

IN THE HIGH COURT OF FIJI

AT LAUTOKA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 25 OF 2017

JITENDRA PRASAD

Appellant

V

STATE

Respondent

Counsel: : Mr. I. Khan for Appellant
 : Mr. A. Singh for Respondent
Date of Hearing : 2nd May, 2017
Date of Ruling : 5th May, 2017

RULING

1. Appellant was convicted on the 28th day of February, 2017 by the learned Magistrate at Nadi of one count of Rape contrary to section 149 and 150 of the Penal Code Cap.17. The matter was stood down till 9th March 2017 for sentence.

2. On the day fixed for sentencing (09.03.2017), police prosecutor made an application for a transfer of the case to High Court for sentence on the basis that the victim was a juvenile and therefore a greater punishment should be imposed than what the Magistrate had power to impose.
3. Pending his sentence, Appellant filed this petition of appeal on the 8th day of March 2017 against conviction.
4. Respondent raised a preliminary objection on the basis that the appeal has been filed prematurely and therefore be dismissed as the sentence is not yet recorded.
5. The law relating to appeal to High Court is set out in Section 246 of the Criminal Procedure Act. The Section reads:

246 (1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgment and sentence....

(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law.

6. It is clear that any person who is dissatisfied with a judgment (conviction) of a Magistrates Court in any criminal cause can appeal to the High Court against the

judgment (although it is prudent and desirable to wait for sentence so that both appeals can be disposed of in one appeal).

7. However the fact that this case has been transferred to this Court under Section 190 of the Criminal Procedure Act makes things different.

Section 190 (1) states:

Where –

(a) a person over the age of 18 years is convicted by a magistrate for an offence; and

(b) the magistrate is of the opinion (whether by reason of the nature of the offence, the circumstances surrounding its commission or the previous history of the accused person) that the circumstances of the case are such that greater punishment should be imposed in respect of the offence than the magistrate has power to impose the magistrate may, by order, transfer the person to the High Court for sentencing.

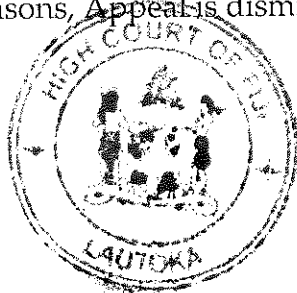
(2) If the person is transferred under sub-section (1) to the High Court, a copy of the order for transfer and of the charge in respect of which the person was convicted shall be sent to the Chief Registrar of the High Court.

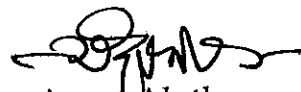
*(3) The High Court shall enquire into the circumstances of the case and **may deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court.** (emphasis added)*

(4) A person transferred to the High Court under this section has the same right of appeal to the Court of Appeal as if the person had been convicted and sentenced by the High Court.

(5) The High Court, after hearing submissions by the prosecutor, may remit the person transferred for sentence in custody or on bail to the Magistrates Court which originally transferred the person to the High Court and the person shall then be dealt with by the Magistrates Court, and the person has the same right of appeal as if no transfer to the High Court had occurred.

8. Once a case has been transferred under Section 190 of the Criminal Procedure Act, the jurisdiction is vested in the High Court and it can deal with the person in any manner in which the person could be dealt with if the person had been convicted by the High Court.
9. A person transferred to the High Court under this Section has the **right of appeal to the Court of Appeal as if the person had been convicted and sentenced by the High Court.**
10. It is therefore clear that the Appellant has filed this appeal in the wrong forum.
11. Objection of the Respondent is upheld albeit not on the ground it raised. For the above reasons, ~~Appeal is dismissed.~~




Aruna Aluthge
Judge

AT LAUTOKA
5th May, 2017

Counsel: Iqbal Khan & Associates for the Appellant
Office of the Director of Public Prosecution for Respondent