IN THE COURT OF APPEAL
FIJI ISLANDS AT SUVA

[Criminal Appeal No. AAU 0090/08]

BETWEEN : **ETUATE DUANA**
(APPELLANT)

AND : **STATE**
(RESPONDENT)

Before the Hon. Acting President, Mr. Justice John E. Byrne

COUNSEL : **Appellant in Person**
: **Ms P. Madanavosa for the Respondent**

Dates of Hearing and Submissions: **23rd November 2009, 19th and 27th January 2010**

Date of Ruling : **20th August 2010**

RULING ON APPLICATION FOR BAIL PENDING APPEAL

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[1] The appellant was convicted in the High Court on the 20th of August 2008 of one count of Robbery With Violence contrary to Section 293(1)(b) of the Penal Code, Cap. 17 and sentenced to five years imprisonment.

[2] He was not a first offender and his list of previous convictions goes back to 1982. They include Robbery With Violence, Assault and Larceny. He was only released from Prison in the year before his conviction on the latest charge.

[3] He now applies for bail pending his appeal to this Court on two grounds;

(i) That the Trial Judge erred in law when she failed to hold a trial within a trial to test the eligibility of the appellant's disputed confession.

(ii) that the Trial Judge erred in law when she wrongfully admitted inadmissible evidence from the prosecution so that no evidence was tendered to constitute the charge of robbery with violence.

[4] It is important to note here that the appellant was found guilty after the three Assessors unanimously gave opinions of guilt which were endorsed by the Trial Judge.

THE LAW

[5] Because there have been almost countless decisions both here and overseas on the right of a person found guilty to bail pending any appeal to a superior court, it should be unnecessary to repeat what the law is governing such applications. They continue to be made in this Court and most of them are exercises in futility.

[6] Simply stated the law is that before bail will be granted on an appeal against a conviction or sentence there must be a very high likelihood of success. It is not sufficient that an 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, - see for example *Edward Fitzerald (1924) 17 Cr.App.R.147and R. v. Watton(1978) Cr.App.R 293* and more recently in this country *Simon John Macartney v. The State, Crim. App. No. AAU 103/08*, a decision of my own on the 12th of December 2008. In the latter case I referred to much of the relevant case law and shall not repeat it here except to mention that "exceptional circumstances" were defined in *R. v. Watton* (supra) as

those circumstances which would drive the court to the conclusion that justice can only be done by granting bail.

[7] The likelihood of success is a factor that the courts in Fiji have long required to mean a very high likelihood of success. I find no such factor in the present application. Here the State alleged that on the 17th of March 2007 at Nasinu, the appellant robbed Cliven Raj of his wallet containing $80 and used violence against him. There was no dispute of the identification of the appellant, (although he claimed this at the trial) in that his victim stated that just outside the house of a friend he saw the appellant whom he recognized approaching him. He knew the appellant because he lived at the Government Barracks in the same neighborhood, that the light from the house and the street light were enough to enable him to recognize the appellant. Having reviewed the evidence at the trial and the Judge's summing up I am satisfied that there are no arguable grounds of appeal sufficient to warrant the appellant being granted bail.

[8] It must be remembered (and based on his criminal record I suspect that the appellant may well be aware of this), that Section 3(3) of the Bail Act 2002 states that there is a presumption in favor of granting of bail to a person but Section (4)(b) states that this presumption is displaced where.....(b) the person has been convicted and has appealed against the conviction.

[9] The appellant has prepared comprehensive submissions and on the 27th of January 2010 he made a final submission relying not only on statute law but the Christian Bible quoting a passage from the book of Deuteronomy which I cannot let pass unnoticed.

[10] Deuteronomy was the last of the "five books of Moses". The word means "the second law" and dates finally from the 7th to the 6th Century B.C. It is rhetorical and is an updating of the Law given as Moses' farewell address.

[11] Two comments may be made on the quotation which the appellant offers "one witness is not enough to convict a man accused of any crime or offence he may have committed. A matter must be established by the testimony of two or three witnesses".

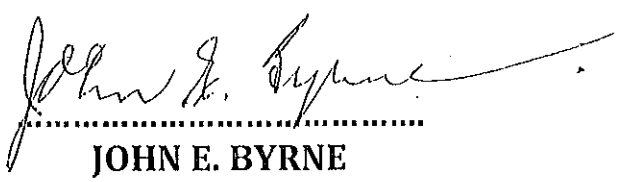
[12] The first comment is that the law of Fiji is not the Law of Moses although doubtless like many of the laws in other countries it may be based to a very limited extent on the books of the bible.

[13] The appellant relies on Deuteronomy in his claim that there was no corroboration of the evidence of the prosecution witness, Cliven. This overlooks the fact that Cliven was not an accomplice so there was no need for his evidence to be corroborated.

[14] The only other matter which calls for comment is the likely time which the appellant must spend in custody pending the hearing of his appeal. Tikaram, P, said at page 5 of his judgment in *Amina Begum Koya v. The State Crim.App.No. AAU0011/96S* that if an accused is likely to spend the whole or a substantial part of his term in prison before his appeal is heard this may constitute a good ground for granting bail. At the date of this ruling the appellant has spent approximately two years of his five years imprisonment.

[15] Given his record in my view to grant bail to the appellant would be unwise and unjustified in that in my view he might well not appear at the hearing of his appeal. I therefore reject his application.

Dated at Suva this 20th day of August 2010.



JOHN E. BYRNE
Acting President