

IN THE COURT OF APPEAL, FIJI
On Appeal from the High Court of Fiji at Suva

CRIMINAL APPEAL AAU 0094 OF 2017
[Suva High Court No: HAC 274 of 2015]

BETWEEN : **CHARLES RONIL BHAN**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**
Qetaki, RJA
Rajasinghe, JA

Counsel : **Appellant in Person**
Vosawale M for the Respondent

Date of Hearing : **7 May, 2025**

Date of Judgment : **29 May, 2025**

JUDGMENT

[1] The appellant had been indicted in the High Court of Suva on one count of Murder, contrary to section 237 of the Crimes Decree, 2009 and one count of Theft, contrary to section 291(1) of the Crimes Decree, 2009 committed on 15 August 2015 at Tamavua, Suva in the Central Division. The information read as follows.

Count 1

Statement of Offence

MURDER: *Contrary to Section 237 of the Crimes Decree 2009.*

Particulars of Offence

CHARLES RONIL BHAN on the 15th day of August, at Tamavua, Suva, in the Central Division, murdered **LUI R RAMAN**.

Count 2

Statement of Offence

THEFT: *Contrary to Section 291 (1) of the Crimes Decree 2009.*

Particulars of Offence

CHARLES RONIL BHAN on the 15th day of August 2015 at Tamavua, Suva, in the Central Division, dishonestly appropriated a Skyworth brand TV worth \$777 and a brand home theatre system worth \$200, the property of **SONIA KAMAL**, with intent to permanently deprive **SONIA KAMAL** of her property.

[2] From the Judges Notes of the High Court proceedings the following is recorded: Pages 291 to 294 Copy Record

- i) On 7 December 2015, the appellant was represented by Mr Yunus. The information was read to the appellant [accused] in English as he preferred that. He then pleaded Not Guilty to both counts charged in the Information filed by the DPP’;
- ii) On 10 February 2016, Mr Paka for the appellant [accused] – proposed agreed facts submitted and defence counsel seek time to consider;
- iii) On 4 March 2016 now Mr Yunus is appearing for the appellant requested for more time to consider the agreed facts;
- iv) On 7 April 2016 now Mr Fesaitu for the appellant requested further time and court agreed to a mention date 14 April 2016 for agreed facts.
- v) 14 April 2016 Mr Yunus informs the court, that the appellant wants to change his plea to guilty plea;

- vi) Trial Judge questioned the appellant about his plea change and the appellant confirms that he wished to plead guilty on his own free will. The charges in the information were again read to the appellant, this time in Hindi and the appellant confirms that he understood them and pleads guilty. The judge records that he found the appellant pleaded guilty on his own free will. A Summary of facts was filed and copy served on appellant. Defence counsel requested time to consider the summary of facts – 2.30 pm was agreed.
- vii) At 2.30pm Mr Yunus for the appellant advised the court that following discussion with State Counsel, both counsels have agreed the amendment of the summary of facts. The amended Summary of Facts was read in court and translated in Hindi and the appellant admitted the amended facts. The appellant further stated that he understood the summary of facts and he admit the same.
- viii) The Court then stated: I found the appellant [accused] pleaded guilty to count 1 and 2 and admitted the facts voluntarily and on his own free will. Therefore, I accept his plea of guilty on both counts 1 and 2 and convict him on both counts accordingly.

[3] On 28 April 2016 the appellant was sentenced to on count 1: life imprisonment with a minimum period of 12 years to serve before pardon is considered For Count 2, sentence is 9 months Imprisonment. Both sentences to be served concurrently. The appellant was given 30 days from 28 April 2016 to appeal.

Enlargement of Time to Appeal Application

[4] Under section 35 (1) (b) of the Court of appeal Act 2009, a judge of the court may extend time within which to file notice of appeal or of an application for leave to appeal. On 12 June 2017, an application for Leave to Appeal out of time against conviction was filed by the appellant. This application was 13 months out of time, a substantial delay indeed.

[5] Before the Single Judge of the Court, the Enlargement of Time Application for Leave to Appeal was heard on 3 August 2020. In a careful and detail ruling, covering the

relevant laws and the 8 grounds of appeal in support of the application, submitted by the appellant, the application for enlargement of time was refused.

- [6] On 26 January 2021 the Court Registry received a Notice of Renewed Grounds of Appeal and Renewal Application for Leave to Appeal. On 17 April 2025 appellant submissions were filed in Court.

