



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

CRIMINAL APPEAL NO. AAU0021 OF 2008S
(High Court Criminal Action No. HAA023 of 2004L)

BETWEEN: **BABU RAM**

Appellant

AND: **THE STATE**

Respondent

In Chambers at Court: Justice Randall Powell, Judge of Appeal

Hearing: Friday, 11th July 2008, Suva

Counsel: Appellant in Person
 P. Bulalainavalu for the Respondent

Date of Judgment: Friday 11th July 2008, Suva

RULING

1. The appellant is 60 years old. On 31 December 2003 the appellant was charged with three counts of incest. The counts were for carnal knowledge of his daughter, who was under thirteen years of age when the offences began.
2. The offences took place in the period January 2001 to December 2003. The appellant pleaded guilty on two of the counts and was sentenced by a magistrate to six years imprisonment on each count, to be served concurrently. He later pleaded guilty on the third count and was sentenced to a further six years, to be served concurrently with the other counts.

3. The appellant appealed to the High Court against conviction on the basis that his plea was equivocal and against severity of sentence. On 1 October 2004 Connors J dismissed the appeal and held that the sentence should be increased to 12 years imprisonment on each count, to be served concurrently.
4. On 23 December 2007 the appellant wrote to the Court of Appeal seeking leave to appeal out of time against the 1 October 2004 decision of the High Court.
5. There are several proposed grounds of appeal. All but one of these are matters of fact that were carefully considered by Connors J. In essence they are that he was illiterate, legally unrepresented, beaten by the police, and pressured to plead guilty on the understanding that he would be let off lightly by the Magistrate. The letter also says that he believes that the evidence given against him by various members of his step family was due to collusion by his family to *"rid me from the land situation"*.
6. The appellant's letter of 23 December 2007 does not complain about the decision of Connors J to increase his sentence.
7. One ground that Connors J does not appear to have considered is the appellant's assertion that he has been impotent since 1992. That is, no doubt, as appears from the transcript of the appeal before Connors J, because it was not raised by the appellant. The appellant says he was not asked about it.
8. The letter of 23 December 2007 refers to a Medical Certificate verifying his impotence. There is a document on file from the VMO of the prison where the appellant is incarcerated. It is dated 10 April 2007 and says that when examined penile and scrotal stimulation did not produce an erection and that ***"In my opinion Mr Ram is totally impotent. Confirmation of his impotency can also be obtained from his wife."***

9. The problem with the Medical Certificate of 10 April 2007 is that it addresses impotency in April 2007, and not in the period 2001 to 2003, when the incest was alleged to have taken place. It is of very little probative value. Nor can it be said that Connors J fell into error in failing to ask about the subject. As appears from the transcript Connors J focussed his questions on whether or not the admissions of guilt given to the Magistrate had been given freely. Connors J found:

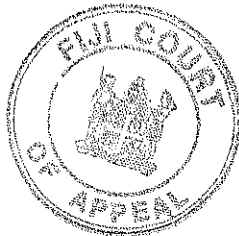
"The record of the court indicates that the plea was in fact unequivocal and when the questions and answers detailed in the court record were put to the appellant, he acknowledged them to be correct."

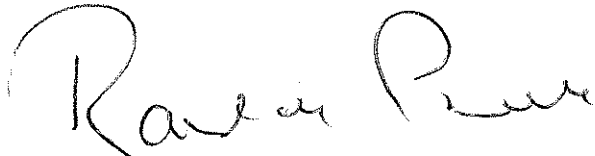
10. As stated by this Court in Vimal Constructions & Prakash v Vinod Patel & Co Ltd. [2008] ABU0093 pf 2006:

"litigants should assume that leave to bring or maintain appeals or other applications where those appeals or applications are out of time will not be given unless there are clear or cogent reasons for the delay. 'Merit' of an appeal or proceeding, without more, will rarely justify an extension of time except where the delay is minimal and no prejudice was occasioned by the delay."

11. In this application there are not clear and cogent reasons for the delay in seeking to appeal. The delay of three years is not minimal. Moreover there seems to be little merit in the proposed appeal given the guilty pleas before the Magistrate and the High Court's finding of fact that the pleas were freely made.

12. Leave to appeal the decision of Connors J of 1 October 2004 is refused.





Randall Powell,
Justice of Appeal