

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

CRIMINAL APPEAL NO. AAU105 of 2013
[High Court Case No. HAC120/12]

BETWEEN : DINESHWAR PRASAD
Appellant

AND : THE STATE
Respondent

Coram : Goundar JA

Counsel : Mr. A. Vakaloloma for the Appellant
Mr. L.J. Burney for the Respondent

Date of Hearing : 23 July 2014

Date of Ruling : 15 January 2015

RULING

- [1] This is an application for leave to appeal against conviction and sentence. To succeed with this application, the appellant must demonstrate his grounds of appeal are arguable.
- [2] The appellant was convicted on two counts of rape after a trial. He was sentenced to 12 years' imprisonment with a non parole period of 10 years.
- [3] The allegations arose when the complainant decided to share a taxi with the appellant. The evidence was that the complainant was drunk, but she got into the taxi with the appellant because she knew him as a friend. The complainant said instead of taking her home, the appellant took her to a motel and raped her twice. When she resisted, the appellant used force and physical violence. She was left behind in the hotel in a state of unconsciousness. A security officer found her in the bedroom. She complained to him that the accused had raped her. She immediately went and reported the matter to the police. Medical examination revealed signs of violence on her body. The appellant admitted having sexual

intercourse with the complainant. His defence was that the complainant consented to the sexual intercourse on both occasions.

Conviction appeal

- [4] The appellant's contention on ground one is that the trial judge did not give adequate directions on the medical report of the complainant. The ground is vague and lacks particulars. The medical evidence of injuries found on the complainant's body was consistent with her evidence that physical violence was used when the appellant raped her. In other words, the medical evidence supported the complainant's version that she did not consent to the sexual intercourse. The learned trial judge at pages 8-9 of his summing up gave a fair and thorough summing up on the medical evidence. At page 12, the learned trial judge reminded the assessors that the weight to be given to the medical evidence was a matter for them. The directions on the medical evidence were adequate and this ground is not arguable.
- [5] The second ground alleges that the learned trial judge failed to analyze all the facts before convicting the appellant. The facts were thoroughly analyzed by the learned trial judge at pages 10-14 of his summing up and the issue of consent was fairly left to the assessors for their determination. This ground is not arguable.
- [6] Ground 3 alleges that the learned trial judge should have carried out an independent assessment of the evidence before convicting the appellant. The assessors expressed unanimous opinions that the appellant was guilty on both counts. The learned trial judge agreed with the assessors' opinions and convicted the appellant. In these circumstances, the learned trial judge was not required by the law to carry out his own independent assessment of the evidence. This ground is not arguable.
- [7] The fourth ground alleges that the learned trial judge failed to direct on any possible defence. The defence case was that the complainant consented to the sexual intercourse. This defence was fairly put to the assessors in the summing up. This ground is not arguable.

[8] The fifth ground is that the prosecution evidence created serious doubt and the benefit of doubt should have been given to the appellant. The main issue at trial was consent or lack of it. The complainant gave evidence that she did not consent to the sexual intercourse and that she was forced to have sex. The medical evidence of bodily injuries supported the complainant's account of force being used. Furthermore, there was evidence of recent complaint made to the motel's security officer that negated lack of consent. The contention that the prosecution evidence created serious doubt is not arguable.

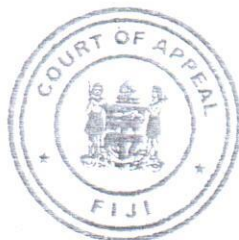
Sentence appeal

[9] The grounds of appeal advanced against sentence complain of severity rather than an error in the sentencing discretion. A total sentence of 12 years' imprisonment is well within the tariff for rape.

[10] This was a case where physical violence was used on the victim to subdue her from resisting. A further aggravating factor was that the appellant exploited the vulnerability of the complainant who trusted him as a friend and accompanied him in the taxi in a state of drunkenness. She was left behind in the motel room after the rape. A total sentence of 12 years' imprisonment for 2 counts of rape reflected the criminality involved and the sentence is not arguably manifestly excessive.

Result

[11] The application for leave to appeal against conviction and sentence is refused.



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Hon. Mr. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Mr. A. Vakaloloma instructed by Messrs. Maqbool & Co. for Appellant
Office of the Director of Public Prosecutions for State