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

Criminal Appeal No. AAU 026 of 2012
(High Court Case No: 17 /2011)

BETWEEN : **MOHAMMED JABAR**

Appellant

AND : **THE STATE**

Respondent

Coram : **Calanchini, P**
Jayamanne, JA
Temo, JA

Counsel : **Mr. J. Singh for the Appellants**
Mr. L. Fotofili for the Respondent

Date of Hearing : **12 May 2016**

Date of Judgment : **27 May 2016**

JUDGMENT

Calanchini, P

[1] I have read the draft judgment of Jayamanne JA and agree that the appeals should be dismissed.

Jayamanne, JA

Charges and outcome of the trial

[2] The appellant was charged with one count of Rape contrary to section 207(1), (2)(c) and (3) of the Crimes Decree No. 44 of 2009 and one count of Sexual assault contrary to section 210(1)(a) of the Crimes Decree No 44 of 2009. The offences were committed between 1 September and the 31 October 2010 against the complainant, a boy under the age of 13 years. In the first count the appellant was alleged to have penetrated the mouth of the complainant, with his penis. In the second count, the appellant is alleged to have rubbed his penis on the complainant's anus.

[3] After a two day trial the assessors unanimously returned a verdict of guilty on the count of rape and found not guilty on the count of sexual assault. With regard to count two, it appears that there was no evidence to show that the appellant rubbed his penis on the complainant's anus. Having concurred with the opinion of the Assessors the learned trial judge convicted the appellant on the count of rape and acquitted on the count of Sexual assault. The appellant was defended by a counsel at the trial. In the appeal also a counsel appeared for him in the Court of Appeal.

[4] On 29 November 2011, the learned trial judge imposed a 12 years imprisonment with a non-parole period of 10 years.

Judgement of Single judge

[5] On 25 February 2012 the appellant filed a notice of appeal and sought enlargement of time. The Court of Appeal received the notice on 2nd May, 2012. After considering the application, Court of Appeal decided to grant leave against the conviction and sentence on following grounds:

i. That the Honourable Trial Judge erred in law and fact when directing the assessors at paragraph 7 of the Summing up that if the assessors do not believe the accused's sworn testimony then it would mean that he has not discredited the evidence of prosecution witnesses in any way.

ii. That the Honourable trial Judge erred in law and fact by not directing the assessors that they may chose to accept the accused version of events, or accept part of it and reject the rest, or reject the rest of it

iii. That the honourable Trial judge erred in law and fact when allowing hearsay evidence of the prosecution witness Talim and not directing the assessors on the rule against hearsay.

iv. That the sentence is harsh and excessive in all the circumstances of the case.

Prosecution Case

[6] The complainant was 9 year old. He was a school boy in class 4. He lived with his family in the neighbourhood of the appellant who was around 56 years at the time material to the case. Though the complainant did not have a close relationship with the appellant, the complainant treated him like a grandfather. The appellant was a frequent visitor to the house of the complainant and the family had a cordial relationship with the appellant.

[7] According to the complainant, on the day in question when the he was watching TV at home around 11 am, the appellant called him and the complainant accompanied him to a nearby thicket, which was referred to as a cane field. The appellant had a knife with him. At the thicket which was 300 meters away from the house of the complainant, the appellant asked the complainant to suck his penis which the complainant did for about one minute. On the request of the appellant, the complainant removed his shorts at which point the appellant rubbed his penis on the complainant's back. The complainant did not run away as the appellant was armed with a knife. He got frightened after seeing the knife. The complainant could not remember the exact date but said that there was a funeral ceremony at the house of one Shifaz, a neighbour. He remembered that it was a weekend. He narrated the incident to Talim, his grandfather.

[8] Under cross examination, the complainant said that he did not tell his father about the incident as he would have hit him. When Talim inquired, the complainant disclosed

the incident to him. He was comfortable with Talim to disclose the incident. To a question posed by the defence, the complainant conceded that the incident took place either on the 40th day or middle of period of ceremony after the funeral at the Shifaz's house. Any how he was not certain about the exact date. When the defence inquired as to why he waited till Talim spoke, the complainant responded saying *"I wanted to tell him. He asked me."* The evidence of the complainant is that he told Talim *'after that day.'* When the defence asked, complainant told the court that the similar incidents happened many times even at the house of the complainant.

