

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

CRIMINAL APPEAL AAU 0157 OF 2014  
(High Court HAC 41 of 2012)

BETWEEN : WAISEA RAMASIMA  
*Appellant*

AND : THE STATE  
*Respondent*

Coram : Calanchini P

Counsel : Mr S Waqainabete for the Appellant  
Mr M Korovou for the Respondent

Date of Hearing : 23 April 2018

Date of Ruling : 7 May 2018

RULING

[1] Following a trial in the High Court at Suva the appellant was convicted on six counts of rape and sentenced to terms of imprisonment of 10 years on each count to be served concurrently which was reduced by 5 weeks for time spent on remand with a non-parole

of 7 years. At the trial the three assessors had returned unanimous opinions of not guilty on all six counts. In a reasoned judgment delivered on 17 April 2014 the learned trial Judge disagreed with the assessors and convicted the appellant on all counts.

- [2] This application for an enlargement of time was filed in December 2014 and was called for mention in March 2016. It was not until February 2018 that the parties had filed the necessary papers for the application to be listed for hearing. This is the appellant's application for leave to appeal against conviction and sentence.
- [3] The factors to be considered for an enlargement of time are (i) the length of the delay, (ii) the reasons for the delay, (iii) whether there is a ground of merit justifying the appellate court's consideration or, where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed and (iv) if time is enlarged, will the respondent be unfairly prejudiced (Sinu and Kumar -v- The State unreported CAV 1 of 2009, 21 August 2012).
- [4] The appellant was sentenced on 23 May 2014. He filed his notice of appeal in person on 23 December 2014. He then engaged the Legal Aid Commission. At the first mention on 17 March 2016 the Court was informed that the appellant wanted to appeal both conviction and sentence. However an amended application for leave to appeal against conviction was not filed until 31 January 2018. The delays are substantial and the appellant has not given any compelling reasons for the long delays.
- [5] The complainant gave evidence at the trial. The Court accepts that finality in criminal litigation involving vulnerable complainants is an important consideration. Delays such as in the present case can cause anxiety and stress for the complainant. Consequently in this case the length of the delay does not point in favour of granting an enlargement of time.
- [6] It is therefore necessary to determine whether there is a ground of appeal that will probably succeed. The grounds of appeal against conviction are:

- "1. **THE** Learned Trial Judge erred in law and in fact when he did not consider the totality of the evidence led which would only raise more than a reasonable doubt to the case of the prosecution and are as follows:
- a. The delay of 9 months in reporting the matter to the police only supported the position of the Appellant that the complainant had freely consented to having sex;
  - b. The evidence stated by Ms Luisa who was the elder sister of the complainant's father when the complainant said when being questioned that the allegations against the appellant about rape are not true and she implicated him because she was afraid of Ms Luisa; and
  - c. The evidence of Appellant where he said that the complainant had consented to sex in all those occasions.
  - d. The Complainant sought forgiveness from the wife of the Appellant.
2. **THE** Learned Trial Judge erred in law and in fact when he speculated in his judgment when assessing the evidence led by the prosecution through the complainant regarding the 9 months delay in reporting the matter of police.
3. **THE** Learned Trial Judge erred in law and in fact when he did not properly consider that the Appellant does not agree with questions 67, 68, 69, 70, 71, and 72 and the respective answers in his caution interview."

[7] Although the appellant's initial notice of appeal against sentence identified 4 grounds of appeal, the submissions filed on behalf of the appellant did not address the sentence appeal and nor did Counsel refer to the sentence appeal in his submissions at the hearing.

[8] It was apparent during the course of submissions at the hearing that the principal issue in the application was whether the appellant had sexual intercourse with the complainant without her consent. The complainant was a student in her late teens whose age meant that lack of consent was an element that required proof beyond reasonable doubt. The offences occurred between April and October 2011. In December of that year the complainant informed her aunt that she was pregnant and that the appellant was the father. However there is some doubt whether during the course of that conversation the

complainant informed her aunt that the appellant had raped her. Furthermore it would appear that no complaint was made to the police until some 9 months after the last alleged incident of rape. There is also the suggestion that at one stage after the last incident of alleged rape the complainant had indicated that sexual intercourse had taken place with consent. The State has conceded that this evidence may not be consistent with the allegations of rape. This ground is sufficiently meritorious to grant an enlargement of time. The two remaining grounds are not sufficiently arguable to justify granting an enlargement of time.

- [9] The appellant has not made any submissions on the application in relation to the appeal against sentence. On consideration of the grounds in the appellant's notice of appeal and having read the sentencing decision there is no indication that there has been an error in the exercise of the sentencing discretion.

Orders:

1. *Enlargement of time granted.*
2. *Leave to appeal on ground 1 is granted.*
3. *Leave to appeal on grounds 2 and 3 is refused.*
4. *Leave to appeal against sentence is refused.*



*W. Calanchini*  
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Hon Mr Justice W. D. Calanchini  
PRESIDENT, COURT OF APPEAL