

IN THE COURT OF APPEAL, FIJI ISLANDS

CRIMINAL APPEAL NO. AAU 0008/2004S

BETWEEN:

MOHAMMED YUNUS

and

MOHAMMED SAYAD KHAN

Appellants

and

THE STATE

Respondent

Appellants in person
Ms. A. Prasad for the Respondent

DECISION

On 9 February 2004 the Appellants were convicted by the High Court at Lautoka of the offence of murder. They were sentenced to the mandatory sentence of life imprisonment but in exercise of the powers conferred on him by Section 33 of the Criminal Procedure Code the learned trial judge (Govind J) also recommended that they serve a minimum term of 17 years.

This is an application by the Appellants for bail pending appeal.

Both Appellants told me that they were seeking bail so that they could find themselves a lawyer to represent them at the hearing of their appeals against conviction and sentence.

In reply to questions by the Court the Appellants conceded that they had brothers and parents but the first Appellant told me that although he had sought his brother's assistance in finding a lawyer to represent him his brother had not responded. Both Appellants told me that although they had been represented by legally aided counsel at the trial they had been advised that the Legal Aid Commission would no longer represent them in any appeal. The second Appellant told me that he did not in any event want a

legal aid lawyer. He wanted to be released from prison on bail so that he could find work and then retain a private lawyer of his choice.

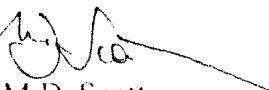
In reply Ms. Prasad first emphasised that by virtue of Section 3 (4) (b) of the Bail Act (26/02) the statutory presumption in favour of granting bail is displaced when, as in this case, the Appellants have been convicted and are appealing against the conviction.

Addressing herself to the criteria applicable in these circumstances (Section 17 (3) of the Act) Ms. Prasad submitted that on the basis of the materials presently available the Appellants' chances of success in their appeals were slim, that it was probable that the appeals could be heard in the November session of the Court of Appeal and that even if the 17 year minimum sentence period were to be reduced to the usual term of about 11 years before release on licence the proportion of the sentence which would by November have been served would not be unreasonable.

Although the record of the trial is still in preparation it is clear from the sentence imposed and the recommendation that was made that the circumstances which led to the Appellants convictions were serious indeed. They were convicted after unanimous findings of guilt by three assessors and were tried before a highly experienced High Court Judge.

I was not at all satisfied that legal aid would not be available to these two Appellants if they requested it. It is not the practice of the Court to release persons convicted of murder on bail to allow them to work so as to retain private lawyers.

Both applications for bail are refused. Pursuant to Section 20 (3) of the Act the Appellants are advised of their right to seek a review of this Decision in the Supreme Court. In view of the fact that the Appellants are serving a term of imprisonment I do not think Section 18 (4) of the Act applies. A copy of this Decision is to be supplied to the Legal Aid Commission.


M.D. Scott
Justice of Appeal

4 June 2004