

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

Criminal Appeal No. AAU 0058/06
(High Court Criminal Case No. HAC 48/05S)

BETWEEN:

SIRELI ROBALENAIVALU

Appellant

AND

THE STATE

Respondent

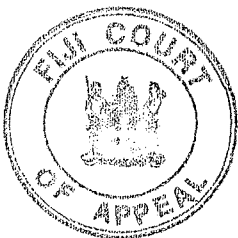
V. Vosarogo for the Appellant

K. Kuruisaqila for the Respondent

DECISION

- [1] This is an application, filed on 6 November 2006 for leave to appeal out of time against a sentence of seven years imprisonment imposed on the Appellant by the High Court at Suva on 2 December 2005. The Appellant (together with another man Navitalai Vecenavura) pleaded guilty to one count of robbery with violence.
- [2] The Appellant, together with Vecenavura and a third man, Aisake Tanidrala met on the night of 27 May 2005. They drank alcohol and smoked marijuana. They decided to invade the home of an elderly Chinese couple Chan Yin Kee and his wife Lixi Aoli in order to obtain money to go to a rock concert.

- [3] Very early the following morning, armed with pliers, the three men went to the house and entered the compound. When Chan Yin Kee came out he was assaulted by Aisake Tanidrala with a piece of wood, a cane knife and another sharp knife. As a result of this assault Chan Yin Kee perished. The three men then turned to his wife. Lixi Aoli was tied up and gagged and \$500 in cash was stolen from her. Other items of value were also stolen from the house before the three men left.
- [4] In her sentencing remarks, the High Court judge described what had occurred as a "truly horrible incident". In my view that description was entirely appropriate. The judge took into account the Appellant's early guilty plea and his expression of remorse. She also treated him as a first offender although in fact he had two previous convictions for petty offences.
- [5] The maximum sentence for the offence of robbery with violence with which the Appellant was charged (Section 293 (1) (b) of the Penal Code) was life imprisonment. In my view there is nothing to suggest that the judge failed to take into account any of the relevant factors. The proposition that the sentence imposed was manifestly excessive is simply unarguable. In these circumstances leave to appeal out of time is refused.



20 April 2007

A handwritten signature in black ink, appearing to read "M.D. Scott", is written above the printed name.

M.D. Scott
Resident Justice of Appeal