

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL NO. AAU 77 of 2010
(High Court Criminal Action No. HAC 28 of 2010)

BETWEEN : **ASAELI TAMANITOAKULA** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Chandra RJA**

Counsel : **Appellant in person.**
Ms. T. Leweni for the Respondent

Date of Hearing : **29 January 2013**

Date of Judgment : **7 June 2013**

RULING

1. This is an application for leave to appeal out of time against conviction and sentence.
2. The Appellant was charged with one count of indecent assault contrary to section 154(1) of the Penal Code and 15 counts of rape. 13 of these counts were under sections 149 and 150 of the Penal Code and 2 under sections 206 and 207 of the Crimes Decree of 2009.
3. The case was initially taken up in the Magistrate's Court on 19th March 2010 the plea was deferred to non availability of legal representation.

4. On 30th March 2010 the Appellant retained counsel and the case was transferred to the High Court.
5. On 14 May 2010 the case was transferred back to the Magistrate Court for hearing and the charge was amended.
6. The case was adjourned thereafter on several dates and on 12 July 2010 the Appellant waived the right to have legal representation and pleaded guilty to all the charges. The learned Magistrate instructed the Appellant to have assistance from the Legal Aid Commission and adjourned the case.
7. On 2 August 2010 the learned Magistrate acting in terms of section 190 of the Criminal Procedure Decree transferred the case to the High Court.
8. On 16 August when the case came up before the High Court the Appellant pleaded guilty to all the charges. But the prosecution had moved to amend the charges and the case was adjourned.
9. On 25 August 2010 the Appellant was legally represented and pleaded guilty to all the charges and he was convicted on all accounts.
10. On 2 September 2010 the Appellant was sentenced to 3 years imprisonment on count one and 16 years imprisonment for the other counts, the sentences to run consecutively.

11. By letter dated 22 September 2010 filed in the Registry of the Court of Appeal on 13 October 2010 the Appellant sought leave to appeal against his conviction and sentence.
12. The grounds of appeal adduced in his application for leave to appeal are:
 1. That his plea of guilty was unequivocal because of the threat made on his life by Police Officers.
 2. That the victim was a willing partner and had consented to the acts of sexual intercourse and therefore he had been recklessly charged by the Police.
 3. That he had been convicted on his own plea of guilt and that the summary of facts did not contain evidence of the offence charged.
 4. That the sentence was too harsh and excessive.
13. The victim of the offences committed by the Appellant was his daughter who was 14 years old. In his caution interview the Appellant had admitted having sex with her daughter after threatening her.
14. Although the Appellant has in his letter stated that he is appealing out of time, the date of the letter is within the appealable period although it had been filed after the appealable period on 13 October 2010 which was 12 days late. Considering the fact that there are delays sometimes in transmitting such appeals from the prison to the Registry I allow the application for leave to appeal out of time.
15. When he pleaded guilty the Appellant was represented by Counsel who would have explained to him about the charges against him and the effect of a plea. The ground that his guilty plea was unequivocal would not be acceptable in such circumstances.

16. The fact that the victim was a willing partner is not a defence since the victim was 14 years at the time of the offence. He had in any event committed the offences having threatened the victim which was admitted by him.
17. As stated above the Appellant had pleaded guilty when he was represented by Counsel and therefore the fact that he was found guilty on his own plea and that the summary of facts did not contain evidence of the offence committed is unacceptable.
18. In the above circumstances the application for leave out of time is allowed but his application for leave to appeal is refused in terms of Section 35(2) of the Court of Appeal Act as it has no basis and therefore is a frivolous and vexatious application.

Orders of Court:

1. Application for leave to appeal out of time is allowed.
2. Application for leave to appeal is refused in terms of Section 35(2) of the Court of Appeal Act.

Suresh Chandra
Resident Justice of Appeal