

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

**CRIMINAL APPEAL NO. AAU 0093 OF 2018**  
(High Court Action No: HAC 59 of 2013 Ltk)

**BETWEEN** : RIMAKSHNI RANIGAL *Appellant*

**AND** : THE STATE *Respondent*

**Coram** : Chandra, RJA

**Counsel** : Ms S Ravai for the Appellant  
Mr S Shah for the Respondent

**Date of Hearing** : 25 February, 2019

**Date of Ruling** : 31 May, 2019

**RULING**

- [1] The Appellant was charged with 1 count of money laundering contrary to section 69 (3)(a) of the Proceeds of Crimes Act, 1997.
- [2] After trial the Appellant was convicted and sentenced on 18<sup>th</sup> September 2018 to 5 years imprisonment with a non-parole period of 3 years.

- [3] The Appellant has filed a timely appeal against conviction and sentence on 26<sup>th</sup> September 2018. On 28<sup>th</sup> September the Appellant also made an application for bail pending appeal supported by an affidavit. On 13 December 2018 the Appellant filed an application to lead further evidence supported by an affidavit by herself and by one Chandrika Prasad.
- [4] The Appellant has filed an amended notice of appeal setting out the following grounds of appeal:

*Against Conviction*

1. *THAT the Learned Trial Judge erred in law and in fact in relying on and / or considering and / or taking into consideration inadmissible and/or prejudicial evidence in finding the Appellant guilty.*
2. *THAT the Learned Trial Judge erred in law and in fact in not adequately / sufficiently/ referring / directing himself and the assessors on the circumstantial evidence that was relied by the State.*
3. *THAT the Learned Trial Judge's failure to adequately evaluate the evidence prior to returning a verdict of guilty as charged, and the failure of the Learned Trial Judge to independently assess the evidence before conforming the said verdict, have given rise to a grave and substantial miscarriage of justice.*
4. *THAT the Learned Trial Judge erred in law and in fact in not directing himself and / or the assessors to refer to any summing up the possible defence on evidence and as such by his failure there was a substantial miscarriage of justice.*
5. *THAT the Learned Trial Judge erred in law and in fact in not taking into consideration adequately that the action of the Appellant was not contrary to law and further whether she had knowledge that the monies she sent overseas were tainted monies. Such failure to do so caused substantial miscarriage of justice.*
6. *THAT the Learned Trial Judge erred in law and in fact in taking too long to outline all the evidence in his summing up which was unfair, imbalanced, confusing and one sided and hence a substantial miscarriage of justice had occurred.*
7. *THAT the Learned Trial Judge erred in law and in fact in not adequately /sufficiently/referring/directing himself or the Assessors the Prosecution evidence against the Appellant was highly*

*circumstantial which was not adequately supported by Prosecution evidence.*

8. *THAT the Learned Trial Judge erred in law and in fact in misdirecting and/or adequately directing the Assessor on the Law as to circumstantial evidence and failure to do so caused substantial miscarriage of justice.*
9. *THAT the Learned Trial Judge erred in law and in fact when he did not reconsider before sentence that the Prosecution witness whose evidence the Learned Trial Judge relied on against the Appellant lied on oath and that the evidence that was provided by the Appellant's Counsel was not contradicted by the State and as such there was miscarriage of justice.*
10. *THAT the Learned Trial Judge erred in law and in fact when it was brought to his attention new evidence that the Prosecution witness, Ravinesh Mani, had lied during the trial, rejected the Appellant's application for a stay of the Proceedings and/or not to proceed with sentence and / or if the Learned Trial Judge persists to sentence then the execution of sentence be stayed pending further investigation of the miscarriage/false evidence given by Prosecution witness, Ravinesh Mani and as such a failure caused a substantial miscarriage of justice.*
11. *THAT there has been a substantial miscarriage of justice in that the assessors were tainted during the trial by the conduct of one or more assessors.*
12. *THAT there has been a substantial miscarriage of justice in that the Appellant has been denied a fair trial.*

*Against Sentence*

13. *THAT the Appellant relies on Grounds 1 to 12 stated hereinabove.*
14. *THAT the Appellant's appeal against sentence being manifestly harsh and excessive and wrong in principal in all the circumstances of the case.*
15. *THAT the learned Trial Judge erred in law and in fact in taking irrelevant matters into consideration when sentencing the Appellant and not taking into relevant consideration.*



*16. THAT the learned Trial Judge erred in law and in fact in passing sentence of imprisonment was disproportionately severe punishment contrary to Section 25 of the Constitution of Fiji (1998) (Section 11(1) of the 2013 Constitution of Fiji).*

*17. THAT the Learned Trial Judge erred in law and in fact in not taking into consideration adequately the provisions of the Sentencing and Penalties Decree 2009 when he passed the sentence against the Appellant.*

