

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

CRIMINAL APPEAL NO. AAU 0069 of 2019
[In the High Court of Suva Case No. HAC 23 of 2019]

BETWEEN : **IMMANUAL SILAS KUMAR SIDAL**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, JA**

Counsel : **Appellant absent and unrepresented**
: **Mr. R. Kumar for the Respondent**

Date of Hearing : **27 August 2020**

Date of Ruling : **28 August 2020**

RULING

[1] The appellant had been charged in the High Court of Suva on one count of rape contrary to section 207(1) and (2) (a) of the Crimes Act, 2009 along with two others on similar counts.

[2] The appellant had been released on bail on 01 May 2019 by the High Court on several conditions including the stipulation he should reside indoors between 7.30 p.m. to 5.00 a.m. at Tuatua, Labasa pending trial. The appellant had made an application to vary his bail condition to change his place of residence to his home at Taveuni and it had been heard and refused by the High Court on 14 May 2019.

- [3] The appellant had then preferred an application on 21 June 2019 to the Court of Appeal under section 30(4) of the Bail Act to review the said refusal by the High Court seeking the variation of bail condition sought by him.
- [4] In the meantime, the High Court had heard the trial against the appellant from 01 to 04 June 2020 and the assessors had opined on 05 June 2020 that the appellant was not guilty along with his co-accused. The learned trial judge in his judgment delivered on 15 June 2020 had agreed with the assessors, found them not guilty and acquitted the appellant and the other two accused of the charges faced by them. Thus, the review application in this Court has been overtaken by those events that had happened in the High Court.
- [5] It appears that the appellant had been represented by his lawyers on 11 July 2019 (whether the appellant had been present or not is not clear) in this court where directions had been given by the then President of the Court of Appeal to take the matter forward. However, those directions had not been complied with. On the two subsequent dates *i.e.* 14 July 2020 and 27 August 2020 the appellant was absent and unrepresented though the Court of Appeal registry had notified his lawyers Maqbool & Company, Labasa of the relevant dates. Maqbool & Company on 14 July 2020 had informed the CA registry that the appellant had been tried and acquitted by the High Court and therefore, the ‘appeal’ can be struck out.
- [6] The court in the absence of the appellant and his lawyers on 27 July 2020 heard the state counsel on the present status of this matter and he made oral submissions and confirmed the position set out in the letter dated 14 July 2020 by Maqbool & Company and followed that with written submissions filed in the CA registry later in the day. The Court fixed the ruling into the matter for 28 August 2020 and the CA registry has notified the appellant’s lawyers, Maqbool & Company of the date of the ruling.
- [7] **Vakacereivalu v State** [2014] FJCA 126; AAU09.2011 (25 July 2014) Goundar J sitting as a single judge of the Court of Appeal remarked on a similar situation as follows.

[1] This is an application for leave to appeal against a decision of the High Court, refusing bail pending trial to the appellant. Whilst this appeal was pending, the appellant was convicted and sentenced to 8 years' imprisonment for robbery with violence by the High Court.

[2] Section 35(1) of the Court of Appeal Act gives a single judge power to grant leave to appeal against a bail decision. Section 35(2) gives a single judge power to dismiss a frivolous or vexatious appeal, or an appeal that is bound to fail because there is no right of appeal.

[3] Following the appellant's conviction, the issue of bail pending trial is academic. The appellant is no longer in custody on remand. He is now a serving prisoner. In these circumstances, this appeal against refusal of bail by the High Court cannot possibly succeed. The appeal is frivolous.

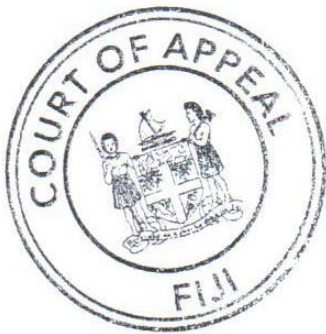
[4] The appeal is dismissed under section 35(2) of the Court of Appeal Act.

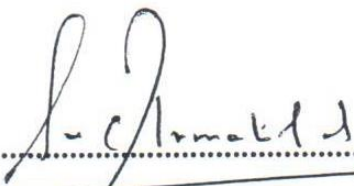
[8] Chalanchini P dismissed the appeal under section 35(2) of the Court of Appeal Act where the appeal under section 21(3) of the Court of Appeal Act against refusal of bail pending trial was pending in the Court of Appeal but the appellant had been tried and convicted in the High Court in **Faiyaz v State** [2019] FJCA 153; AAU51.2018 (19 July 2019). Chalanchini P had dismissed two similar appeals against refusal of bail pending trial in **Raivasi v State** [2018] FJCA 98; AAU0172.2016 (25 June 2018) and **Vunivesi v State** [2018] FJCA 99; AAU0177.2016 (25 June 2018) under section 35(2) of the Court of Appeal Act as during the time the appeal was pending in the Court of Appeal the trial had taken place in the High Court.

[9] In the circumstances, the appellant's application to review bail conditions has now become not only academic but also untenable in view of his acquittal. Therefore, following the previous precedents on section 21(3) of the Court of Appeal this application should be dismissed under section 35(2) of the Court of Appeal Act for having become frivolous and vexatious.

Order

1. Application to review bail conditions is dismissed.




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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL