

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO. AAU0051 OF 2014
(High Court Criminal Case No. HAC054 of 2012)

BETWEEN : **TIMOCI ALUSEINI**
Appellant

AND : **THE STATE**
Respondent

Before : The Hon. Justice Daniel Goundar

Counsel : Mr. S. Waqainabete for the Appellant
Mr. S. Vodokisolomone for the Respondent

Date of Hearing : 6 July 2016

Date of Ruling : 15 July 2016

RULING

[1] This is an untimely application for leave to appeal against conviction only. The appellant was convicted of rape and sentenced to 10 years imprisonment with a non-parole period of 8 years in the High Court at Labasa. The appeal is late by 7 months. The reasons for the delay are explained in the appellant's affidavit as follows:

- 1) After my conviction I was sentenced, however due to my age and lack of formal education I languished in prison until a prison inmate in Suva Prison assisted me in the filing of my appeal.
- 2) I had been tried and sentenced in Labasa and initially I was sentenced and served at the Vaturekuka prison.
- 3) After serving for a little while I was moved to Suva Prison and in the process I lost touch with my documentation.

- 4) It was not until I reached Suva Prison that I managed to obtain copies of the same.
- 5) During that time and also as aforementioned I received no assistance and neither could I have been able to assist myself.
- 6) It was only when I got into Suva prison and received my disclosures that an inmate assisted me.

[2] In my opinion, the length of the delay is considerable and the reasons are not compelling. The real question is whether there is a ground of appeal that will probably succeed (*Rasaku v State* unreported Cr. App No CAV0009/13; 24 April 2013).

[3] The initial grounds of appeal were filed by the appellant in person. Counsel for the appellant has made no attempt to re-draft those grounds in proper form. In his own words the appellant advances the following grounds:

1. The victim's evidence lacked corroboration and it consistent mostly on Indecent Assault which still requires corroboration in sexual offence matters.
2. The evidence of her father does not help the charge of Rape either. The victim herself in her statement to the police she said her father was inside the house but not present when the appellant put his hand in her private part.
3. The medical report was based on the statement of the victim's mother whose evidence was "mere hearsay" because she was at work at that material time. The Doctor had failed to put into words that were spoken out of the victim.
4. The time of the incident and the record of the medical report raise doubt as to why victim was taken for medical examination at 7 pm when the incident took place shortly after school at 3.30 pm.

[4] The first ground is misconceived. The victim gave evidence. At the time of the offence, she was six years old. She gave evidence that the appellant had penetrated her vagina with his finger. When the offence was committed, the requirement for corroboration warning had been abolished by law. In other words, the victim's evidence was sufficient to convict the appellant without the need to look for corroboration.

- [5] The second ground has no substance. The victim's father witnessed the assault. He saw the appellant's hand under the victim's skirt. When the appellant realised that the victim's father had seen him with his hand under the victim's skirt, he walked away. The evidence of the victim's father was direct evidence of the assault on the victim. It was not circumstantial evidence requiring special direction as submitted by counsel for the appellant.
- [6] A further ground was advanced by counsel for the appellant during leave hearing. Counsel submits that the history conveyed to the examining doctor by the victim's mother was hearsay evidence. I accept that the history conveyed to the doctor by the victim's mother was hearsay, but any objection to the admissibility should have been taken at the trial and not for the first time on appeal. In any event, there is no arguable ground to suggest that the trial judge based his decision to convict on hearsay evidence.
- [7] The victim was medically examined within 4 hours from the alleged assault. Medical examination revealed fresh injuries to the victim's genitals. The evidence against the appellant was overwhelming. I find this appeal not only unarguable, but also frivolous.

Result

- [8] Enlargement of time refused.
Leave refused.



.....
Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State