IN THE COURT OF APPEAL, FIJI AT SUVA

CRIMINAL APPEAL NO. AAU0029 OF 2001
(High Court Criminal Case No. 3/99)

BETWEEN:	MOOL CHAND LAL	*Appellant*
AND:	THE STATE	*Respondent*

APPLICATION FOR LEAVE TO APPEAL OUT OF TIME

In November 1999 the Appellant was convicted of murder by the Chief Justice (Sir Timoci Tuivaga), sitting at Labasa, with three assessors. The assessors were unanimous in finding the Appellant guilty of murder as charged. The learned Chief Justice imposed the mandatory sentence of life imprisonment.

2. In October 2001 the Appellant applied for leave to appeal against his sentence. A single Judge of this Court (Eichelbaum JA) dismissed the application under Section 35(2) of the Court of Appeal Act (as amended) on the ground that there is no right of appeal and no right to seek leave to appeal against sentence in a case of murder, the sentence being prescribed by law.

3. In February 2002, the Appellant wrote to the Registrar of this Court, seeking leave to appeal against his conviction for murder.

4. I heard the Appellant and Counsel for the State on the 10th of October 2002. The State opposes this application on the ground that there is no reasonable explanation for the delay in applying to appeal against the conviction, and in any event, the proposed appeal lacks merit, and there is no chance of it succeeding.

5. The main body of evidence against the Appellant consisted of highly damning admissions he made to the police. These comprised the notes of interviewof the Appellant by Detective Constable Ramendra Kumar, and the charge statement recorded by Constable Dhir Sen. Both statements were witnessed by a second police officer, present during the interview and charge.

6. In both the interview statement and the charge statement the Appellant candidly admitted hitting the deceased Venkat Sami three times with a pinch bar in the course of a robbery. At the end of the Prosecution case, the Appellant elected to give evidence on oath, and did not deny hitting the deceased with the pinch bar, but claimed that he did so in the heat of the moment, and under provocation.

7. The alleged provocation, was the victim's threat to report the break-in by the Appellant into Telecom's Labasa office to "the boss", having earlier agreed not to report provided the Appellant tidied up the place, by putting back various items of furniture that he had moved about.

8. After a lengthy voir dire, the learned Chief Justice admitted both statements in evidence. He found that the statements were made by the Appellant voluntarily, and the police had not conducted themselves improperly or oppressively, in obtaining the statements.

9. In his closing address to the Chief Justice and the assessors, learned Counsel for the Appellant stated that the defence agreed with 99% of the Prosecution case, the only area of dispute revolving around the issue of provocation.

10. The learned Chief Justice directed the assessors on the law of provocation, and drew their attention to the evidence in the case, which the defence contended amounted to provocation in law, sufficient to reduce the charge of murder to manslaughter. The summing up, if anything was favourable to the Appellant. The assessors took only half an hour to consider the evidence, and returned to express their opinion that the Appellant was guilty. Clearly they did not accept that the Appellant acted under provocation.

11. The learned Judge accepted their opinion, and convicted the Appellant.

12. The Appellant says that one of the assessors in the case was known to him. That he did not get along with this particular assessor, and that he may have been biased against him. No challenge was made to this assessor, and nothing turns on this complaint, made so belatedly. The truth of the matter is that the evidence against the Appellant was overwhelming. This was not case which rested only on the bare admissions of the Appellant. There was a body of evidence which was consistent with and confirmatory of the incriminating statements made by the Appellant to the police.

13. The original indictment charged the Appellant with two lesser offences of office breaking with intent to commit felony, and shed breaking entering and larceny. The learned Chief Justice withdrew these two counts from the assessors. In doing so the learned Chief Justice acted properly, and no prejudice resulted to the Appellant. The Appellant's complaint in this respect is totally without merit.

14. I have carefully read the ruling given by the learned Chief Justice at the end of a lengthy voir dire. I have also carefully looked at the summing up, and the two highly incriminatory statements that the Appellant made to the Police. The evidence against the Appellant was simply overwhelming. I have therefore reached the conclusion that the proposed appeal has no prospects of succeeding. The application for leave to appeal out of time is therefore refused. Under Section 35(3) of the Court of Appeal Act as amended, the Appellant has the right to have his application for leave to appeal out of time considered by the full Court. He is advised accordingly.

Dated at Suva this 15th October, 2002.

FIJI COURT OF APPEAL

Jai Ram Reddy
President