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

CRIMINAL APPEAL NO. AAU 104 OF 2016
(High Court HAC 138 of 2014 at Suva)

BETWEEN : **RABINDAR SINGH**

Appellant

AND : **THE STATE**

Respondent

Coram : **Calanchini P**

Counsel : **Mr J Vulakouvaki for the Appellant**
Ms S Tivao for the Respondent

Date of Hearing : **23 January 2019**

Date of Ruling : **14 February 2019**

RULING

[1] Following a trial in the High Court at Suva the appellant was convicted on one count of manslaughter and was sentenced on 25 July 2016 to a term of imprisonment of 8 years with a non-parole term of 7 years. This is his timely application for leave to appeal against sentence pursuant to section 21(1)(c) of the Court of Appeal Act 1949 (the Act).

Section 35(1) of the Act gives to a Judge of the Court the power to grant leave. The test for granting leave to appeal against sentence is whether there is an arguable error in the exercise of the sentencing discretion (**Naisua –v- The State** [2013] FJSC 14; CAV 10 of 2013, 20 November 2013).

[2] The background facts to the conviction may be stated briefly. On 6 May 2014 the appellant drove a bus registration No.CO 110 around the various stations at the Suva bus stand knowing that the brakes and clutch were defective. The appellant crashed the said bus into the rear of a stationary Nasese bus. That collision suddenly pushed the Nasese bus forward thereby causing the Nasese bus to hit two pedestrian who were crossing in front of the Nasese bus. Both pedestrians were knocked to the ground and subsequently died later the same day at the CWM Hospital.

[3] The ground of appeal against sentence is set out in the notice filed on 18 August 2016 as follows:

> *"That the learned trial Judge erred in law and in fact in sentencing the accused to 8 years imprisonment which sentence is harsh and excessive in all the circumstances considering the fact that the Accused (sic) is a first offender."*

[4] The tariff for manslaughter ranges from a suspended sentence up to 12 years imprisonment: **Bae –v- The State** [1999] FJCA 21; AAU 15 of 1998, 26 February 1999. The maximum sentence for manslaughter is 25 years under section 239 of the Crimes Act 2009. The learned Judge selected a starting point of 7 years which is about the mid point within the tariff. In my judgment that adequately reflected the seriousness of the offending in the sense that the appellant was driving a bus, which in itself can become a dangerous weapon and furthermore he was driving the bus knowing that it was defective. The degree of culpability under those circumstances justified the starting point in this case. The learned Judge added 3 years on account of aggravating factors. Clearly the fact that the appellant drove the defective bus recklessly in the crowded Suva bus stand thereby causing the death of a mother and daughter were matters that called for an

increase in the starting point for aggravating factors. There is no error in the exercise of the sentence discretion up to that point. The Judge has considered a deduction for the time spent in remand under section 24 of the Sentencing and Penalties Act 2009. He has also allowed a discount of a further period of 1 year and 11 months for good character. The appellant was 49 years old at the time and was before the Court for the first time. In my judgment that discount does not constitute an error in the exercise of the sentencing discretion. The sentence itself reflects the serious nature of the conviction for manslaughter in this case.

[5] For all of the above reasons I would refuse leave to appeal against sentence.

Order:

Leave to appeal against sentence is refused.

W. Calanchini

Hon Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL