

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

APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: AAUOO43 OF 2005
(HIGH COURT CRIMINAL APPEAL NO.: HAC0012 OF 2001L)

BETWEEN:

1. JOHN MILLER
2. PITA TOKONIYAROI
3. SAMUELA ROGOIVALU

Appellants

AND:

THE STATE

Respondent

Coram: Goundar, JA
Khan, JA

Hearing: Wednesday 26th November, 2008

Counsel: Ms. R. Senicuraciri for 1st and 3rd Appellants
2nd Appellant in Person
Mr. A. Rayawa for the State

Date of Decision: Wednesday 26th November, 2008

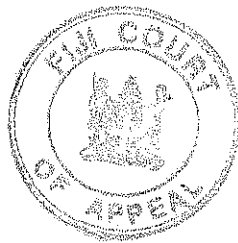
DECISION

[1] This appeal was set for hearing today. The 1st and 3rd Appellants are represented by the Legal Aid Commission. The 2nd Appellant is unrepresented.

- [2] Ms. Senikuraciri from the Legal Aid Commission made an appearance without file and relayed to the Court that the Director who was in charge of the matter was unavailable and therefore Legal Aid Commission was not ready to proceed with the hearing. Ms. Senikuraciri sought an adjournment.
- [3] The 2nd Appellant opposed the application for an adjournment on the ground of delay.
- [4] The State although concerned about the delay, had no objection to an adjournment.
- [5] An adjournment was granted. We now publish our reasons.
- [6] All three Appellants were jointly charged and tried in the Lautoka High Court for an offence of murder. They were convicted of the charge and sentenced to life imprisonment. The 1st and 3rd Appellants are only appealing against sentence while the 2nd Appellant is appealing against conviction. If the 2nd Appellant is successful in his appeal against conviction, the outcome could have a bearing on the convictions of the 1st and 3rd Appellants although they have not advanced any grounds of appeal against conviction when they filed their Petitions of Appeal.
- [7] To hear separately the appeal of the 2nd Appellant, the Court will have to sever the appeals. This is undesirable course to adopt in this appeal because the Appellants were tried together and the prosecution relied on the principle of joint enterprise to prove the charge. We are also minded that the outcome of the 2nd Appellant's appeal could make the appeal of the other two Appellants futile. The Appellants are serving life imprisonment and therefore the question of having served substantial term of the sentence before the appeal is heard does not arise.

[8] We do not see the 2nd Appellant to be prejudiced by an adjournment of the appeal to the March session of 2009. We make the following orders:

1. Adjournment granted.
2. Case to be listed for call over to fix a hearing date in the March session of 2009.



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Daniel Goundar
JUDGE OF APPEAL

A handwritten signature in black ink, appearing to read "Izaz Khan", written over a horizontal dotted line.

Izaz Khan
JUDGE OF APPEAL

At Suva
Wednesday 26th November, 2008

Solicitors:

Legal Aid Commission, Government Buildings, Suva for 1st & 3rd Appellants
In Person for 2nd Appellant
Office of the Director of Public Prosecutions, Suva for the State