[9] Talim testified that, on a Saturday i.e. 28 October, 2010 whilst dismantling a shed at Shifaz's house, *'I remember Jabbar taking Muzamik toward the creek many times.'* It appears that after the funeral, the funeral ceremony was held for several days or at least the shed put up for the ceremony was kept for several days. Clear evidence has not been elicited in this regard. The witness felt suspicious as he had seen on many Saturdays', the appellant going to the house of the complainant around 11 a.m. The witness in his evidence confirmed that the complainant divulged the incident to him. As the father of the complainant had gone for work, Talim could not inform him of the incident on the same day. On the next day, the witness went to see his sick sister. In addition, the witness too was suffering from cough also. However the witness told the court that *'after a while'* he reported the incident to the father of the complainant. According to the father's evidence, Talim informed him about the incident on 4 November 2010 i.e. 7 days after the incident.

[10] During cross examination the witness maintained that he had spoken to the appellant on several occasions prior to the incident. But the defence suggested that only in two instances the witness spoke with the appellant, which suggestion the witness denied. In any event, the defence never suggested to the witness of having any animosity with the appellant.

[11] Manjoor Begg, the father of the complainant told the court that Talim brought the matter to his notice on 4 November 2010. Then the father inquired from the complainant. The complainant told father also that he sucked the appellant's penis and showed the father the place of the incident. Complainant told father that he did not divulge the incident to him because the complainant was afraid of him. To a

question raised by the defence, the witness said that Talim did not ask him to complain to the police about the incident. The witness testified that the appellant is also a distantly related through his wife's side, used to visit his house very often and used to drink grog in his house.

[12] On the same day, i.e. 4 November 2010, the father of the complainant informed the incident to the police and complainant also gave a statement to the police. Police referred the complainant to a doctor for medical examination. The doctor did not find any injuries on the body of the complainant.

Analysis and consideration of grounds of appeal

Ground one and two

[13] Counsel for the appellant submitted that he would argue ground one and two as a condensed ground as both have a connection. The thrust of his submission was that learned trial judge erred in not giving proper directions with regard to evaluation of the evidence of the appellant. With regard to Ground one, he submitted that at paragraph 7 of the summing up was a 'mis-direction.' The impugned part of the summing up is as follows:

> *'If they do not believe the accused's sworn testimony then it would mean that he has not discredited the evidence of prosecution witness in any way."*

[14] It is well established principle that a summing up should not be criticised or viewed by merely looking at one or few selected sentences, but it must be read as a whole. A judge's directions cannot be sometimes summarised into one sentence. It has to be scrutinised as to how the assessors have perceived the directions. Counsel for the appellant isolated one sentence of paragraph 7 and argued that the assessors were mis directed. It is relevant to refer to judicial pronouncements in order to understand as to how this issue should be resolved.

[15] In **Singh V Reginam** [1980] FJCA7; Criminal Appeal No. 46 of 1979 (30 June 1980) at page 16, the trial judge in two paragraphs told assessors that *" It is sufficient for his purposes if he merely raises a reasonable doubt in your minds" and* it was argued that

the judge had suggested that the burden of proof rested on the accused. However the Court of Appeal pronounced that:

> *"It has been said time and again that summing up must be read as a whole and it is quite wrong to take one or two phrases in isolation and examine them away from their context.....Read in context, it is perfectly clear that the summing up was entirely proper"*

[16] In the present case, in several paragraphs, the learned trial judge has clearly and unambiguously directed the assessors that the burden is always with the prosecution and assessors must only use the evidence of the prosecution witnesses as for the conviction. He further said them that the accused has no burden to prove. It is fair and necessary to examine the disputed paragraph 7 in full, which is follows:

> *"The accused elected to give evidence(1). I must remind you that when an accused gives evidence he assumes no onus of proof. That remains on the prosecution throughout(2). His evidence must be considered along with all other evidence and you can attach such weight to it as you think appropriate(3). If you believe him or do not feel sure of his guilt, then your opinion must be not guilty(4). If you reject his evidence as being untrue; that does mean that he is automatically guilty of the offence(5). The situation would be then be the same as if he had not given any evidence at all (6). He would not have discredited the evidence of the prosecution witnesses in any way (7). If prosecution evidence proves that he committed the offences then the proper opinion would be guilty(8)"* (parenthesis and emphasis added)

[17] The learned trial judge was perfectly correct when he reminded that the accused had no onus to prove and it remains on the prosecution throughout. It means till the end of the case i.e. even after the defence case, the burden is on the prosecution. In the next line, the trial judge emphasised the assessors to consider the evidence of the accused. Had the judge not given that direction, it would have been argued as an omission. In the 4th sentence, he succinctly states that if the accused was believed then he should not be guilty. When the judge says that *"do not feel sure of guilt"* it means that even if there is reasonable doubt, then also the accused should be found not guilty. In the 5th sentence i.e just before the disputed two sentences, the judge made it crystal clear that even if the accused evidence was rejected, he is not automatically guilty. Therefore he warned the assessors not to convict just because evidence of the accused was rejected.

