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

CRIMINAL APPEAL NO.AAU 0008 of 2017
[In the High Court at Lautoka Case No. HAC 106 of 2016]

BETWEEN : **JOVILISI GODROVAI**

Appellant

AND : **STATE**

Respondent

Coram : **Prematilaka, JA**

Counsel : **Ms. S. Nasedra for the Appellant**
: **Mr. L. J Burney for the Respondent**

Date of Hearing : **23 July 2020**

Date of Ruling : **24 July 2020**

RULING

[1] The appellant had been indicted in the High Court of Lautoka on one count of murder contrary to section 237 (1) of the Crimes Decree, 2009 and one count of aggravated robbery contrary to section 311 (1) (b) of the Crimes Decree, 2009 committed on 19 and 20 May 2016 at Lautoka in the Western Division.

[2] The particulars of the information read as follows.

Murder

Jovilisi Godrovai between the 19th of May 2016 and 20th of May 2016 at Lautoka in the Western Division murdered Sushila Devi,

Aggravated Robbery

> *Jovilisi Godrovai between the 19th of May 2016 and 20th of May 2016 at Lautoka in the Western Division robbed Sushi Devi of $ 120 cash, 1 Sony portable radio valued at $90, 1 Nokia mobile phone valued at $ 80, 1 carry bag valued at $80, 4 tin Fish valued at $ 14, 1 torch light valued at $ 7.50, all to the total value of $ 391.50, the property of Sushi Devi and at the time of the robbery used personal violence on the said Sushi Devi.*

[3] On 16 September 2016 represented by his counsel, the appellant had pleaded guilty to the information. The learned trial judge, having been satisfied that the appellant had fully comprehended the legal effect of his plea of guilty and tendered it voluntarily and freely, had convicted the appellant of both charges on 14 October 2016. The trial judge had considered the summary of facts presented on 23 September 2016 which contained the appellant's cautioned interview, photographs of the scene of the offences and the report of the Post-Mortem Examination. He had sentenced the appellant on 14 October 2016 to mandatory life imprisonment with a minimum serving period of 20 years for murder and 12 years of imprisonment with a non-parole period of 07 years for aggravated robbery; both sentences to run concurrently.

[4] The appellant's leave to appeal application against conviction and sentence is out of time, having been signed on 20 January 2017 (reached the CA registry on 26 January 2017). The delay is around 05 – 06 weeks. Legal Aid Commission had sought enlargement of time on behalf of the appellant to file his appeal out of time by the application dated 09 June 2020 containing amended grounds of appeal and written submissions. The appellant's affidavit explaining the reasons for the delay is dated 11 July 2019. The state had filed its written submissions on 22 June 2020.

[5] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State**; **Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[6] In ***Kumar*** the Supreme Court held

> *'[4] Appellate courts examine five factors by way of a principled approach to such applications. Those factors 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 court's consideration.
(iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
(v) If time is enlarged, will the Respondent be unfairly prejudiced?

[7] ***Rasaku*** the Supreme Court further held

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'*

[8] Grounds of appeal urged on behalf of the appellant are as follows.

> '**Appeal against conviction**
>
> 1. *THAT the learned trial Judge erred in law and in fact when he failed to consider the defence of diminished responsibility as per section 243 of the Crimes Act 2009, which was available to the Appellant in light of the Appellant being a person of unsound mind thus rendering the plea equivocal."*
>
> 2. *THAT the learned trial Judge erred in law and in fact when he failed to consider from Counsel and the Appellant any opportunity of change of plea or withdrawal of the guilty plea given the defence of diminished responsibility and also after the Summary of Facts was read out thus rendering the plea equivocal.*
>
> 3. *THAT the learned trial Judge erred in law and in fact when he failed to make an inquiry as to the unsoundness of mind of the Appellant as per Section 104 of the Criminal Procedure Act 2009, thus rendering the plea equivocal.*
>
> **Appeal against sentence**
>
> 4. *THAT the minimum term of 20 years is harsh and excessive*

[9] The summary of facts as narrated in the sentencing order is as follows.