Renewed Application for Leave to Appeal

- [7] The appellant did not submit a renewed leave to appeal against the ruling of the single judge of the court, which was on application of enlargement to appeal, instead he filed Notice of Appeal as if he had had been leave to appeal. It is noted that the grounds of appeal are the same as those advanced before the Single Judge for the Enlargement of Time to Appeal application for which leave was refused. It is noted that the application to the full court is made pursuant to section 35 (1) (a) of the Court of Appeal Act. This application ignores the fact that the appeal was substantially out of time and leave to appeal out of time was refused. The court has no jurisdiction to hear an appeal without leave, following a hearing of an enlargement application for time to apply for leave which was not granted. This was not a case where leave to appeal was refused; it has not got to that stage because time would have to be extended and that state was refused by the Single Judge.

- [8] When this appeal was initially heard both parties' attention was referred to the full Court decision in **Tang Lu Guang v State [2011] FJCA 33 (AAU 013/2007)**, in similar circumstances as this one, the Court said:

“5. *Although this matter has been listed as a renewal before the Court of Appeal (the Full Court) of my hearing on 3rd February 2011 and my decision of 21st February 2011 there is not, on the facts of this*

case, the usual jurisdiction for a renewal after leave to appeal has been refused. The first reason is that I as Single Judge used section 35(2) to dismiss the appeal. The second reason is that this is not a case where leave to appeal was refused. That stage was never reached because time would have to have been extended and my decision was that it should not be extended.

6. *It follows that this Court should order the dismissal of the renewed application for leave to appeal before the Court of Appeal by reason of lack of jurisdiction for the Full Court to entertain it.*”

[9] The Supreme Court in **Li Jun v State; Tan Lu Guang v State [2012] FJSC 7 (CAV 017 of 2007S)** confirmed the legal position taken by the Court of Appeal above in **Tang Lu Guanga** (supra).

[10] The court reviewed the grounds of appeal to be satisfied that no grounds of appeal involved question of law only. In reviewing the initial grounds of appeal, one of the claims raised as grounds 1 and 2 relates to the appellant’s claim, that in the circumstances of his initial guilty plea which he later changed into guilty plea, may raise an issue of law only namely, that his plea was equivocal. The Court in **Jason Zhong v State [2014] FJCA 108**, stated:

“[14] *That each ground of appeal against conviction is described as an error in law does not in any way assist this Court to determine whether any ground against conviction involves a question of law alone. As the Court of Criminal Appeal noted in the Hinds decision (supra) at page 333:*

"Whether or not such a ground so stated is to be regarded as a question of law alone or whether it is a ground of law mixed with fact or of mixed law and fact may, in any particular case, not be an easy question to determine."

[15] *The Court of Criminal Appeal in Hinds (supra) relying on the ground of appeal under discussion in that case provided a most useful example of the difference between a ground of appeal involving a question of law alone and a ground of appeal involving a question of law mixed with fact or a ground of mixed law and fact at page 333:*

"If the question were: Is hearsay evidence admissible on a criminal trial in England? that would plainly be a pure question of law or a question of law alone. If the question were: Was hearsay evidence admitted at this trial, or did the answers given by a witness on page so-and-so and so-and-so of the transcript constitute hearsay? then it might be that the natural approach would be to suppose that there were questions of fact to be determined, and after the determination of those facts the law of hearsay evidence, including the proper definition of hearsay, would have to be applied to those facts."

[16] *In my judgment upon a careful reading of each of the four grounds of appeal against conviction there is in each case a question of law mixed with a considerable amount of fact. In my judgment none of the four grounds involves a question of pure law or a question of law alone.*

[11] In the light of the above guiding statement on the question whether the grounds 1 and 2 involve question or law only or both law and fact, and after careful review of the grounds of appeal referred to above, it is judgement of this court that all grounds of appeal submitted and in question in this appeal, involve questions of both law and facts, for which leave of the court is required.

What then is the situation now of the Appeal

[12] **Practice Direction 4 of 2019** at paragraph 4, dealing with criminal appeals, states:

"In default of a party failing to file and serve a renewed application for leave to appeal or a renewed application for an enlargement of time within 30 days of the date of the pronouncement of the decision refusing the application, the appeal shall be dismissed pursuant to the inherent power of the Court to avoid abuse of process."

[13] The situation now is that the appeal cannot be heard by the Court because as outlined above, it has no jurisdiction to do so. The appeal was misconceived when it was filed without challenging the refusal by the single judge to grant enlargement of time to


appeal. To proceed on the basis that leave to appeal is available to the appellant was misconceived. The grounds of appeal submitted by the appellant did not address the fact that the enlargement application to file an appeal was not granted.


[14] Under those circumstances the court have no jurisdiction to hear the appeal and the appeal is dismissed.


ORDERS:

1. Appellant's appeal dismissed for want of jurisdiction.




The Hon. Mr Justice Isikeli Matalotoga
PRESIDENT OF THE COURT OF APPEAL


The Hon. Mr Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL


The Hon. Mr Justice Thushara Rajasinghe
JUSTICE OF APPEAL