The word *'automatically'* must be read in conjunction with last sentence of the paragraph. It reminds the Assessors that the responsibility is with the prosecution to prove the offence.

[18] Other relevant portions of summing up are as follows:

i. *Paragraph 5 - "The prosecution must prove its case beyond reasonable doubt."*

ii. *Paragraph 4 - "The burden of proof rests throughout the trial upon the State...The burden never changes, never shifts to the Accused."*

iii. *Paragraph 27- "Remember it is not for the accused to prove anything. He does not have to prove his alibi or any motive for the complainant to make up the allegation against him. The prosecution must prove guilt of the accused beyond reasonable doubt."*

iv. *Paragraph 34- "The only evidence that implicates the accused is of the complainant. ....Did the complainant tell the truth in court or is he a reliable witness? .... These are matters for you to consider along with all my directions before you arrive at your opinions."*

v. *Paragraph 35- "But if you do not believe the complainant or feel not sure of guilt of the accused, you must express opinions of not guilty."*

[19] It is appropriate to refer to Bullard v R (1957) A.C. 635, where it was held that:

> *"But there is no magic formular and provided that on a reading of the summing up as a whole the jury are left in no doubt where the onus lies the complaint can properly be made"*

[20] Dealing with ground two of the appeal, the counsel for the appellant argued that learned trial judge has failed to direct as to what they should do, in the event they held that only a part of evidence of the accused were to accept and to reject the balance. In paragraph 15, the trial judge has given directions with regard to 'divisibility of credibility' which is as follows:

> *"You can accept part of a witness's testimony and reject other parts. A witness may tell the truth about one matter and*

lie about another; he or she may be accurate in saying one thing and be wide of mark about another."

[21] Counsel argued when trial judge referred to the word 'witnesses' in the above paragraph, very likely, the assessors may have thought of the prosecution witnesses and not about the accused. I have to say with respect that there is no merit in this proposition. Let me examine the issue now. At the end of the prosecution case Mr. Kholi, the defence counsel informed court that *"accused will give evidence"* and the accused was called to give evidence and in court he was referred to as *"Defence Witness 1"*(page 161 of the record).

[22] The learned trial judge at paragraph 11 told the assessors that:

> *"Those opinions must be based solely upon the evidence. Evidence consists of sworn testimony of the witnesses, what each witness has told the court in the witness box"*
>
> (emphasis added)

[23] Further, at paragraph 17, the trial judge told them that *'Evidence is what a witness said from the witness box in court."*

[24] At paragraph 7 as shown previously, the learned trial judge told them, in a number instances, that the accused gave evidence. It meant he gave evidence from the witness box.

[25] Therefore trial judge has told them clearly that evidence comes from persons who narrates facts from the witness box. In this case, the accused has given evidence from the witness box. Thus there is no opportunity for the assessors to assume that the accused is not a witness.

[26] In the circumstance, one cannot conclude that the assessors thought that the accused was not a witness. Since he is a witness, direction given at paragraph 15 with regard to divisibility of credibility is equally applicable to the accused as well.

[27] The correct legal position is even if the evidence of the accused is rejected, still there can be a reasonable doubt on the prosecution case. This situation would arise in

instances where the assessors are in a position neither to accept nor reject the evidence of the accused. This can happen when part of the evidence of the accused is believed and other part is rejected. Then the assessors would not feel sure of the guilt of the accused. At paragraph 7 the learned trial judge referred to the words *'do not feel sure of his guilt'* and therefore he has given correct directions. Learned trial judge has in very simple but in a convincing language articulated the concept.

[28] In the light of the above analysis I hold that grounds one and two have not been established.

Ground 3- Recent complaint & hearsay evidence

[29] Counsel for the appellant vigorously argued that the learned trial judge made an error in allowing to lead 'hearsay' evidence of Talim and not properly directing the assessors as to how such evidence should be treated.

[30] His contention was that since Talim did not see the incident, and it was illegal to allow him to testify in court narrating what was told to him by the complainant about the incident. Counsel argued that, in particular, since the complaint made to Talim cannot be regarded as a 'Recent Complaint', the trial judge should not have allowed it as an exception to hearsay rule though the complaint was related to a sexual offence.