> *'It was revealed in the summary of fact, which you admitted in open court that you have committed these two offences between the periods of 19th of May 2016*

to 20th of May 2016. On that particular day, you entered into the house of deceased Sushila Devi through the side window of the sitting room. You removed the wooden shutters and louver blades and then entered into the house ,while she was sleeping in her bed room in the night. <u>You then walked into her bed room, where she was sleeping. You pressed the mouth of the deceased and punched on her both thighs. She woke up and started to shout. You then gagged her mouth with a piece of cloth ripped out from the bed sheet. You then tied up her legs and hands using a rope.</u> You used a knife to cut the ropes. You have used the rope and the knife to incapacitate the deceased before you proceed to rob the house. You then ransacked the house searching valuables. You stole FJD 120, four Angel tin Fish valued at FJD 14 , one Nokia Mobile Phone valued at $ 80, and Sony Black Radio valued at $90. <u>Before leaving the house you went and checked the deceased and found that she was dead</u>. You then left the house.

[10] There is a vital piece of information available in the summary of facts missed out by the learned judge in the sentencing order. Before the appellant tied the mouth of the deceased with a piece of cloth torn up from the bed sheet, he had seen another piece of cloth on the floor beside the bed, picked it up and put it inside the mouth of the deceased. I have examined the appellant's cautioned interview and questions 63 and 65 and the answers thereof clearly show that the appellant had spoken to this act on his part. The report of the Post-Mortem Examination reveals that the direct cause of death had been asphyxia resulting from upper airway traumatic obstruction (antecedent cause) which clearly was due to the piece of cloth inserted inside the mouth of the deceased by the appellant coupled with gaging her mouth with another piece of cloth.

01st ground of appeal

[11] Section 243 of the Crimes Act, 2009 is as follows.

'243. — (1) When a person who unlawfully kills another under circumstances which, but for the provisions of this section, would constitute murder, is <u>at the time of doing the act or making the omission which causes death in such a state of abnormality of mind</u> (whether arising from a condition of arrested or retarded development of mind or inherent causes or induced by disease or injury) as substantially to impair—

(a) the person's capacity to understand what the person is doing; or

(b) the person's capacity to control the person's actions; or

(c) the person's capacity to know that the person ought not to do the act or make the omission

the person is guilty of manslaughter only.

(2) on a charge of murder, it shall be for the defence to prove that the person charged is by virtue of this section liable to be convicted of manslaughter only.

(3) When 2 or more persons unlawfully kill another, the fact that 1 of such persons is by virtue of this section guilty of manslaughter only shall not affect the question whether the unlawful killing amounted to murder in the case of any other such person or persons.'

[12] To say the least, I am surprised to find the appeal counsel having raised this ground of appeal, for there was not an iota of material before the learned trial judge to have considered any defense based on diminished responsibility. Had there been any, no one would have been in a better position to know that than the trial counsel who was also from the Legal Aid Commission and I think I can safely assume that the trial counsel would not have advised the appellant to plead guilty for murder, if there had been any evidence that at the time of committing the acts which caused the deceased's death, the appellant was in such a state of abnormality of mind substantially impairing his capacity as described in section 243(1) (a), (b) or (c). It surprises me even more that the appeal counsel had decided to raise this ground of appeal knowing that in terms of section 243(2) the burden is on the appellant to prove that he by virtue of section 243(1) is liable to be convicted of manslaughter only but not murder and without any evidence to substantiate it, the appellant could not have done so.

[13] Even up to the hearing into enlargement of time, there is not even an affidavit or an application for fresh evidence (if available) in support of the factual basis of this ground of appeal. I think that it can be reasonably assumed that the appeal counsel would have been in a position to peruse all the material (and even more) that I examined at this stage which was available to the trial judge and also to trial counsel. The trial counsel, I am sure, would have been available for any consultation in this regard.

[14] Further, the only feeling that anyone could get while reading the cautioned interview is that the appellant had described the incident with absolute clarity and answered questions with precision. Only a very rational and mentally alert person could have done it.

[15] It is also not without significance that the appellant had not made any compliant of the trial counsel in so far as his advice to plead guilty to the charges in the information is concerned.

