

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CRIMINAL APPEAL NO. AAU 41 OF 2013**  
**(High Court No. HAM 173 of 2012)**

**BETWEEN** : ISAAC NAVUNIGASAU

*Appellant*

**AND** : THE STATE

*Respondent*

**Coram** : Chandra RJA

**Counsel** : Mr. J. Savou for the Appellant  
Mr. V. Perera for the Respondent

**Date of Hearing** : 1 October 2016

**Date of Ruling** : 7 December 2016

**RULING**

- [1] The Appellant was convicted by the Rakiraki Magistrate's Court for the offence of rape contrary to Section 149 and 150 of the Penal Code (Cap.17).
- [2] The Appellant was sentence to 9 years imprisonment with a non-parole period of 7 years on 30<sup>th</sup> November 2011.

- [3] The Appellant appealed against his conviction and sentence to the High Court but only proceeded with the appeal against his conviction. After hearing the appeal was dismissed on 10<sup>th</sup> April 2013.
- [4] By his amended petition of appeal the Appellant has appealed against the judgment of the High Court on the following grounds:
- (1) The High Court erred in law by failing to make an independent assessment on the issue of consent.
- (2) The High Court erred when it incorrectly affirmed at paragraph 15 that neither Salome nor Talica gave evidence.
- [5] The complainant had given evidence to the effect that in November 2006 the Appellant, her uncle, had offered her employment. She and her father had agreed and she had presented herself at the Appellant's office. He had told her that any ladies who came to his office had to be checked and if that she was found have an illness, he would write it in his book and send it overseas. He made her undress and lay on a bed. He had put hospital gloves on and spectacles and spreading her legs had touched her genitals, opening her vagina. When he had finished checking, she had dressed and gone outside. He had later told her to come back in, undress and to lay again on the bed. He had then undressed himself and raped her. He had threatened her and told her not to tell anybody. She had dressed and walked home. When she had got home she had told Salome and Talica as to what happened. In February, when she was at home with her parents the Appellant had come and taken her and her father to another uncle's house where she was made to sign a paper. The paper was later seen to be a withdrawal of the complaint of rape. She had not read the paper and had not known what she was signing. She had affirmed in Court at that time she had no intention of withdrawing the charge. The Appellant had given alibi evidence that he was in Suva at all relevant times and that the complainant was lying about the rape.

### **Ground One**

- [6] It is conceded by the Appellant that this ground was not argued before the High Court but since it was apparent from the Magistrate's Court record that no question on the issue of consent was posed to the complainant, it was necessary to ventilate same in the interests of justice.
- [7] The Appellant further submits that it is only the trial Magistrate in his judgment who has stated that the complainant never gave consent, and that these contradictions were not discussed by the High Court but are nevertheless important.
- [8] The present appeal has been filed by the Appellant pursuant to section 22(1) of the Court of Appeal Act (Cap.12). It is an appeal against the judgment of the High Court. The Appellant has to show as to how the High Court had erred.
- [9] The Appellant is seeking to argue matters that were not raised before the High Court and on which the High Court had not addressed its mind.
- [10] An appeal lies against the judgment of the High Court sitting in appeal against the judgment of a Magistrate's Court in terms of section 22(1) of the Court of Appeal Act only on a question of law. No question of law arises on this ground raised by the Appellant and therefore there is no merit in it.

### **Ground Two**


- [11] In this Ground the Appellant is urging that the learned High Court Judge erred in incorrectly affirming that neither Salome nor Talica had given evidence before the Magistrate's Court whereas their statements had been admitted by consent as Exhibits 5 and 6.

- [12] The learned High Court Judge in his analysis started off by stating that it is trite law that the only evidence that is of any value is the evidence voiced in Court. Thereafter the evidence of the witnesses who gave evidence in Court were analysed. At paragraph [15] he went on to state that neither Salome nor Talica gave evidence, and to that extent any inconsistencies claimed from their statements are both irrelevant and inadmissible.
- [13] The learned Judge at paragraph [16] has considered the effect of such statements and has arrived at the conclusion that even if the evidence of recent complaint was not complete, that would not be fatal to the conviction.
- [14] In view of the above position it cannot be said that the learned High Court Judge erred and therefore there is no merit in this ground of appeal.
- [15] Since the grounds adduced by the Appellant have no merit the appeal would be dismissed in terms of section 35(2) of the Court of Appeal Act as being frivolous.

***Orders of Court:***

*The appeal of the Appellant is dismissed in terms of section 35(2) of the Court of Appeal Act.*



  
**Hon. Justice S. Chandra**  
**RESIDENT JUSTICE OF APPEAL**