withdraw because of conflicting instructions, lack of instructions and ethical reasons. Shortly afterwards she gave details of her difficulties and was allowed to withdraw. The court asked if another lawyer, Mr Shah, who was apparently in court at the time, could represent her and he was given until the following morning to take instructions.
- [5] Mr Shah did take the case on. The charge was put again and the appellants both pleaded guilty. It was necessary then to adjourn the case to obtain up to date records and, on that day, following mitigation, the appellants were sentenced to mandatory life imprisonment. The judge specifically declined to fix a minimum term.

- [6] The grounds of appeal filed by each appellant show they are challenging the conviction. It became apparent in the chambers hearing before me, that neither of the appellants appreciated that there had only been a trial on the admissibility of the statements. Both appellants told the Court that they had changed their pleas because they were told by counsel that they might receive a shorter sentence in consequence. It should be added that the record shows both defence counsel referred to the mandatory sentence for this offence during mitigation.
- [7] However, in all the circumstances, I consider that the appellants should be given leave to appeal against conviction and sentence. It will be for the full Court to decide whether there is any evidence of equivocation.
- [8] I had indicated to the appellants that I would consider whether to ask counsel to explain the advice they gave the appellants when the pleas were changed. The appellants were willing to waive privilege for that purpose. However, I do not feel that would be necessary or appropriate as the test will be whether there is any support in the record for a suggestion that this was an equivocal plea.
- [9] I accept the appeal was initially filed in time and so leave to appeal out of time is not necessary. I grant leave to appeal against conviction and sentence.
- [10] The respondent has not received some of the papers in this case and I order that they be given a full record. The case should be listed before me in chambers again on the 18 January 2007 at 9.30am.



A handwritten signature in cursive script, appearing to read "Gordon Ward".

Gordon Ward
PRESIDENT