[16] Thus, it is clear why the trial counsel had advised the appellant to tender pleas of guilty in respect of both counts and why the trial judge had no reason to consider the defense of diminished responsibility under section 243 of the Crimes Act, 2009.

[17] Therefore, this calls for an observation by this court that any appeal counsel should not fall into the error of raising grounds of appeal which have no factual or legal foundation referable to the proceedings in the original court. Such grounds of appeal could only be called frivolous and vexatious.

2nd ground of appeal.

[18] The counsel for the appellant argues that the trial judge should have inquired from the appellant and his trial counsel whether the appellant would wish to change or withdraw the plea given the defense of diminished responsibility.

[19] Thus, the whole argument here is based on perceived or more accurately surmised defense of diminished responsibility which as pointed out earlier is only in the realm of conjecture even at this stage. However, the counsel also argued that what the trial judge had stated in the sentencing order such as '*.....to incapacitate the deceased....'* and *'Before leaving the house you went and checked the deceased and found that she was dead'* should have alerted the judge to question whether the element of intention to kill was satisfied and give the trial counsel and the appellant time to reflect on the earlier plea of guilty for murder.

[20] As I have already stated the learned trial judge had missed out an important piece of evidence in narrating the summary of facts in the sentencing order which clearly shows the nexus or proximity between the appellant's acts and the cause of death. They clearly establish that the appellant had been reckless in causing the death of the deceased by his conduct.

[21] The entire cautioned interview and the post-mortem examination report were available to the judge, the appellant and his trial counsel. They should have been available to the appeal counsel too. Therefore, it can be understood as to why the appellant and his trial counsel never thought of changing the plea of guilty to the charges. It could also be clear why there was no reason for the learned trial judge to have entertained any thought of calling upon the appellant and his counsel to change the plea or withdraw it. In any event they had time from 16 September 2016 to 14 October to do so, if they so wished.

[22] The appellant relies on **Masicola v State** AAU73 of 2015: 10 May 2019 [2019] FJCA 64. Where the appellant had pleaded guilty to an offence of attempted murder but challenged his conviction in appeal, the Court of Appeal in **Vosa v State** [2019] FJCA 89; AAU0084.2015 (6 June 2019) (where there had been legal representation to the appellant) *inter alia* examined grounds of appeal relating to incompetence of defense counsel, ambiguous pleas and whether the admitted facts did not disclose the offence in detail.

[23] The Court of Appeal in ***Vosa*** cited **Masicola v State** AAU73 of 2015: 10 May 2019 [2019] FJCA 64 where Calanchini P sitting as a single Judge discussed the duty of a trial judge on equivocation of the plea and regarding the availability of any alternative defense or verdict on the evidence though the ground of appeal against conviction related to the defense of provocation.

> *'[3] The only ground of appeal against conviction relates to the defence of provocation. The ground involves consideration of two principles. The first principle is that an appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence of equivocation on the record (**Nalave v The State** [2008] FJCA 56; AAU 4 and 5 of 2006, 24 October 2008). Equivocation may be evidenced by ignorance, fear, duress, mistake or even the desire to gain a technical advantage (**Maxwell v R** [1996]) 184 CLR 501. The second principle is that it is the duty of a trial judge in Fiji to decide whether on the evidence he should direct the assessors and himself on the availability of any alternative defence or verdict that is not raised by the defence (**Praveen Ram v The State** [2012] 2 Fiji LR 34.*
>
> *'[4] However those two principles must be considered in the context of the particular circumstances of the present application. At the trial the appellant pleaded guilty to all three counts. He was represented by Counsel. With both the appellant and Counsel present in court the prosecution read out a detailed*

summary of the facts. Through his counsel the appellant admitted the summary of facts.'

'[9] It does not follow that a judge is necessarily prevented from assessing whether a plea of guilty is equivocal when an accused person is represented by counsel. Furthermore it does not follow that a plea of guilty by an accused person who is represented by counsel should be regarded always as an unequivocal plea.

