

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU0059 of 2015
[High Court Case No: HAC195 of 2013]

BETWEEN : **ADITYA DEEDAR SAMI** *Appellant*

AND : **THE STATE** *Respondent*

Before : **Hon. Mr. Justice Daniel Goundar**

Counsel : **Appellant in person**
Ms P Madanavosa for the Respondent

Date of Hearing : **18 January 2017**

Date of Ruling : **24 January 2017**

RULING

[1] This is an application for an enlargement of time to seek leave to appeal against sentence. The appellant was charged with one count of sexual assault and one count of the rape. The rape charge alleged that the appellant on 30 October 2013 at Nadi penetrated the anus of a 9-year old boy with his penis. The sexual assault charge alleged that on the same date and location the appellant procured the same 9-year old boy to commit an act of gross indecency by sucking the penis of another minor boy. When the appellant appeared in the High Court at Lautoka, he pleaded guilty to the charges. On 30 June 2014, he was sentenced to a total effective term of 9 years 3 months and 16 days imprisonment with a non-parole period of 8 ½ years.

[2] Section 35(1) of the Court of Appeal Act, Cap 12 gives a single judge power to grant an enlargement of time to appeal. The factors to be considered are:

- (i) The reason for the failure to file within time.
- (ii) The length of the delay.
- (iii) Whether there is a ground of merit justifying the appellate courts consideration?
- (iv) Where there has been substantial delay, nonetheless is there a ground that will probably succeed?
- (v) If time is enlarged, will the respondent be unfairly prejudiced? (*Kumar v State* unreported Cr App No CAV0001 of 2009; 21 August 2012).

[3] The statutory time period within which an appeal must be filed is 30 days from the date of the impugned decision. The appellant's notice of appeal dated 24 March 2015 was received by the Registry on 8 April 2015. The appeal is late by about 8 months. The reasons for the delay are unsatisfactory. The appellant's excuse is that he was unable to contact his family to prepare his appeal. Counsel for the State submits that apart from the delay being excessive and unreasonable, the grounds of appeal are devoid of merit. I agree.

[4] The appellant's first complaint is that his sentence is manifestly harsh and excessive and wrong in principle in all circumstances of the case. The facts were that the appellant and the victims lived in the same settlement. On the day in question, the appellant invited the victims to his place for lunch. After having lunch, the appellant lured the first victim (the 9-year old boy) to his bedroom and made him watch a pornographic movie on his mobile phone. While they were in the bedroom, the appellant penetrated the victim's anus. When the victim resisted, the appellant slapped him in the head and buttocks. When the victim cried out in pain, the appellant blocked his mouth with his hand. When the second victim heard the commotion, he went to enquire. The appellant forced the first victim to suck the second victim's penis. The appellant threatened the victims not to complain. When the appellant was arrested and interviewed under caution, he admitted the allegations. At the time of the offending, the appellant was 22 years old and a first time offender.

- [5] In *Anand Abhay Raj v State* unreported Case No CAV0003.2014; 20 August 2014, the Supreme Court confirmed the tariff for child rape to be between 10-16 years imprisonment. The appellant's sentence is below the tariff. The first complaint is unarguable.
- [6] The second complaint is that the learned High Court judge failed to give one third reduction in sentence for the guilty plea. For the offence of rape, the learned High Court judge took 12 years as his starting point and added 4 years to reflect the aggravating factors. In paragraph 15 of the sentencing remarks, the learned High Court judge considered the guilty plea separately from other mitigating factors and gave a generous reduction of 4 years to reflect the guilty plea. This complaint has no merit.
- [7] The third complaint is that the appellant's remand period was not considered. The appellant's remand period was 8 months and 14 days. In paragraph 16 of the sentencing remarks, the learned High Court judge separately considered the remand period from the mitigating factors by reducing the sentence to reflect the remand period. This complaint is unarguable.
- [8] The fourth complaint is that the learned High Court did not consider the appellant's clear record when he fixed the non-parole period too close to the head sentence. The appellant's previous good character was considered as a mitigating factor and the learned High Court judge gave an appropriate reduction in sentence to reflect that fact. The non-parole period complies with section 18 of the Sentencing and Penalties Decree 2009 and the recent judgment of the Full Court in *Singh v State* unreported Cr App No AAU009 of 2013; 30 September 2016. In *Singh*, the Court said at [12]:

Further it cannot be said that fixing a non-parole period is the only manner by which conditions for promotion and facilitation of rehabilitation can be established. Rehabilitation in my view is a part of the duties of the Correction Institute and should be afforded to all inmates. The fact that the non-parole period fixed is one year, does not offend section 18(4) of the Sentencing and Penalties Decree 2009. In my view a Sentencing Judge cannot be faulted for failure to spell out in his Sentencing Order the very wording of the Sentencing and Penalties Decree 2009 as to the purposes for which the sentence was imposed. (per A Fernando JA).

[9] All the grounds of appeal advanced by the appellant are unarguable. I am also convinced that the appeal against sentence has no prospect of success and is frivolous. I would grant an enlargement of time but dismiss the appeal under section 35(2) of the Court of Appeal Act, Cap. 12.

[10] **Result**

Appeal dismissed under section 35(2) of the Court of Appeal Act, Cap. 12.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

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