

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

CRIMINAL JURISDICTION

CRIMINAL APPEAL NO. AAU0050 OF 2008

(Suva High Court Criminal Case No. HAC 030 of 2007)

BETWEEN : JEFFERY VEIBATAKI VULIKIVAVALAGI COLATA
Appellant

AND : THE STATE *Respondent*

Before the Honourable Judge of Appeal Mr Justice John E Byrne

Counsel : G. O'Driscoll for the Appellant
P. Bulamainavalu for the Respondent

Date of Hearing &
Ruling : 10th June 2008

R U L I N G

- [1] On the 29th of April 2008 the Appellant was convicted in the High Court of ***Manslaughter*** and sentenced to 2 years imprisonment. The Judge declined to suspend his sentence in the absence of any special circumstances.
- [2] The Appellant now applies for bail pending the hearing of his appeal which is unlikely to be until the last session of this Court beginning on the 21st of October and concluding on the 28th of November 2008.

- [3] It has to be said immediately that there are many extenuating circumstances in this case which the learned Trial Judge recognised in her remarks on sentence when she said that the Appellant comes from a good family, that he was Head Boy at his school, that he is a keen sportsman and the offence for which he was convicted is out of character for him. She also accepted that he has a daughter whom he is bringing up himself and that he intends to seek traditional forgiveness from the family of the deceased for whose death the Court found the Appellant guilty.
- [4] The facts are that on the 25th of November 2006 an altercation occurred outside Barista's Coffee Shop in Suva at about 6.00pm. The Appellant was then 21 years old and employed as a waiter at the Coffee Shop. As a result of the altercation one Lepani Rokodovunivosa who was 27 years old died.
- [5] At about 6.00pm the deceased was with three friends who were employees of the King's Construction Company which at that time had a construction site on Knolly's Street. The deceased and his friends were all at a work party that day and they were walking past Barista's Coffee Shop on their way to town. It was not in dispute that they had all consumed alcohol at this party and that the deceased was drunk. I do not propose to traverse the evidence at the trial but summarise it by quoting the remarks of Shameem J. on Sentence on the 29th of April 2008 after the Appellant had been found guilty of *Manslaughter*. The Judge said that on the 25th of November 2006 the Appellant saw a group of drunk men on the road, he came down to the road from the Coffee Shop to confront them, became involved in an exchange of words with two of them and punched the deceased twice. The second punch caused him to

fall backwards onto the concrete footpath. He died of cranio-cerebral injuries caused by the blunt impact, two weeks later.

- [6] It has to be said immediately that the Appellant showed commendable self-restraint in not responding immediately to the insults which were directed at him by the deceased and one of his companions.
- [7] However the Judge also noted some aggravating features in the Appellant's conduct. The first was that she considered any provocation by the deceased to be almost non-existent. He was undoubtedly irritating and very drunk but his conduct required no response from the Appellant. However she also considered the violence he inflicted was minimal. His first punch apparently left no injury and the second caused the deceased to hit his head on the concrete footpath. Against those facts the Judge also set the fact that the deceased died two weeks after the assault after he had been kept on a life support machine and that his family suffered undoubted loss and grief. She concluded by saying that, taking into account all the mitigating and aggravating factors including the fact that the Appellant brought the entire situation upon himself by coming downstairs to challenge the deceased, she imposed what is undoubtedly a very low sentence, because the death of a person resulted, of 2 years imprisonment.
- [8] The Appellant now applies for bail pending the hearing of his appeal. I have given a number of decisions on such applications during the last 14 months, one of them being in Orisi Tamani -v- The State, Criminal Appeal No. AAUOO14 of 2007. Bail is only granted to convicted persons in exceptional circumstances pending

an appeal. The law is stated in Sections 3 and 17 of the Bail Act, particularly Section 3(4)(b) and Section 17(3)(a).

[9] Section 3(4)(b) states that the presumption in favour of the granting of bail is displaced where the person seeking bail has been convicted and has appealed against the conviction.

[10] Section 17(3)(a) states that when a Court is considering the granting of bail to a person who has appealed against a conviction or a sentence, it must take into account:

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

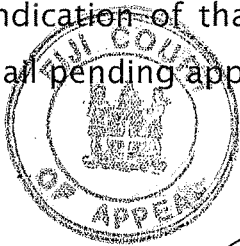
[11] I am not prepared to venture an opinion on the likelihood of success of the appeal because it would be unwise to do so in the particular circumstances of this case. However it can be said that the appeal will be heard in the sessions of the Court beginning on the 21st of October 2008 by which time the Appellant will have served approximately six months of his sentence. With remissions the Appellant could expect to be released from prison in approximately August 2009.

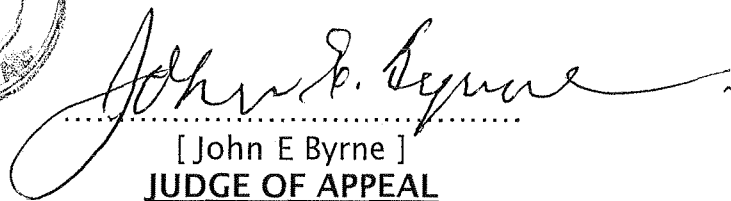
[12] Apart from the Bail Act, there is local common law on when a prisoner may be released on bail pending an appeal. I have referred to this in my Ruling of the 4th of October 2007 in Criminal Appeal AAU0045 of 2007, Saula Lalagavesi -v- The State. The

essential consideration is whether there are exceptional circumstances on which an applicant may rely. Some of these would be the applicant's personal circumstances such as extreme age and frailty or some serious medical condition. The first two of these circumstances do not apply to the applicant and it is possible that he has a medical condition which, although not serious now, might become so later. I refer to his statement during the hearing of this application that he is now being treated for a rheumatic heart condition.

[13] It is also clear from the authorities that the Courts here have long required a very high likelihood of success in the appeal. It is not sufficient that the appeal raises arguable points and it is not for a single Judge on an application for bail pending appeal to delve into the actual merits of the appeal. This is something which can only be left to the Full Court of this Court.

[14] Should the circumstances of the Appellant change radically between now and the time his appeal is likely to be heard then of course he may renew his application but at this stage there is no indication of that. For these reasons I refuse the application for bail pending appeal.




[John E Byrne]
JUDGE OF APPEAL

At Suva

10th June 2008