

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

**CRIMINAL APPEAL NO.AAU 151 of 2019**  
**[In the High Court at Suva at Suva Case No. HAC 28 of 2018]**

**BETWEEN** : **SOKOWASA BULAVOU**

***Appellant***

**AND** : **STATE**

***Respondent***

**Coram** : **Prematilaka, RJA**

**Counsel** : **Mr. M. Fesaitu for the Appellant**  
: **Mr. R. Kumar for the Respondent**

**Date of Hearing** : **06 December 2022**

**Date of Ruling** : **07 December 2022**

**RULING**

[1] The appellant had been charged and convicted in the High Court at Suva on a single count of aggravated robbery contrary to section 311(1)(a) of the Crimes Act, 2009 committed on 14 January 2018 at Suva in the Central Division. He had been sentenced on 10 September 2019 to 07 years, 04 months and 03 days of imprisonment with a non-parole period of 05 years, 04 months and 03 days.

[2] Considering the appellant's appeal against conviction and sentence, the single judge of this court on 06 August 2021 allowed leave to appeal only against sentence. His bail pending appeal application too was refused. This is his second bail pending appeal application.

- [3] The complainant had been robbed of his wallet and mobile phone near Bad Dog Café, Suva on 14 January 2018. At around 0430 hours on 14 January 2018, the appellant together with 03 others had allegedly tackled the complainant from behind whilst he was walking with two of his friends after having drinks with his friends at a nightclub. While the victim was falling down due to the said tackle, the appellant had allegedly stolen the victim's Samsung J2 mobile phone and his wallet from his pockets. The complainant had then seen the person whom police arrested throwing a phone away which he later identified to be his. The complainant's friend (PW2) had seen the complainant on the ground with four boys surrounding him and a person crossing the road holding a phone. The police officer PC 4918 Jone Masirewa (PW3) had seen four individuals robbing the complainant and he had managed to catch a person who had taken the wallet and phone, which he later came to know as the Appellant. The police officer Pauliasi Sicinilawa (PW4) had arrested the appellant who threw a phone which the complainant confirmed to be his mobile phone.
- [4] The trial judge had, however, not been satisfied that the prosecution had led sufficient evidence regarding the circumstances under which PW2 and PW3 identified the appellant as the person who took the mobile phone or both the mobile phone and the wallet from the complainant considering the Turnbull Guidelines. Therefore, the judge had not relied on that evidence for identification. Nevertheless, the trial judge had concluded that it was manifestly clear that the phone stolen from the complainant was found in the possession of the appellant within a very short interval from the incident and in view of the doctrine of recent possession it had been inferred that the appellant stole the said mobile phone from the complainant and accordingly, he participated in committing the offence of aggravated robbery.
- [5] The Supreme Court recently delivered **State v Tawake** [2022] FJSC 22; CAV0025.2019 (28 April 2022) handing down sentencing guidelines for street mugging which are relevant to the determination of the appellant's appeal on sentence. The appellant has already served almost 03 years and 03 months of imprisonment after sentencing and prior to trial he had been in remand for 01 year and 08 months making the total incarceration 04 years and 11 months.

- [6] In view of *Tawake*, the appellant's sentence range could be 1-5 (low harm) or 3-7 (medium harm) years of imprisonment based on his having committed the offending with others.