[10] The issue in this application is whether the judge, on the basis of the agreed summary of facts, was entitled to conclude that the guilty plea was unequivocal. A trial judge is required to address the defence of provocation if there is evidence that raises the issue of provocation. In my judgment there is no reason why that obligation should not apply when a judge is required to determine whether a plea of guilty is unequivocal based on an agreed summary of the facts presented by the prosecution.

[11] If the agreed summary of facts suggests that the plea of guilty may be equivocal due to mistake or ignorance then the judge is, in my opinion, at the very least required to raise the issue with Counsel for the accused

[24] In ***Vosa*** where the Court of Appeal found that the trial judge had proceeded on the fault element of 'intention to cause death' without having considered the appellant's caution interview and the charge statement attached to the amended summery of facts to see whether the facts in the caution interview and the charge statement unequivocally satisfy the fault element of intention to cause death, the court proceed to hold as follows

'[50] Having considered all the material available to the High Court Judge, particularly the amended summery of facts, appellant's caution interview, his charge statement and the medical reports, I am of the view that one cannot draw an unequivocal inference of an intention to cause the death of the victim by the appellant.

'[52] Therefore, in all circumstances of the case scrutinized by me, I believe that this is a fit case for this court to act on section 24(2) of the Court of Appeal Act which reads as follows.

> *'(2) Where the appellant has been convicted of an offence, and the judge could on the information have found him guilty of some other offence, and on the findings of the judge it appears to the Court of Appeal that the judge must have been satisfied of facts which proved him guilty of that other offence, the Court may, instead of allowing or dismissing the appeal, substitute for the verdict found by such judge a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.*

> *[53] Therefore, I would substitute for the conviction of attempted murder entered by the trial judge a verdict of guilty of the offence of 'Act with Intent to Cause Grievous Harm' under section 255 (a) of the Crimes Act, 2009……*

[25] In **Ali v State** [2020] FJCA 11; AAU31.2015 (27 February 2020) the Court of Appeal upheld a similar complaint to that of ***Vosa*** of the appellant who had pleaded guilty to a charge of attempted murder but sent the case back to the High Court for the appellant to plead to the information afresh.

[26] I emphasized in **Hicks v State** [2020] FJCA 87; AAU02.2017 (23 June 2020) on the importance of placing not only the summary of facts but the cautioned interview, charge statement (if relevant) and the medical evidence before the trial judge when he considers a plea of guilty. I said so in the context of the prosecution having selectively chosen from the cautioned interview a single question and answer to put in the summary of facts to show that the appellant had intended to cause death when several other questions and answers were not so unequivocal.

> *[13] Unfortunately, I cannot see from the sentencing order that the prosecution had submitted to the learned trial judge copies of the appellant's cautioned interview, charge statement and the medical report along with the summary of facts. I have been informed by a state counsel on another occasion that they have been advised to do so and in fact do that in cases where the accused tender pleas of guilty.*
>
> *[14] I think it is very important, if not essential to place before the trial judge all such material for him to independently evaluate the plea of guilty to the information before convicting the accused irrespective of whether the appellant is represented by counsel or not. As correctly pointed out in **Masicola** if the trial judge has doubts on the issues of equivocation or as to whether the facts could establish the elements of the offence in the light of all the material before him he could then raise such concerns with the counsel or not proceed to accept the plea of guilty to the information. This should particularly be considered indispensable in cases where an accused pleads to a charge of murder or any other grave crime.*

[27] In ***Masicola***, Calanchini P had cast an obligation on the trial judge to address a defense, if there is evidence that raises it, when a judge is required to determine whether a plea of guilty is unequivocal based on an agreed summary of the facts presented by the prosecution.

[28] Though not fully argued in this appeal, Mr. Burney indicated that he may not agree with Calanchini P's approach in ***Masicola***, and my observations in ***Hicks*** particularly when the appellant is represented by counsel at the time of his plea in the original court. I refrain from expressing any view in that regard here as it was not necessary to argue that aspect in this appeal except to say that having examined the complete summary of facts and the post-mortem examination report given to me by Mr. Burney, I became convinced that there was no reason whatsoever for the trial judge to have doubted the unequivocal nature of the appellant's plea.

