

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

CRIMINAL APPEAL AAU0105 OF 2008S
(High Court Action No. HAC001 of 2003L)

BETWEEN: **ABDUL AHAMMED ALI**

Appellant

AND: **THE STATE**

Respondent

In Chambers: **The Hon Justice Andrew Bruce, Justice of Appeal**

Date of Ruling: **Wednesday, 11th March 2009, Suva**

RULING GRANTING LEAVE TO APPEAL

- 1 This is an application for leave to appeal to the Court of Appeal against the judgment of the High Court in which the applicant, Abdul Ahmed Ali, was convicted after trial in the High Court (Sherry J and assessors) of murder. The conviction was on 17 October 2008. He was sentenced to imprisonment for life with a recommended minimum term of 17 years.
- 2 The essence of the grounds of appeal on which the Applicant relies are:
 - (1) the judge failed to consider his sworn evidence during the trial;
 - (2) the trial judge failed to consider the negligence of the police prosecutor and police department in bringing the case before the High Court after a lapse of something of the order of seven years;
 - (3) the judge failed to inform the assessors about the lack of evidence in relation to Malice Aforethought;

- (4) the judge was wrong in not considering the compliance by the Applicant of ill-treatment during his detention at Labasa Police kept station during his interview under caution.
- 3 According to a letter dated 17 October 2008, the Applicant has applied for legal aid. There is no information before me as to the outcome of that application.
- 4 It is proper to note that this matter has something of a long history. In particular, this cab applicant together with two others (one of which was his co-accused at trial) sought to appeal against a ruling of Shameem J in which that learned the judge refused an application for a stay of proceedings by the applicants in that appeal. On 14 April 2008, the Court of Appeal (Byrne, Pathik & Mataitoga JJA) held that an appeal to the Court of Appeal from such a ruling was, as a matter of law, incompetent. This is an issue reflected in ground two of the enumerated grounds of appeal drafted by the Applicant.
- 5 In my judgment, leave to appeal should be granted. This matter should be listed for mention at the next call over off matters for consideration before the Court of Appeal.

DATED the 11th day of March 2009.



(Andrew Bruce)

Justice of Appeal

