

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

Criminal Appeal No: AAU0090/07
[High Court Cr. Appeal No: HAA45/07]

BETWEEN:

ASHOK CHANDRA

Appellant

AND:

THE STATE

Respondent

Coram: Pathik JA
Goundar JA

Hearing: 30th March 2010

Counsel: Appellant in person
Mr. S. Vodokisolomone for State

Date of Judgment: 8th April 2010

JUDGMENT OF THE COURT

- [1] Following a trial in the Magistrates' Court, the appellant was convicted of insulting the modesty of a female contrary to section 154(4) of the Penal Code. He was sentenced to 9 months imprisonment suspended for 3 years.

- [2] At the trial, the victim gave evidence. She was 14 years old at the time of the offence. The appellant was her neighbour. On the day in question, the victim went to a corner shop where the appellant pulled her from behind and proposed to marry her and invited her to accompany him to a motel to have sex. He said to her that if she refused he would rape and throw her in a river. The victim was offended by what the appellant said to her. She immediately reported the incident to her mother and then to the police.
- [3] The appellant also gave evidence. He said it was the victim who made sexual gestures to him and wanted to marry him. He denied the allegations that he insulted the modesty of the victim.
- [4] The learned trial Magistrate believed the evidence of the victim and convicted the appellant.
- [5] The appellant appealed against conviction and sentence to the High Court. He founded his grounds of appeal against conviction by challenging the findings of fact of the learned trial Magistrate. Further, he contended that his sentence was excessive.
- [6] The High Court did not find any merit in the appeal, and on 6 August 2007, dismissed it.
- [7] The appellant then filed an appeal to this Court. On 23 May 2008, Byrne JA refused leave to appeal after concluding the grounds of appeal were without merit.
- [8] The appellant now seeks leave to appeal from the full Court.

- [9] In his written and oral submissions, the appellant challenges the findings of fact made by the learned trial Magistrate to convict him. He made no submission on sentence.
- [10] Section 22 of the Court of Appeal Act (Cap. 12) governs appeals from the High Court in its appellate jurisdiction to this Court. Sub-section (1) provides:
- “Any party to an appeal from a Magistrates’ Court to the High Court may appeal, under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.”
- [11] Sub-section (1A), added to the Act by the Court of Appeal (Amendment) (No. 2) Act 1998, provides:
- “(1A) No appeal under subsection (1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –
- (a) that the sentence was an unlawful one or was passed in consequence of an error of law; or
- (b) that the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence.”
- [12] We have considered the submissions of the appellant. We are satisfied that none of the grounds raised by him constitute an error of law only. It therefore follows that the appeal is bound to fail because there is no right of appeal. Leave to appeal cannot be properly given in a case where the appeal is bound to fail because there is no right of appeal. That is the situation here.
- [13] For the reasons given, we conclude Byrne JA was correct to refuse leave to appeal.

ORDER

[14] Leave to appeal refused.



D. Pathik

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Hon. Justice D. Pathik
Judge of Appeal

D. Goundar

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Hon. Justice D. Goundar
Judge of Appeal

At Suva
8th April 2010

Solicitors:
Appellant in person
Office of the Director of Public Prosecutions for State