- [5] The Appellant along with two others who were charged were involved in a sophisticated online scam having international consequences. The victims had maintained their bank accounts with Westpac Bank. All accounts had online banking facilities. After hacking into their electronic banking facility, unauthorized money transfers were made online to two separate Westpac Bank accounts. The transferred stolen money had come into the account of the 2nd Accused, Avenai Danford and that of another person named Avitesh Chand. The money deposited into those two accounts was withdrawn on the instructions of the 1<sup>st</sup> Accused, Rahul Rajan Naidu. Avenai Danford, the 2<sup>nd</sup> Accused, having withdrawn the stolen money from his account gave it to the 1<sup>st</sup> Accused. 1st Accused with the assistance of the third accused, (the Appellant) a teller at the Western Union transferred the stolen money out of the country through Western Union, breaching protocols and procedures of Western Union.
- [6] The Appellant filed written submissions regarding her application for bail in the first instance and followed it up subsequently with written submissions regarding the appeal against conviction and sentence.

#### **Adducing of fresh evidence**

- [7] Regarding the application to adduce fresh evidence, an application will have to be made to the full Court of the Court of Appeal as a Single Judge is not empowered to deal with such an application in terms of section 35 of the Court of Appeal Act.

### Application for bail pending appeal and leave to appeal

[8] Section 17(3) of the Bail act, 2002 provides:

*“When a Court is considering the granting of bail to a person who has appealed against conviction or a sentence the Court must take into account*

- (a) The likelihood of success in the appeal;*
- (b) The likely time before the appeal hearing;*
- (c) The proportion of the original sentence which will have been served by the Applicant when the appeal is heard.”*

[9] The position regarding bail regarding a person charged for a crime and awaiting trial and one who has been convicted after trial was succinctly set out by his Lordship Sir Moti Tikaram in **Amina Kova v State** Cr App. No.AAU))11/96 as follows:

*“I have borne in mind the fundamental difference between a bail applicant waiting Trial and one who has been convicted and sentenced to jail by a court of competent jurisdiction. In the former the applicant is innocent in the eyes of the law until proven guilty. In respect of the latter he or she remains guilty until such time as a higher court overturns, if at all, the conviction. It therefore follows that a convicted person carries a higher burden of satisfying the court that the interests of justice require that bail be granted pending appeal.”*

[10] His Lordship Justice Ward in **Ratu Jope Seniloi, Ratu Rakuita Vakalalabure, Ratu Viliame Volavola, Peceli Rinakam and Viliame Savu v The State** (Crim. App. No.AAU0041/04S. High Court Cr App No.002S/003, 23 August 2004) said:

*“It has been a rule of practice for many years that where an accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in **exceptional circumstances** will be released on bail during the pendency of an appeal. This is still the rule in Fiji. The mere fact an appeal is brought can never itself be such an exceptional circumstance.”* (Emphasis mine)

[11] Scutt JA in **Matai v The State** (2008) FJCA 89 AAU0038.2008 has set out in detail the manner in which applications for bail pending appeal have been dealt with in common law jurisdictions which all deal with the high threshold that has to be met with by an Appellant seeking bail pending appeal.



[12] It has been clearly laid down in a series of cases that bail pending appeal will be granted only rarely and that too where there are exceptional circumstances. Therefore the threshold is very high when applications for bail pending appeal are taken up for consideration by Court.

[13] In the present case, the Appellant is relying on the grounds set out in paragraph 4 above.

[14] As regards the grounds that have been adduced whether there is a likelihood of success in appeal, it is relevant to consider how the Courts have dealt with same.

[15] In **Ratu Jope Seniloli and Ors. v The State** (Supra) the Court of Appeal said:

*"The first question is the likelihood of success in the appeal...The likelihood of success has always been a factor the court has considered in applications for bail pending appeal and section 17(3) now enacts that requirement. However, it gives no indication that there has been any change in the manner in which the court determines the question and the courts in Fiji have long required a very high likelihood of success. It is not sufficient that the appeal raises arguable points and it is not for the single judge on an application for bail pending appeal to delve into the actual merits of the appeal. That as was pointed in Koya's case, is the function of the Full court after hearing full argument and with the advantage of having the trial record before it ..."*

[16] The written submissions that have been filed on behalf of the Appellant has been in two stages, firstly regarding the application for bail pending appeal and thereafter regarding the grounds of appeal against conviction and sentence.

[17] Much emphasis has been laid down in the written submissions regarding the application for bail pending appeal and the application for adducing fresh evidence.

[18] The emphasis on the written submissions of the Appellant have been apart from the written submission regarding the application for bail, on the question of fresh evidence being adduced which relate to grounds 11 and 12 of the grounds of appeal.

