

IN THE COURT OF APPEAL
AT SUVA

CRIMINAL APPEAL NO. AAU 61 OF 2013
(High Court HAC 34 of 2010)

BETWEEN : SOLOMONI NAQOLI
Appellant

AND : THE STATE
Respondent

Coram : Chandra RJA

Counsel : Mr. M. Yunus for the Appellant
Mr. L. Fotofili for the Respondent

Date of Hearing : 24 April 2015

Date of Ruling : 1 May 2015

RULING

1. This is an application for leave to appeal against the sentence imposed on the Appellant.
2. The Appellant was charged with one count of rape contrary to section 207(1) of the Crimes Decree, 2009.
3. The Appellant pleaded guilty to the charge and was sentenced to 11 years imprisonment with a non-parole period of 9 years with effect from 16th May 2013.

4. The Appellant was the uncle of the complainant who was 7 years old and was living in the same house. The complainant had been watching television and lying on the lap of the Appellant. After some time he had taken the complainant to the village hall, and thereafter raped her. The child had related the incident to her mother and thereafter a complaint had been made to the Police.
5. The Appellant filed an application for leave to appeal against the sentence imposed on him and urged the following ground of appeal:

“That the learned sentencing Judge erred in fact and law when he failed to discount the term of more than (3) years which was the period the Petitioner spent in remand from the final sentence of the Appellant.”
6. An appeal against sentence would lie in terms of Section 21(c) of the Court of Appeal Act (Cap.12) and as held by the Supreme Court in Naisua v. State [2013] FJSC 14; CAV0010.2013 (20 November 2013) if it is demonstrated the trial Judge made one of the following errors:
 - (i) Acted upon a wrong principle;
 - (ii) Allowed extraneous or irrelevant matters to guide or affect him;
 - (iii) Mistook the facts;
 - (iv) Failed to take into account some relevant consideration.
7. The Appellant had been in remand for 2 years and 7 months which period had not been discounted when the Appellant was sentenced. The Respondent has in the written submissions filed in Court conceded this position.
8. Section 24 of the Sentencing and Penalties Decree, 2009 requires a sentencing Court to deduct time spent in remand when a sentence is imposed on an accused who has been found guilty of the charge against him.

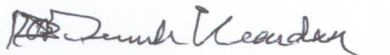
9. It is established law that the period of remand should be deducted when imposing a sentence on an accused who has been found guilty. Naivalurua Koroitavalena v. The State Criminal Appeal No.AAU 0051 of 2010 (5 December 2014).

10. The failure to deduct the period spent in remand by the Appellant when he was sentenced was an error and therefore leave to appeal is granted to the Appellant.

Order of Court:

Leave to appeal against sentence is granted to the Appellant.




Hon. Justice S. Chandra
Resident Justice of Appeal