

IN THE COURT OF APPEAL
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0074 of 2011
(High Court Criminal Action No. HAC 121 of 2010)

BETWEEN : **LAIASIA NIGANI**

Appellant

AND : **THE STATE**

Respondent

Coram : **Chandra JA**

Counsel : **Appellant in person.**
Mr M Korovou for the Respondent

Date of Hearing : **23 October 2013**

Date of Ruling : **5 November 2013**

RULING

1. The Appellant was charged in the High Court at Lautoka on two counts, firstly for wearing a uniform without lawful authority contrary to section 382(1)(b) and the secondly with rape contrary to section 207(1) (2) of the Crimes Decree.
2. He pleaded guilty on the first count and was convicted of same and on the second count of rape he was tried and was found guilty and sentenced on 3rd November 2010 to eight years imprisonment with a non-parole period of six years.
3. The Appellant has filed a petition of appeal on the 28th of July 2011 which is more than eight months after he was sentenced.

4. In his petition of appeal he has set out the following grounds of appeal as regards his sentence:
 - i. That the sentence of eight years is excessive and harsh.
 - ii. The learned sentencing Judge erred in law while passing the sentence and not considering the Appellant as a first offender.
 - iii. That the Appellant's sentence is unsafe and unsatisfactory.

5. Since his appeal has been filed after the lapse of the 30 days granted in terms of Section 26(1) of the Court of Appeal Act (cap.12), he has delayed filing his appeal by over eight months. In a letter written to the Registry he has sought to explain his delay basing it on his ignorance of the appeal procedure.

6. It has been the practice in criminal appeals to grant some latitude of about three months regarding appeals filed out of time. However, if it is a period beyond that time the discretion of granting any latitude is less likely to be granted. **Koro -v- State** [2008] Cr. App. No.AAU0028 of 2008, 14 May 2008.

7. The only reason that has been adduced by the Appellant has been the fact that he has been ignorant of the appeals procedure which is a reason that would not be acceptable. Therefore it would be necessary to consider the strength of the appeal of the Appellant.

8. The victim in this case was sixteen years old when the offence was committed. The tariff regarding sentencing of victims of rape who are young is between 10 and 16 years. **State - v- Tamanitoakula** Cr. Case No.HAC 28 of 2010, 2 September 2010.

9. In sentencing the Appellant the learned trial Judge had commenced his sentencing at seven years which has been at a fairly lower level. He had taken into account the aggravating factors such as luring the victim away with him by the deceit of being a Naval person and the use of violence to subdue her and added four years.
10. The learned trial Judge had considered the mitigatory factors of the Appellant being 29 years old and caring for a very elderly step mother and asking for forgiveness and deducted three years to impose the sentence of 8 years and setting a minimum of 6 years.
11. The Appellant has got a fairly lenient sentence considering the sentences that have been imposed in similar cases and his grounds of appeals that the sentence is harsh and excessive and being unsatisfactory have no merit.
12. In the circumstances of the case, a consideration of the grounds urged shows that there is no merit in the appeal of the Appellant and therefore his delay in filing his appeal cannot be excused and he is denied an extension of time.
13. In addition since the appeal has no merits and the grounds urged being frivolous it would attract the application of section 35(2) of the Court of Appeal Act (Cap.12) and the application of leave is dismissed as it is frivolous and vexatious.

Order of Court:

1. Application for leave to appeal for extension of time is refused.

2. The Application for leave to appeal is dismissed in terms of section 35(2) of the Court of Appeal Act (Cap.12) as it is frivolous and vexatious.

Suresh Chandra
Resident Justice of Appeal