

Office.

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

APPELLATE JURISDICTION

CRIMINAL APPEAL NO: AAU0058 OF 2008
(HIGH COURT CRIMINAL CASE NO.: HAC 019 OF 2007)

BETWEEN:

ESALA TABALOA

Applicant

AND:

THE STATE

Respondent

Counsel: Applicant in Person
 Mr. P. Bulamainaivalu for the State

Date of Hearing: Monday 4th August, 2008
Date of Ruling: Friday 8th August, 2008

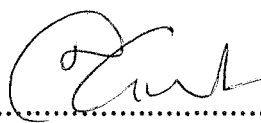
RULING

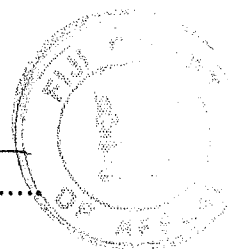
[1] Esala Tabaloa (the applicant) filed the following applications:

- (i) Application for Leave to appeal against conviction.
- (ii) Application to adduce fresh evidence on appeal.
- (iii) Application for bail pending appeal.

- [2] Following trial in the High Court at Lautoka, the applicant was convicted of robbery with violence and unlawful use of motor vehicle. He received an overall sentence of 7 years imprisonment on 15 May 2008.
- [3] The applicant raises the following assignment of errors in his application for leave to appeal against conviction:
- Prejudice due to lack of legal representation
 - Lack of direct evidence
 - Unreliability of identification evidence
 - Unreliability of circumstantial evidence
 - Misdirection on standard and onus of proof
 - Failure to consider alibi evidence
- [4] The application for fresh evidence is vague. It is difficult to ascertain from the application what new evidence the applicant proposes to call on appeal. In any event, only the full Court has jurisdiction to hear an application to call fresh evidence.
- [5] Under the Bail Act, where the person seeking bail has been convicted and is seeking bail pending an appeal, the presumption is displaced [s.3(4)].
- [6] In considering an application for bail pending an appeal, the court must take into account the three matters set out in section 17(3). They are:
1. The likelihood of success of the appeal.
 2. The likely time before it will be heard.
 3. The sentence which will have been served by the time it is heard.

- [7] It is settled law that the applicant must demonstrate every chance of success in order to succeed in the application for bail pending an appeal.
- [8] The applicant was unrepresented at trial. However, he was on bail and had every opportunity to secure legal representation for himself. The trial judge was a senior and experienced judge. After having read the summing up, I am not satisfied that the applicant's appeal has every chance of success. The applicant has not advanced any ground of appeal against sentence. The appeal could be heard either in the November session this year or early next year by which time the applicant would have served only a small portion of his sentence of 7 years imprisonment.
- [9] I make the following orders:
1. The application for bail pending an appeal is refused.
 2. The application for leave to appeal against conviction is allowed.
 3. The application for leave to call fresh evidence should be placed before the full Court. The applicant must amend his application to clearly state the fresh evidence he intends to call on appeal.
 4. Court record is to be compiled and filed.


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Daniel Goundar
JUDGE



At Suva
Friday 8th August, 2008

Solicitors:

Applicant in Person
Office of the Director of Public Prosecutions, Suva for the State