*Law on bail pending appeal*

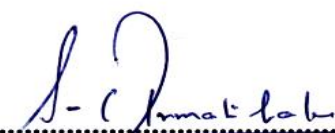
- [7] The legal position is that the appellants have the burden of satisfying the appellate court firstly of the existence of matters set out under section 17(3) of the Bail Act namely (a) the likelihood of success in the appeal (b) the likely time before the appeal hearing and (c) the proportion of the original sentence which will have been served by the appellants when the appeal is heard. However, section 17(3) does not preclude the court from taking into account any other matter which it considers to be relevant to the application. Thereafter and in addition the appellants have to demonstrate the existence of exceptional circumstances which is also relevant when considering each of the matters listed in section 17 (3). Exceptional circumstances may include a very high likelihood of success in appeal. However, appellants can even rely only on 'exceptional circumstances' including extremely adverse personal circumstances when he fails to satisfy court of the presence of matters under section 17(3) of the Bail Act [vide *Balaggan v The State* AAU 48 of 2012 (3 December 2012) [2012] FJCA 100, *Zhong v The State* AAU 44 of 2013 (15 July 2014), *Tiritiri v State* [2015] FJCA 95; AAU09.2011 (17 July 2015), *Ratu Jope Seniloli & Ors. v The State* AAU 41 of 2004 (23 August 2004), *Ranigal v State* [2019] FJCA 81; AAU0093.2018 (31 May 2019), *Kumar v State* [2013] FJCA 59; AAU16.2013 (17 June 2013), *Ourai v State* [2012] FJCA 61; AAU36.2007 (1 October 2012), *Simon John Macartney v. The State* Cr. App. No. AAU0103 of 2008, *Talala v State* [2017] FJCA 88; ABU155.2016 (4 July 2017), *Seniloli and Others v The State* AAU 41 of 2004 (23 August 2004)].
- [8] Out of the three factors listed under section 17(3) of the Bail Act 'likelihood of success' would be considered first and if the appeal has a 'very high likelihood of success', then the other two matters in section 17(3) need to be considered, for otherwise they have no direct relevance, practical purpose or result.

- [9] If appellants cannot reach the higher standard of ‘very high likelihood of success’ for bail pending appeal, the court need not go onto consider the other two factors under section 17(3). However, the court may still see whether the appellants have shown other exceptional circumstances to warrant bail pending appeal independent of the requirement of ‘very high likelihood of success’.
- [10] The appellant has already satisfied this court that he deserved to be granted leave to appeal to appeal against sentence and it now appears that he has a very high likelihood of success in his appeal against sentence due to the sentencing error of wrong tariff being applied and in view of Tawake guidelines. In my view, the full court is not likely to impose a higher sentence than 04 years and 11 months of imprisonment.
- [11] I shall now consider the second and third limbs of section 17(3) of the Bail Act namely ‘*(b) the likely time before the appeal hearing and (c) the proportion of the original sentence which will have been served by the appellants when the appeal is heard*’ together.
- [12] The appellant has already spent 04 years and 11 in incarceration. The appeal is not likely to be taken up before the full court in the immediate future (being an appeal filed in 2019). If the appellant is not enlarged on bail pending appeal at this stage, he is likely to serve perhaps more than the whole of the sentence the full court is likely to impose on him after hearing the appeal in the future. Therefore, it appears that section 17(3) (b) and (c) should be considered in favour of the appellant in this case.
- [13] Therefore, I am inclined to allow the appellant’s application for bail pending appeal and release him on bail on the conditions given in the Order.

**Orders of the Court:**

1. Bail pending appeal is granted to the appellant, **SOKOWASA BULAVOU** subject to the following conditions:
  - (i) The appellant shall reside at Qaranivalu Road, Kalabu, Nasinu with his uncle and his family.
  - (ii) The appellant shall report to Nasinu Police Station every Saturday between 6.00 a.m. and 6.00 p.m.
  - (iii) The appellant shall attend the Court of Appeal when noticed on a date and time assigned by the registry of the Court of Appeal.
  - (iv) The appellant shall provide in the person of Laitia Cagimaivei Rabuli [appellant's father's older brother - Tax Identification no. 183674609 (FRCS & FNPF) and mobile phone No. +679 9370188] of Qaranivalu Road, Kalabu, Nasinu.
  - (v) Surety shall provide sufficient and acceptable documentary proof of his identity.
  - (vi) The appellant shall be released on bail pending appeal upon condition (iv) and (v) above being fulfilled.
  - (vii) The appellant shall not reoffend while on bail.



  
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**Hon. Mr Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**