

IN THE COURT OF APPEAL, FIJI ISLANDS  
APPELLATE JURISDICTION

CRIMINAL APPEAL NO: AAU0027 of 2008

BETWEEN:

ILAISA SOUSOU

Appellant

AND:

THE STATE

Respondent

Coram: Goundar JA  
Temo JA

Hearing: 31<sup>st</sup> May 2010

Counsel: Appellant in person  
Ms S. Puamau for State

Date of Judgment: 11<sup>th</sup> June 2010

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**JUDGMENT OF THE COURT**

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[1] Following a trial in the Magistrates' Court, the appellant was convicted of robbery with violence and unlawful use of motor vehicle. He was sentenced to 5½ years for robbery with violence and 4 months imprisonment for unlawful use of motor vehicle, to be served concurrently.

- [2] He appealed against conviction to the High Court. On 24 January 2008 the High Court dismissed the appeal.
- [3] He appealed against the High Court judgment to this Court but his appeal was filed after the appeal period of 30 days had expired under section 26(1) of the Court of Appeal Act. His application dated 11 March 2008 was received by the registry on 28 March 2008, by which time the appeal was out of time by a month.
- [4] When an appeal is lodged after the appeal period had expired, a judge of the Court of Appeal has discretion under section 35(1)(b) of the Act to extend the appeal period. On 18 October 2008 Byrne P considered the application and concluded that neither the learned Magistrate nor the learned High Court judge made any error in law and that the appellant was properly convicted. Byrne P refused leave to appeal out of time.
- [5] After four months from the date Byrne P delivered his decision refusing leave, the appellant on 16 February 2009 applied to Full Court for leave to appeal out of time. By the time this application was filed, the appeal was out of time by nearly one year.
- [6] He attributes the delay to the prison department for not timely filing his appeal.
- [7] When an application is made to appeal out of time, the relevant considerations are the length of delay, reasons for the delay and the merits of the appeal (*The State v Ramesh Patel Criminal Appeal No.AAU0002 of 2002S (15 November 2002)*).
- [8] In this case, even if we are to accept that good cause exists for the late appeal, we are not satisfied the grounds of appeal advanced by the appellant have merits.

- [9] As this is an appeal from the High Court in its appellate jurisdiction, the appellant is limited by section 22 of the Court of Appeal Act to any ground which involves a question of law only. In relation to his appeal against conviction, the appellant seeks to challenge the evidentiary findings of the trial court on the identification of the appellant by a prosecution witness and the rejection of his alibi.
- [10] These matters were carefully considered on appeal by the High Court and the conviction of the appellant was confirmed by that court. Like *Byrne P*, we cannot find any error of law made by either the learned trial magistrate or the learned High Court judge.
- [11] In support of his grounds of appeal to this Court, the appellant also applied for leave to call fresh evidence from a co-offender who is serving imprisonment sentence in the same facility with him. The appellant informed the Court that the co-offender is willing to exonerate him from any criminal responsibility in this case and take full responsibility for the crime upon himself.
- [12] Firstly, we do not consider the proposed evidence to be fresh. The co-offender was available when the appellant was tried and he could have been called to give evidence if he was willing to take full responsibility for the offence.
- [13] Secondly, we have to consider whether the proposed evidence is credible at all. Both offenders are serving in the same prison and for one to take full responsibility in order to exonerate the other after conviction, is not evidence that we accept as reliable and credible to act upon to allow the appellant's appeal. The application to call fresh evidence is refused.

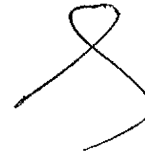
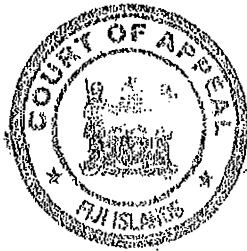
[14] We are satisfied the appeal against conviction has no prospects of success.

[15] We grant leave but dismiss the appeal.



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Hon. Mr. Justice D. Goundar  
Judge of Appeal



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Hon. Mr. Justice S. Temo  
Judge of Appeal

**Solicitors:**

Appellant in person

Office of the Director of Public Prosecutions for State