

File

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

CRIMINAL APPEAL NO. AAU0084 OF 2008
(High Court Criminal Action No. HAC 136 of 2007L)

BETWEEN: KALIOVA RASAKU
Appellant

AND: THE STATE
Respondent

Date of Hearing: Monday, 18th October 2010

Counsel: Appellant in Person
 Mr. M. Korovou for the Respondent

Date of Ruling: Monday, 18th October 2010

RULING OF THE COURT

This morning 18th October 2010 I heard an application before me as a Single Justice of the Court of Appeal for leave to appeal by Kaliova Rasaku.

Out of an incident in which a passenger dismounting from a vehicle got involved with two men standing at the bus stop, that passenger Mr Sukumana Kitone received head injuries from which he died. This incident occurred at about 3.20 a.m. on 18th August 2007.

After a trial in the High Court before Mr Justice Govind and assessors Kaliova Rasaku (D1) and Netani Momoivalu (D2) were convicted of murder on 16th July 2008.

I was told by Mr Korovou appearing today for the State that last month Netani Momoivalu obtained leave to appeal and that the appeal is fixed for 2.15pm on 12th November 2010.

Since both Mr Rasaku and Mr Momoivalu had been drinking alcohol quite heavily on the lead up to this event it seems that both men, who were represented at trial, relied on not being able to form the necessary specific intent for murder on account of intoxication.

The following grounds of appeal appear in a letter from Mr Rasaku dated 24th July 2008:

"Appeal Against Conviction

(1) The Learned Trial Judge erred in law and in fact in not properly directing the Assessors in respect of intoxication when he failed to inform the Assessors that the Prosecution had the burden of proving specific intent and knowledge.

(2) The Learned Trial Judge failed to direct the Assessors that the recollection of events contained in the Caution Interview ought not to be relied upon as suggesting intent and knowledge on my part at the time of the fighting considering the amount of intoxication."

I am told that Mr Netani Momoivalu is appealing on similar grounds.

I consider that it would more just and equitable if both of these young men, who were of good character before this event were treated in the same way. They were co-accused at trial facing the same charge of murder and it would be unjust to Mr Rasaku if he were refused leave to appeal while Mr Momoivalu was granted leave to appeal.

I direct that the appeals be heard together on 12th November 2010.

Mr Rasaku will be representing himself and I have asked him to send his submissions in writing to the Registry as soon as possible and by 28th October 2010.

I direct that if in the circumstances the State requires a few days more to respond in the matter they shall have some latitude.

In these circumstances I grant Mr Rasaku leave to appeal to the Court of Appeal.

DATED at Suva this 18th day of October, 2010.



A handwritten signature in cursive script, reading "William R. Marshall".

Hon. Justice William R. Marshall
Justice of Appeal