[29] Mr. Burney also pointed out a paragraph in **Darshani v State** [2018] FJSC 25; CAV0015.2018 (1 November 2018) in support of his contention (as per Keith, J) which is directly relevant to this appeal in another respect as well.

> *'[33] The basis on which the petitioner's counsel put the proposed appeal against conviction was that the trial judge should himself have raised the question of the petitioner's mental health, and then caused it to be investigated. That in effect is to argue that the judge has a duty to raise and investigate a defendant's mental health even when the defendant's legal team has not asked him to do that. As a matter of principle, I doubt that this is correct. It is inconsistent with a criminal trial being an adversarial process. In our system of criminal justice, the judge merely holds the ring, and leaves it to the parties to decide what avenues need to be investigated and what evidence should be called. Indeed, none of the materials on which the petitioner's counsel relied support the proposition she was seeking to advance. They were (i) section 104 of the Criminal Procedure Act 2009, (ii) the judgment of the Supreme Court in Bonaseva v The State [2015] FJSC 75 and (iii) the judgment of the Supreme Court in Nauru in CRI029 v The Republic [2017] NRSC 75.'*

[30] It is clear that the above remarks of Keith, J had been made in the context of the appellant having attempted to argue that the plea of guilty was equivocal on the basis of diminished responsibility and Keith, J further remarked

> *'[32]……The difficulty for the petitioner is that such a defence cannot get off the ground without a medical or psychiatric report addressing the state of her mental health when the killings took place. At present, no such medical report has been prepared. Her counsel merely asserts that such a report may provide a basis for arguing that her mental health at the time may have afforded her a defence to the two counts of murder – the defence of diminished responsibility not being available in a case of attempted murder. The evidential*

basis for running the defence of diminished responsibility simply does not exist at present.

[31] Therefore, while remarks of Keith, J exactly meet the appellant's argument in this appeal, I do not think that they can be taken to have addressed the legal position expressed by Calanchini P in ***Masicola*** or the kind of observations I made in ***Hicks.***

03rd ground of appeal

[32] The appellant argues that despite him having had a history of being a patient at Saint Giles Psychiatric Hospital, the learned trial judge had failed to hold an inquiry or at least obtain a report on the unsoundness of the appellant's mind rendering the plea equivocal. Section 104 of the Criminal Procedure Act, 2009 reads:

'104. — (1) When, in the course of a trial at any time after a formal charge has been presented or drawn up, the court has reason to believe that the accused person may be of unsound mind so as to be incapable of making a proper defence, it shall inquire into the fact of such unsoundness and may adjourn the case under the provisions of section 223 for the purposes of —

(a) obtaining a medical report; and

(b) such other enquiries as it deems to be necessary.

[33] There is absolutely no material before me to indicate that the trial judge had any reason to act under section 104. If he had so acted and obtained a report and made other inquires the trial judge would have been satisfied that the appellant was not of unsound mind so as to be incapable of making a proper defence and therefore proceeded to take his plea. Simply because the appellant had obtained treatment at some point of time as alleged by him could not have made him unfit to plead at the time of the trial.

[34] The appellant also relies on ***Darshani*** where the following observations of Keith, J seems to address the futility of the third ground of appeal based on section 104 of the Criminal Procedure Act, 2009.

'[34] As for (i), section 104 is about the court's duty to inquire into a defendant's unsoundness of mind for the purpose of determining whether a defendant is capable of properly defending the charge. That is not the issue here: even now, it is not suggested that the petitioner may have been unfit to plead. The fact that the legislature may exceptionally have imposed a duty of

inquiry on the judge in one specific context does not mean that, absent any legislative provision about it, a similar duty is cast upon the judge for other purposes.'

[35] I am reminded of the following sentiments expressed by Pathik J, in **Khan v State** [2009] FJCA 17; AAU0046.2008 (13 October 2009) and as far as the above grounds of appeal are concerned I can only concur with them.

'[18] (a) The grounds advanced by the appellant are completely without merit. In fact I find that this is a frivolous and vexatious application. Further the application is an abuse of the process of the court.

