

IN THE COURT OF APPEAL, FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU 0036 OF 2004  
(High Court Criminal Action No. HAC 16 of 2002S)

BETWEEN:

NAVAU LEBOBO

*Appellant*

AND:

THE STATE

*Respondent*

Coram: Henry, JA  
Scott, JA  
McPherson, JA

Date of Hearing: Tuesday, 12 July 2005

Counsel: Appellant in person  
Mr. R. Gibson for the Respondent

Date of Judgment: Friday, 15 July 2005

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**JUDGMENT OF THE COURT**

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[1] On 6 April 2004 the Appellant, after trial in the High Court, was convicted of murder, robbery with violence and rape. He was sentenced to life imprisonment for murder, with the recommendation that he serve a minimum of 20 years. He received 13 years imprisonment for the rape and 10 years imprisonment for the robbery with violence.

[2] Section 21 (1) of the Court of Appeal Act (Cap. 12 - the Act) provides that:

A person convicted on a trial held before the High Court may appeal under this Part to the Court of Appeal -

- (a) against his conviction on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal, against his conviction on any ground of appeal which involves a question of fact alone or a question of mixed law and fact or any other ground which appears to the Court to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal against the sentence passed on his conviction unless the sentence is one fixed by law.”

[3] Section 26 (1) of the Act provides that a convicted person wishing to appeal or seek leave to appeal must give notice of appeal or notice of his application for leave within 30 days of the date of conviction.

[4] Section 35 (1) (b) of the Act gives a single Justice of Appeal the power to extend the time within which a notice of appeal or a notice of application for leave to appeal may be given.

[5] The Appellant did not file an appeal or application for leave to appeal within the 30 day period but filed an application for leave to extend time on 18 October 2004, that is over five months after the appeal period expired.

[6] On 20 December 2004 the President dismissed the application. In his decision he wrote:

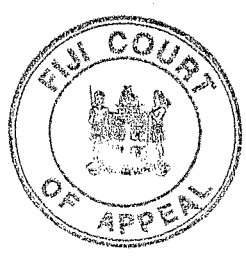
“If I felt there was any realistic chance however slight of this appeal succeeding I would have granted leave to appeal out of time. However I am sure it cannot succeed and leave is refused.”

- [7] The Appellant now renews his application to the Full Court as provided by Section 35 (3) of the Act.
- [8] The Appellant's explanation for the lengthy delay in applying for leave is that his legal representation ended with his conviction and sentence, that he was disheartened and anguished by his conviction, that he did not have a copy of the record of his trial and that his academic qualifications were "inadequate".
- [9] Of the 12 proposed grounds of appeal the first seven question the adequacy of the evidence against him. By way of example ground 2 reads:
- "There was not a single evidence of identification nor there was no other material evidence against me nor were any stolen items recovered with me."
- [10] In his application the Appellant omitted any reference to a statement of agreed facts filed in the trial under the provisions of Section 192 (c) of the Criminal Procedure Code (Cap. 21). As pointed out by the President, the Appellant "had been represented by counsel and many of the facts were admitted by the accused. There was no dispute about his presence at the scene of the crime ...."
- [11] Among the facts included in the statement and agreed by the Appellant were:
- (i) that he forcefully entered the house of the deceased on the night that he died;
  - (ii) that the Appellant stole money from the same house; and
  - (iii) that he slapped the face of the victim of the rape.
- [12] As appears from the trial judges' summing up to the assessors a confession statement by the accused was tendered by the prosecution. His fingerprints were found at the scene of the crime and he was identified by the rape victim at an identity parade.

[13] The five grounds of appeal which do not deal with the evidence are confused and do not take the appeal any further. We agree with the President that none of the grounds of appeal has any chance of success.

[14] So far as the sentence is concerned we also agree that the Appellant's conduct was brutal in the extreme. The rape victim was 76 at the time and her husband, who was beaten to death by the Appellant in her presence, was 82. In the words of the trial judge this was "a truly dreadful crime". There is nothing to suggest that the sentence imposed was in any way wrong in principle.

[15] The application for leave to appeal out of time is dismissed.



*[Handwritten Signature]*  
Henry, JA

*[Handwritten Signature]*  
Scott, JA

*[Handwritten Signature]*  
McPherson, JA

Solicitors

Officer of the Director of Public Prosecutions for the Respondent