

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO. AAU0062 OF 2007

BETWEEN : POASA YAVALA Appellant

AND : THE STATE Respondent

Before the Honourable Judge of Appeal, Justice John E. Byrne

Counsel : Appellant - In Person
: A.G. Elliott - For the Respondent

Date of Hearing
& Ruling : 19th May 2008

R U L I N G
ON BAIL PENDING APPEAL

[1] On the 7th of June 2007 at Labasa the Appellant was convicted on one count of '*Indecent Assault*' and four counts of '*Rape*', dating from the 20th of December 2003 to the 3rd of September 2004. The verdict of the assessors was unanimous and endorsed by the trial Judge. The facts as found by the assessors and the Court were that the Appellant first indecently assaulted his daughter Ruci, and then raped her by threatening her and using violence on her to ensure her submission. In

December 2003 she was 15 years old and felt that there was no one to whom she could complain. Eventually when she told her mother, her mother did not believe her. She said that she still did not believe her daughter. The Judge considered all aggravating and mitigating factors in the case. The mitigating factors were that the Appellant was a first offender, 39 years old and a village elder. He is the sole breadwinner in the family and has seven children including Ruci. The aggravating factors which the Judge found were the age of the Complainant (15 years), the violence and threats the Appellant used on her, the length of time over which the offending occurred and the disruption to Ruci's life since she made her complaints.

- [2] The Judge sentenced the Appellant to 10 years imprisonment on each count of **Rape** to be served concurrently with each other. On the count of Indecent Assault she held that there was a gross breach of trust in that the Appellant assaulted his own daughter. She sentenced him to 2 years imprisonment on this charge to be served concurrently with the sentences of 10 years on the **Rape** charges.
- [3] He now applies for bail pending his appeal which will be heard in the October-November sessions of this Court

beginning on the 21st of October and concluding on the 28th of November. Section 3(4)(b) of the Bail Act states that the presumption in favour of the granting of bail is displaced where the person has been convicted and has appealed against the conviction.

[4] In a Ruling which I gave on the 22nd of November 2007 in Criminal Appeal No. AAU0014 of 2007 **Orisi Tamani -v- The State**, I considered some of the matters relevant to any application for bail pending appeal. Section 17(3)(a) of the Bail Act states that when a court is considering the granting of bail to a person who has appealed against a conviction or sentence the court must take into account:

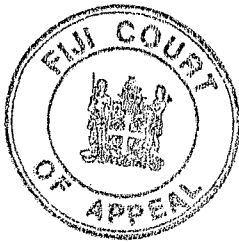
- a) *The likelihood of success of the appeal;*
- b) *The likely time before the appeal hearing;*
- c) *The proportion of the original sentence which would have been served by the Appellant when the appeal is heard.*

[5] In his Ruling in **Ratu Jope Seniloli & Ors -v- The State** Criminal Appeal No. AAU0041 of 2004 given on the 23rd of August 2004 Ward P. referred to several of the relevant authorities but before doing so said that it was clear from the terms of sub-section 3 of Section 17 of the Bail Act that it is mandatory for a Court when considering bail

pending appeal, to take into account the three matters referred to in Section 17(3) but also any other matters which it considered were properly relevant. He said that there had to be exceptional circumstances before bail could be granted to a person convicted. Some of these would be the Applicant's personal circumstances, such as extreme age and frailty or some serious medical condition. The Appellant readily concedes that neither of these three apply to him. Ward P. then referred to three other cases Apisai Tora -v- The Queen [1978] 24 FLR 28, the Decision of Tikaram P. in Koya -v- The State - AAUOO11 of 1996 and Reddy P. in Mutch -v- The State [2000] AAUOO60 of 1999.

- [6] It is clear from these authorities that the Courts in Fiji have long required a very high likelihood of success in the appeal. It is not sufficient that the appeal raises arguable points and it is not for a single Judge on an application for bail pending appeal to delve into the actual merits of the appeal. In his application today the Appellant first submitted that in her summing-up to the assessors the trial Judge showed bias against him and in favour of the Prosecution but when I asked him to show me any passages in the summing-up which supported this contention, he could not. He said that there were gaps in the Prosecution case and in the investigation

which Mr Elliot for the Respondent conceded but said that, notwithstanding this, the Prosecution case was strong. I note that the opinion of the assessors on all counts was unanimous. As I have said this appeal is likely to be heard in the last session of the Court beginning on the 21st of October and for that reason alone I consider that bail should be refused pending appeal. I can find no exceptional circumstances which would warrant my granting the Appellant bail and I am not in a position on the material before me to say that the Appellant has excellent chances of success. Doubtless all these questions will be canvassed by the Court of Appeal when it has the full court record before it and hears the submissions of counsel for the parties. For these reasons the application for bail pending appeal is refused.



John E. Byrne
[John E. Byrne]
JUDGE OF APPEAL

At Suva

19th May 2008