

IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU0065 of 2015
[High Court Case No: HAC161 of 2013]

BETWEEN : **VICKY ANAND SAMI**
Appellant

AND : **THE STATE**
Respondent

Before : **Hon. Mr. Justice Daniel Goundar**

Counsel : **Mr. G. O’Driscoll for the Appellant [on instructions
from Iqbal Khan & Associates]
Mr. M. Vosawale for the Respondent**

Date of Hearing : **23 November 2016**

Date of Ruling : **30 November 2016**

RULING

[1] This is a timely application for leave to appeal against both conviction and sentence. The appellant was convicted after trial of rape of an 11-year old girl and sentenced to 10 years’ imprisonment with a non-parole period of 7 years.

[2] The appellant was the victim’s neighbour. On the night of the incident, the appellant invited the victim to his home and offered food. When the victim entered the kitchen, the appellant pulled down the victim’s underwear and inserted his fingers into her vagina. She said she felt pain and was too scared to report to anyone. The incident occurred on 20 March 2013. The victim was medically examined on 28 March 2013, that is, 8 days after the assault. Medical examination revealed a healed laceration on the vagina that was consistent with penetration with a finger. The appellant gave evidence at the trial. He did not dispute that he invited the victim to his home but he denied sexually assaulting her.

[3] The grounds of appeal are:

- (1) That the Learned Trial Judge erred in law and in fact in not taking into consideration that apart from the evidence of the Complainant, there was no other independent evidence against the Appellant.
(full particulars will be provided upon receipt of the Court Record).
- (2) That the Learned Trial Judge erred in law and in fact in relying on and/or considering and/or taking into consideration inadmissible and/or prejudicial evidence in finding the Appellant guilty.
(full particulars will be provided upon receipt of the Court Record).
- (3) That the Learned Trial Judge erred in law and in fact in not fully analyzing/and/or inadequately analyzing the evidence before the Court and hence there was a substantial miscarriage of justice.
(full particulars will be provided upon receipt of the Court Record).
- (4) That the Learned Trial erred in law and in fact in not adequately directing/misdirecting the previous inconsistent statements/evidence made by the Complainant and as such there has been a substantial miscarriage of justice.
(full particulars will be provided upon receipt of the Court Record).
- (5) That the Learned Trial Judge erred in law and in fact in not adequately/sufficiently/referring/directing himself on the evidence presented by the Appellant during the trial.
(full particulars will be provided upon receipt of the Court Record).
- (6) That the Learned Trial Judge erred in law and in fact in not directing himself the possible defence on evidence presented in Court and as such by his failure there was a substantial miscarriage of justice.
(full particulars will be provided upon receipt of the Court Record).
- (7) That the Learned Trial Judge erred in law and in fact in not directing himself or the Assessors to the evidence of Prosecution Doctor and the Appellants Doctor whose qualified opinions were conflicting. The failure to do so caused a substantial miscarriage of justice.
(full particulars will be provided upon receipt of the Court Record).
- (8) That the Learned Trial Judge erred in law and in fact in shifting the burden of proof to the Appellant when he stated that “the complainant’s version of events is different from the accused’s version of events. Who appears to you to be the credible witness? Who appears to you to be forthright and not evasive? Who appears to you to be telling the truth? If you think the complainant was the credible witness, you will have to find the accused guilty as charges. If you think the accused was the credible witness, you will have to find the accused not guilty as charged.” And thus a substantial miscarriage of justice had occurred.

(full particulars will be provided upon receipt of the Court Record).

(9) That the Appellant appeals against sentence being manifestly harsh and excessive and wrong in principal in all the circumstances of the case.

(10) That the Learned Trial Judge erred in law and in fact in not taking into relevant consideration SENTENCING AND PENALTIES DECREE 2009 namely:-

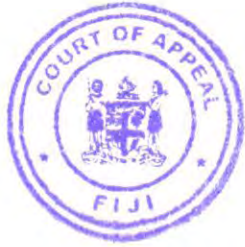
1. Section 3 of the Sentencing and Penalties Decree;
2. Section 4 of the Sentencing and Penalties Decree; and
3. Section 5 of the Sentencing and Penalties Decree.

[4] Counsel for the appellant filed written submissions in support of the above grounds of appeal on 5 July 2016. Apart from reciting unnecessary case law, the submissions hardly identify the particulars of the alleged errors. The first ground of appeal is misconceived because the law did not require the complainant's evidence to be corroborated with independent evidence. The second ground is unarguable because the appellant has not pointed out to the inadmissible or prejudicial evidence that the trial court relied upon to convict him. The evidence was analyzed in the summing-up. Ground three is unarguable. There is no evidence to show that the victim made a previous inconsistent statement on a material issue requiring special direction. Ground four is unarguable. Ground five is too vague to be arguable. The appellant's defence was a denial of the allegation. This was fairly put to the assessors. Ground six is unarguable. The two doctors did not give conflicting evidence. The medical evidence was fairly summarised in the summing-up. Ground seven is unarguable. When the summing-up is read as a whole, the assessors were clearly told that the burden of proof was on the prosecution and that the appellant was not required to prove his innocence or anything at all. Ground eight is unarguable.

[5] The sentence of 10 years' imprisonment for rape of an 11 year old girl in a contested case is on the lower end of the tariff for child rape. The appellant was 25 years old and married when he committed this offence. Apart from his previous good character, there was no other compelling mitigating factor. I am not convinced that there is an arguable error in the sentencing discretion.

Result

[6] Leave refused.



A handwritten signature in blue ink, appearing to read "Daniel Goundar", with a long horizontal flourish extending to the right.

.....
Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Iqbal Khan & Associates for the Appellant
Office of the Director of Public Prosecutions for the State