- [19] As regards the other grounds of appeal, only grounds 1 to 4 and grounds 7 and 8 have been addressed. On these also, grounds 1 to 4 have been addressed together and grounds 7 and 8 have been addressed together. No submissions have been made on any of the other grounds.
- [20] Addressing grounds 11 and 12 it has been submitted that they are based on the material set out in the affidavits that have been filed with regard to the adducing of fresh evidence. It is on that basis that it has been submitted that the Appellant has not had a fair trial.
- [21] As stated above at paragraph [5] the adducing of fresh evidence has to be on the basis of an application to the Full Court of the Court of Appeal and not a matter that can be dealt with in the present instance.
- [22] Grounds 1 to 4 have been set out in wide generalized terms and are vague. They refer to generalized matters, such as, the learned trial Judge not taking into consideration inadmissible and/or prejudicial evidence without setting sufficient particulars, the learned trial Judge not directing himself and the assessors on the circumstantial evidence relied on by the State, failure to adequately evaluate the evidence, failure to refer to the possible defence that would arise on the evidence. The Appellant has failed to give particulars of the evidence that was being relied on by the Appellant in support of these submissions.
- [23] The learned trial Judge had in his summing up dealt with circumstantial evidence in detail and also in his judgment. The learned trial Judge had also analysed the evidence that was led in the trial in great detail and had also dealt with the evidence that the Appellant had been relying on for her defence.
- [24] In these circumstances, these grounds (1 to 4) have no likelihood of success.
- [25] In ground 7 and 8, the same position regarding circumstantial evidence has been revisited without giving any particulars and therefore there is no likelihood of success.



- [26] In grounds 9 and 10 the Appellant has taken up the position that the learned Trial Judge had erred in law and in fact when he did not reconsider before sentence that the Prosecution witness whose evidence the learned Judge relied on had lied on oath and that the evidence that was provided by the Appellant's Counsel was not contradicted by the State and as such there was a miscarriage of justice.
- [27] The judgment was delivered by the learned trial Judge on 4<sup>th</sup> September 2018. When the case had been adjourned for the 10<sup>th</sup> of September 2018 for sentencing submissions and mitigation, Counsel for the Appellant had filed a notice of motion supported by an affidavit seeking a stay of the proceedings and not to proceed with sentencing until further investigation and that the current trial be declared a mistrial.
- [28] This was an unusual application that was made by Counsel for the Appellant, which was made after the judgment was delivered. However, the learned Trial Judge had considered the application and in a written Ruling given on 10<sup>th</sup> September 2018 dismissed the application as there was no basis for such an application.
- [29] It is based on this Ruling regarding the application made by Counsel for the Appellant that these two grounds of appeal 9 and 10 have been formulated. There is no merit in these grounds and are not arguable.
- [30] The other grounds of appeal regarding conviction have not been supported with any written submissions and contain very much the same matters addressed in the grounds that have been considered above and therefore have no likelihood of success.
- [31] The grounds of appeal against sentence are again in a generalized form without setting out the errors in the sentence such as whether the trial judge acted upon a wrong principle, whether he allowed extraneous or irrelevant matters to guide or affect him, whether he has mistaken the facts, whether any relevant consideration were not taken into account in sentencing.



- [32] The sentence of 5 years imposed on the Appellant is at the lower end of the tariff of 5 to 12 years.
- [33] The grounds of appeal against sentence also have no likelihood of success.
- [34] The Appellant was sentenced to 5 years imprisonment on 18<sup>th</sup> September 2018 and therefore has been serving the sentence for about 8 months and therefore has not served a substantial period of the sentence.
- [35] In Ratu Jope Seniloli & Ors. v The State (Supra) the Court of Appeal said that the likelihood of success must be addressed first, and the two remaining matters in S.17(3) of the Bail Act namely "the likely time before the appeal hearing" and "the proportion of the original sentence which will have been served by the applicant when the appeal is heard" are directly relevant ' only if the Court accepts there is a real likelihood of success' otherwise, those latter matters 'are otiose'.
- [36] Having considered the submissions made before me, I am of the view that the grounds of appeal do not meet the threshold of being ones where there is a very high likelihood of success.
- [37] In the above circumstances the application of the Appellant for bail pending appeal is refused.
- [38] I have also considered the grounds of appeal against conviction and sentence as stated above and I am of the view that they are not arguable.

**Orders of Court:**

*[1] Leave to appeal against conviction and sentence are refused.*

*[2] Application for bail pending appeal is refused.*

*[3] This Court lacks jurisdiction to grant the application to adduce fresh evidence.*



*Suresh Chandra*

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**Hon. Justice Suresh Chandra**  
**RESIDENT JUSTICE OF APPEAL**