

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

CRIMINAL APPEAL NO.AAU0076 OF 2014
(High Court Criminal Case No. HAC348 of 2011)

BETWEEN : MATAIASI VESIKULA
Appellant

AND : THE STATE
Respondent

Before : The Hon. Justice Daniel Goundar

Counsel : Mr. J. Savou for the Appellant
Mr. Y. Prasad 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 charged with rape of a child under the age of 13 years. Following a trial in the High Court at Suva, he was convicted and sentenced to 10 years' imprisonment with a non-parole period of 7 years. The appeal is late by 3 months and 9 days. The appellant attributes the delay to his limited education and incarceration. However, appellate courts have said on many occasions that personal circumstances are not good reasons to deviate from statutory time period to lodge a timely appeal. The real question is whether there is a ground of appeal that will probably succeed? (*Kumar v State* unreported Cr App No CAV0001/09; 21 August 2012).
- [2] The sole ground of appeal states:

Ground 1 – The Learned Trial Judge erred in law and in fact when he failed to direct and guide the assessors on how to approach the evidence contained in the caution interview and the weight to be attached to the disputed confession.

- [3] At trial, the appellant was unrepresented. He challenged the admissibility of his confession to police on the ground that he was assaulted during the caution interview. The trial judge held a voir dire and ruled the confession admissible. The appellant continued to dispute his confession in the trial proper. In his summing-up, apart from summarising the evidence of the police officers who recorded the appellant’s caution interview and charge statement, the trial judge gave no directions on how the assessors were to consider the disputed confession. The assessors were not directed that they can rely on the confession as proof of guilt only if they were satisfied that the confession was true (*Burns v Queen* [1975] 132 CLR 258, 261). For these reasons, I am satisfied that there is a ground of appeal that will probably succeed.

Result

- [4] Leave granted.



A handwritten signature in blue ink, appearing to read "Daniel Goundar".

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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