(b) …… It is a case which I should have summarily dismissed.'

04th ground of appeal

[36] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40*;* (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal preferred out of time against sentence to be considered arguable there must be a real prospect of its success in appeal**. The aforesaid guidelines are as follows.

(i) Acted upon a wrong principle;
(ii) Allowed extraneous or irrelevant matters to guide or affect him;
(iii) Mistook the facts;
(iv) Failed to take into account some relevant consideration.

[37] The appellant argues that the minimum serving period of 20 years is harsh and excessive. The learned trial judge had stated in the sentencing order as follows and discussed aggravating factors in paragraphs 9, 10 and 18 which could be considered as relevant to the minimum serving period imposed.

*'7. Justice Madigan in **State v Rokete [2014] FJHC 114; HAC084.2009 (4 March 2014)** has discussed the setting of minimum term in comparison with the sentencing guidelines of UK, where his lordship held that;*

> *"In the U.K, the Criminal Justice Act, 2003 Schedule 21, makes provision for minimum terms. The schedule provides for elements of aggravation and mitigation that a Court could consider in assessing a minimum term for murder. This U.K Act does not apply in Fiji of course, nor does Fiji have similar legislation but those provisions can be of real assistance in assessing a minimum term before pardon in terms of section 237 of the Fiji Crimes Decree. Aggravating features listed in the UK schedule and which are of particular relevance to the present case include:*
>
> *i. Murder for gain (for example in the course of robbery or burglary),*
> *ii. The murder of a vulnerable victim in terms of age and or vulnerability,*
> *iii. A murder with a view to obstruct justice,*
>
> *13. You have been adversely recorded with twenty one previous convictions. Therefore, I find that you are not entitled for any discount for your previous good character. I must assure you that your previous convictions have not been considered as an aggravating factor in this sentencing.'*

[38] The Sentencing and Penalties Act has no application to sentences for murder [see **Prakash v State** [2016] FJCA 114; AAU44 of 2011 (30 September 2016)]. The only discretion that is vested in the judge is setting the minimum serving period before pardon may be considered but it is not mandatory for a sentencing judge to fix such a minimum period in every case. In **Aziz v The State** [2015] FJCA 91; AAU 112 of 2011 (13 July 2015) the Court of Appeal stated:

> *'6……The provisions of section 18 of the Sentencing Decree will have general application to all sentences, including where life imprisonment is prescribed as a maximum sentence unless a specific sentencing provision excludes its application. In my judgment a sentencing court is not expected to select either a non-parole term or a minimum term when sentencing for murder under section 237 of the Crimes Decrees. As a result any person convicted of murder should be sentenced in compliance with section 237 of the Crimes Decree…'*

[39] The appellant could be seen as a person in respect whom the consideration of rehabilitation appears to be of little relevance and meaning. He comes across as a person who is a threat to the law abiding citizens and in need to be distanced from society for a considerable period of time.

[40] The appellant has not demonstrated any sentencing error in the minimum serving period.

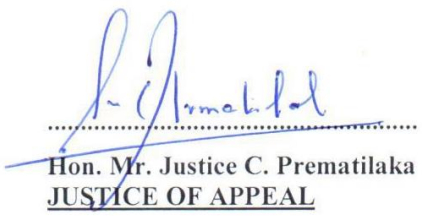
[41] I see no reason why the sentiments expressed in **Natini v State** AAU102 of 2010: 3 December 2015 [2015] FJCA 154 by the Court of Appeal on the operation of the non-parole period should not be applicable when fixing a minimum serving period in the case of death sentences. The sentencing judge would be in the best position in the particular case to decide on the minimum serving period depending on the circumstances of the case.

[42] This ground of appeal has no real prospect of success in appeal.

[43] The appellant's delay is not substantial but the reasons given are not convincing. However, no prejudice could be anticipated to the respondent if enlargement of time is granted. However, as already determined the appellant fails the 'merits' test for enlargement of time.

Order

1. Enlargement of time against conviction is refused.
2. Enlargement of time against sentence is refused.



Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL