

IN THE HIGH COURT OF FIJI
AT LABASA
APPELLATE JURISDICTION

Criminal Appeal No. HAA 11 OF 2016

STATE

Appellant

V

MOHAMMED MAZAR SHAFIL KHAN
SULIASI RATU BABITU

Respondents

Counsel : Mr. L. Fotofili for the Appellant
Miss S. Nasendra (L.A.C.) for the Respondents

Date of Hearing : 1 May 2017

Date of Ruling : 2 May 2017

RULING

1. On the 3rd June 2016 in the Labasa Magistrates Court both respondents entered pleas of guilty to one charge of setting fire to crops. They were each sentenced that same day to 12 months' imprisonment, suspended for 2 years.

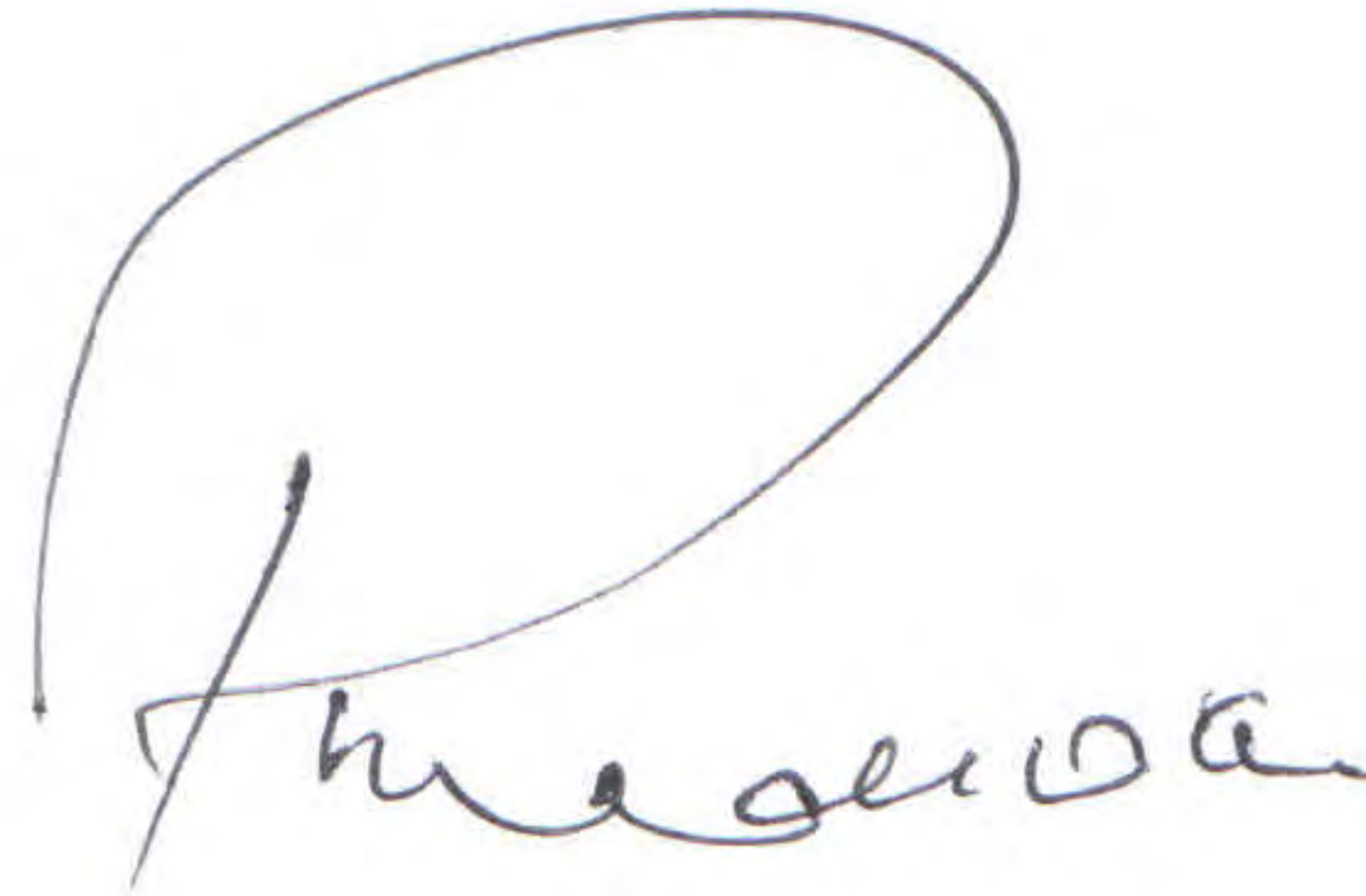
2. Being dissatisfied with the sentence, the State filed a Petition of Appeal on the 25th October 2016, nearly four months out of time.
3. The State now makes application for leave to appeal out of time.
4. Section 248(2) of the Criminal Procedure Decree 2009 provides for enlargement of time “for good cause”.
5. “Good cause” has been considered by the Supreme Court on several occasions, for example in **Mesake Sinu** CAV1 of 2010 and **Ravurabota** CAV 0011 of 2013.
6. It has been decided that factors to be considered include:
 - 1) the reason for failure to file in time
 - 2) the length of the delay
 - 3) a merit worthy ground of appeal that needs consideration
 - 4) despite the delay the probability of success
 - 5) if time is enlarged will the respondent be unfairly prejudiced.
7. Mr. Fotofili for the Applicant with his usual candour, quite frankly concedes that, in taking time to perfect the grounds of appeal against the impugned sentence, the constraints of time were not observed.
8. Counsel for the Respondents in objecting to the application submits that there is no reasonable explanation for the 4 month delay and that the appeal itself cannot be said to be likely to succeed.

9. Application of time limits to file appeals are applied strictly to convicted persons and any delay greater than 3 months causes a Court to examine reasons and merit assiduously.
10. There is no reason why the State should not attract the same rigorous scrutiny when a late appeal is filed. The State has a large amount of resources at its behest, both in terms of manpower and legal knowledge.
11. The respondents' counsel is correct; there is no reasonable explanation for the delay and one of nearly four months is unjustifiable.
12. The success of the appeal itself is unpredictable. The two respondents are very young; they have clear records, and they pleaded guilty at the earliest opportunity demonstrating remorse. An anticipated attempt by State Counsel to adduce new evidence into the appeal (evidence that was available at the time in the lower court, but not relied upon) will certainly not succeed.
13. Finally the prejudice caused to the respondents is immense.
14. At the time of hearing of the appeal they would be mid way through their suspended term and it is the intention of the State to have them serve a term of imprisonment. They have since the sentence was passed moved on with their lives in the reasonable expectation that the matter had been dealt with.
15. Any appeal against acquittal or appeal against a lenient sentence by the State is oppressive in the extreme, and that being so the Courts will insist on diligent compliance with the rules on appellate procedure.

16. As Goundar J. said in **Kamal Pratap** HAM 9 OF 2009Lbs

“Public interest is in preserving finality of verdict entered after a fair hearing; otherwise the criminal courts will be burdened with late appeals which ultimately will affect the general administration of justice”.

17. The application for leave to appeal out of time is **refused and dismissed.**



P. K. Madigan
Judge



At Labasa

2 May 2017