

IN THE COURT OF APPEAL
[On Appeal from the High Court]

CRIMINAL APPEAL NO: AAU0001 of 2013
(High Court Case No: HAC11 of 2011 Ltk)

BETWEEN : **THE STATE** *Appellant*

AND : **CHEN WEN JIAN** *Respondent*

Coram : Goundar JA

Counsel : Mr. M. Delaney for the Appellant
Mr. N. Nand for the Respondent

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Mr. M. Delaney for the Respondent

Date of Hearing : 29 May 2014

Date of Ruling : 6 June 2014

RULING

[1] Following a trial in the High Court at Lautoka, the appellant was convicted on two counts of rape and sentenced to 7 years' imprisonment. The appellant seeks leave to appeal against his conviction. The State seeks leave to cross-appeal against sentence.

Appeal against conviction

[2] The appeal against conviction is advanced on the following grounds:

- “1. That the verdict and findings of the Learned Trial Judge and the assessors were unreasonable and against the weight of the evidence adduced at the trial and/or that it could not be supported on the totality of the evidence.
2. That under all the circumstances and in consideration of all the evidence of the case the finding of the Learned Trial Judge is unsafe, unfair and unreasonable.
3. That the Learned Judge erred in law and in fact by allowing the assessors to formulate questions to be put to the prosecution witnesses through the Judge during the course of the trial.
4. That the Learned Judge erred in law and in fact by admitting the evidence of the date of birth of complainant.
5. That the Learned Judge erred in law and in fact by directing the assessors on the following terms “what a pathetic way to celebrate birthday 13 years, 11 months and 24 days” by reference to the complainant.
6. That the Learned Judge erred in law and in fact by directing the assessors by making reference to the provisions of the Indian Penal Code.
7. That the Learned Judge erred in law and in fact by not adequately directing the assessors on the issue of consent.
8. That the Learned Judge erred in law and in fact by not adequately directing the assessors of the Appellant’s right to remain silent during the course of the interview by Police.
9. That the Learned Judge erred in law and in fact by allowing hearsay evidence to be led during the trial from the prosecution witnesses.
10. That the Learned Judge erred in law and in fact by not addressing hearsay evidence in summing up to the assessors.”

[3] Counsel for the State concedes that grounds one, two and seven are arguable. At the time of the offences, the complainant was 14 years old. The prosecution was required to prove lack of consent on behalf of the complainant and that the appellant knew about the lack of consent. It is evident from the summing up that the complainant’s version was that her elder sister forced her to have sex with the appellant on two occasions. The complainant

does not seem to suggest that the appellant used force against her or knew she was not consenting. The directions on the issue of consent or knowledge of lack of consent are arguably inadequate or lacking. On the other grounds, Mr. Delaney submits that he cannot respond to them without the court record. He submits that if the alleged errors are supported by the court record then at least some are arguable.

- [4] In my judgment the grounds of appeal raise serious issues that cannot be substantiated without the benefit of the court record. In these circumstances, justice can only be done if leave is granted and the full court record is made available to the parties.


Appeal against sentence

- [5] The gist of the State's appeal against sentence is that it is manifestly lenient. In my judgment, the sentence of 7 years' imprisonment for rape of a child in a contested case is arguably lenient.

Result

- [6] The appellant is granted leave to appeal against his conviction. The State is granted leave to cross appeal the appellant's sentence.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL