

IN THE COURT OF APPEAL
AT SUVA

CRIMINAL APPEAL NO. AAU 0026 OF 2013
(High Court Action No. HAC 57 of 2011)

BETWEEN : PETERO KALOU
Appellant

AND : THE STATE
Respondent

Coram : Chandra RJA

Counsel : Appellant in person
Mr. M. D. Korovou for the Respondent

Date of Hearing : 8 July 2014

Date of Ruling : 2 October 2014

RULING

1. This is an application for leave to appeal against conviction and sentence.
2. The Appellant was charged with 14 counts of rape, the victim being his daughter aged 17 years.
3. After trial the Appellant was convicted on the learned trial Judge agreeing with the unanimous verdict of guilty brought in by the Assessors and sentenced to 17 years imprisonment with a non-parole period of 14 years.

4. In his grounds of appeal the Appellant has set out the following grounds:

- i. That the sentence is not fair, wrong in law and inconsistent with sentences given to accused convicted of the same offence;*
- ii. The trial judge failed to warn himself properly on the issue of lies in the summary of facts which did not contain the evidence of the defence and which I admitted to save the victim from the embarrassment of facing the court;*
- iii. The observation of the trial judge in my case was erroneous and biased towards the victim;*
- iv. That I was not properly represented in my case even though the seriousness of the offence for which I was charged was clear to the court;*
- v. The sentence ordered by the trial court was extremely harsh and excessive.*

5. Grounds i and v relate to his sentence and the other three grounds relate to his conviction.

6. A *voire dire* inquiry had been held and the confession of the Appellant was held to be admissible.

7. The main basis of his application for leave to appeal against conviction is that the victim was a willing partner and that she was lying in court whereas the victim's evidence was that she was always under threat.

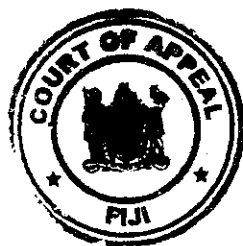
8. The grounds of appeal against conviction have to satisfy the criteria in Section 21 of the Court of Appeal Act (Cap.12) either as questions of law, questions of fact or questions of mixed law and fact or any other ground which appear to be a sufficient ground of appeal.

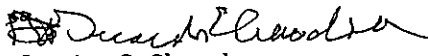
9. None of the grounds ii, and iii satisfy the requirements of Section 21.

10. Regarding his position that he was not properly represented, the right to legal representation is not an absolute right and he had been given the opportunity to cross examine the witnesses and therefore there does not appear to be any prejudice caused to the Appellant in this case. Therefore that ground also fails.
11. As far as the grounds of appeal against sentence, to satisfy the requirements of Section 21 he has to obtain leave of the Court of Appeal unless the sentence is one fixed by law.
12. The learned trial Judge in sentencing the Appellant has kept to the tariff and cited several similar instances where the victims have been raped by persons who have had some close relationship to them and taking into account the fact that the Appellant was the biological father of the victim when the sentence was imposed. No merit is seen in the grounds of appeal regarding sentence.
13. In the above circumstances the application for leave to appeal against conviction and sentence is refused.

Order of Court

Application for leave to appeal against conviction and sentence is refused.




Hon. Justice S. Chandra
Resident Justice of Appeal