

IN THE COURT OF APPEAL, FIJI
APPELATE JURISDICTION

CRIMINAL APPEAL NO. AAU 133 of 2016
(High Court HAC 181 of 2011)

BETWEEN : **PRAVEEN CHAND**

Appellant

AND : **THE STATE**

Respondent

Coram : **Chandra RJA**

Counsel : **Mr. T Lee with Ms. N Mishra for the Appellant**
Ms. P Madanavosa for the Respondent

Date of Hearing : **12 June 2018**

Date of Ruling : **31 July 2018**

RULING

- [1] The Appellant was convicted for one count of rape and was sentenced on the 8th of February 2016 to 14 years of imprisonment with a non-parole period of 12 years.
- [2] The Appellant filed an application seeking extension of time to appeal against the said conviction and sentence.

[3] In his application the Appellant has proposed the following grounds of appeal:

- “1. That the learned trial Judge erred in law in relying on the confession made by the Appellant in the caution interview statement yet not adequately and properly directing the assessors on convicting the assessors on any other evidence apart from the confession.
2. That the learned trial Judge erred in law in not properly and adequately directing the assessors on the principle of Turnbull since the identification of the perpetrator was disputed.
3. That the learned sentencing Judge erred in law in considering 12 years as the appropriate starting point.
4. That the learned Sentencing Judge erred in law in not considering the time Appellant spent in remand.
5. That the learned Sentencing Judge erred in law in not considering the age of the Appellant and his previous good record.”

[4] In Kumar v State; Sinu v State [2012] FJSC 17; CAV0001.2009 (21 August 2012), the factors to be considered in applications seeking extension of time to appeal were set out as follows:

1. The length of delay;
2. The reason for the failure to file within time.
3. Whether there is a ground of merit justifying the Appellate Court’s Consideration.
4. Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?
5. If time is enlarged, will the Respondent be unfairly prejudiced?

[5] The sentence was imposed on the 8th of February 2016 and the application for extension of time was filed on 22 September 2016. The delay in appealing is about six months.

- [6] The Appellant has deposed in his affidavit that he expected the Legal Aid Counsel to file his appeal as he had instructed Counsel to appeal soon after he was sentenced. He had realized subsequently that the appeal had not been filed.
- [7] It would appear that there has been a miscommunication between the Appellant and the Legal Aid Counsel. His intention to file an appeal is clear and is therefore an excusable reason.
- [8] The merits of the grounds of appeal:
- [9] Ground 1 relates to the inadequacy of the direction to the Assessors by the learned trial Judge in that there had been no direction to consider that the remaining evidence was sufficient to prove the charges against the Appellant and reference has been made to paragraph 30 of the summing up.
- [10] In the said paragraph the learned trial Judge has drawn the attention of the Assessors to the direct evidence led by the prosecution, being that of the victim, the medical report and the caution interview and stated that they could take into account the caution interview statement if they were satisfied with the truthfulness of the its contents.
- [11] The learned trial Judge has referred to the victim's evidence in paragraph 36 of his summing up regarding matters that the Assessors should consider.
- [12] Considering the totality of the summing up, I do not consider that the summing up has been inadequate and that any prejudice has been caused to the Appellant. Therefore this ground of appeal fails.
- [13] The second ground of appeal is regarding the identity of the Appellant on the basis that there was none or no sufficient light by which the victim could identify the Appellant.

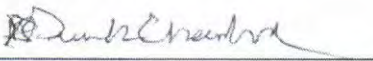
- [14] It was not disputed that the Appellant slept in the same room as the victim and her mother. The lights had been turned off but the victim had given evidence to the effect that the radio light was on and that she clearly identified her uncle as the perpetrator. She had also stated in evidence that the Appellant had told her that she should not tell anyone about the incident.
- [15] In those circumstances the identity of the Appellant cannot be said to have been disputed and there was no need to refer to the Turnbull principles.
- [16] The second ground of appeal also fails.
- [17] The 3rd ground of appeal is relating to the starting point of the sentence as being high. The learned trial Judge took the starting point as 12 years which I would consider as being arguable when considering the tariff to be between 10 to 16 years.
- [18] The 4th ground is the failure to take into account the period that the Appellant had been in custody.
- [19] The Appellant had been in custody for 21 days according to the mitigating submissions. No reference has been made by the learned trial Judge regarding this period in his sentencing judgment. This ground is therefore arguable.
- [20] The 5th ground of appeal is that the learned trial judge had failed to consider the age of the appellant and his previous good record when sentencing him.
- [21] The learned trial Judge had considered the age of the Appellant and his previous good character and given a discount of one year. As to whether a sufficient discount had been given is arguable.

[22] Since there is merit in the grounds of appeal regarding sentence and the fact that the delay is excusable, leave is granted to appeal against the sentence.

Orders of Court:

1. *The application for extension of time to appeal is granted.*
2. *Leave to appeal against conviction is refused.*
3. *Leave to appeal against sentence is allowed.*




Hon. Justice S. Chandra
RESIDENT JUSTICE OF APPEAL