[31] As the witness Talim saw the appellant taking the complainant toward the cane field, that part of the evidence is not hearsay. However, what happened between the complainant and the appellant can be considered as 'hearsay' if one were to use it as substantive evidence. It means that the narration of the complainant to the witness Talim cannot be used as corroboration as it violates the basic premise of the evidentiary principles. Such evidence cannot be permitted to be used as corroborative evidence. However, the narration of the complainant to Talim can be used to show the consistency of the complainant. This procedure is subjected to a condition. There is longstanding and well established common law principle that unless such complaint of a complainant, in a sexual assault incident, is 'recent', even for the purpose of showing consistency, such complaint should not be permitted to be led as evidence.

Therefore, unless complaint of complainant to Talim is a 'recent' one, the evidence of Talim in this respect becomes inadmissible.

[32] In deciding the consistency of the complaint, the prosecution has to establish that not only the requirement of 'recent complaint' but also the compatibility of the evidence between the complainant and what he told Talim in his complaint. Therefore, firstly, I shall scrutinize requirement of compatibility.

[33] The complainant whilst giving evidence explained the act in following words(at page 135 of the proceedings):

> *"He told me to suck his penis. I sucked his penis for about one minute. He told me to take off my shorts. He rubbed his penis on my bum about one minute.....*
> *I went to play at Shifaz's house at the back of my house.....*
> *On that day there was a funeral ceremony at Shifaz's house. It was a weekend. I can't remember the day. I felt bad about what Jabbar did to me. I told my grandfather Talim. I did not run away from Jabbar because he used to bring a knife with him. I told grandfather after that day."*

[34] Talim's testimony on this point is as follows (page 146 of the proceedings):

> *"As I was dismantling the shed I remember Jabbar taking Muzamik towards the creek many times. I asked Muzamik why Jabbar took him into cane fields. Muzamik told me that Jabbar used to take his pants out. hold his private place and then suck. Muzamik told me that Jabbar wanted to put his private part into his back. I reported the matter to Muzamik's father. On 28/1010 Muzamik's father was at work....."*

[35] A comparison of the above two passages shows that the gist of the evidence of the complainant is compatible with what the complainant told to Talim in his complaint. Thus, there cannot be a serious allegation with regard to compatibility. In any event, we need to be mindful that the complainant was a 9 year child who had to disclose most shameful episode of his life in court in the face of potential social stigma.

[36] Let me, secondly, examine requirement of 'recent' complaint. The complainant could not give exact date of the incident. He said in court that it happened during a weekend and during a period of ceremony following a funeral at Shifaz place. We have to bear in mind that the date is not an element of the offence. Specially a child complainant may not remember the exact date. The question arises as to whether the complainant informed the incident on the following day or few days later. Evidence of the complainant does not clearly shows the exact date. It appears no party has pointedly asked the question from the complainant on this point and therefore he cannot be criticized. Even Talim's evidence also does not give specific reference as to when he inquired from the complainant about the incident.

[37] Some questions with regard to the date were asked during cross examination which is at page 139:

> *Question: On 28/10/10, you took the shed off?*
> *Answer : Yes*
> *Question: When was the last day of the ceremony*
> *Answer: Saturday*
> *Question: 23/10/10?*
> *Answer: Saturday. We dismantled the shed on 28/10/10*

[38] From the evidence of both complainant and Talim one cannot exactly come to conclusion about the date of the incident or the date of the complaint of the complainant to Talim. But one thing is certain i.e Talim started looking for father of the complainant to report the matter on 28/10/10. Complete reading of complainant's and Talim's evidence tend to show that the incident occurred between 23/10/10 and the 28/10/10. Therefore, it is safer to be generous for the defence and to assume that the complaint was made within few days and not on the same day. In fact, it appears that the learned trial judge was also generous and told the assessors that '*the complaint was made some days after the last incident and could hardly be regarded as recent*'.(paragraph 31 of the summing up)

[39] However, in my view we need not be that rigid in fixing a particular time limit in determining 'recent complaint' when children who are generally vulnerable, make

complaints. It all depends on facts of each case and drawing a rigid formula is not fair by the vulnerable child complainants, having regard to the traumatic experience and other factors. It is relative and depends on circumstances of each case.

[40] According to the present law in Fiji, to prove a sexual offence, evidence of corroboration is not required. Evidence pertaining to what Talim saw would amount to corroboration. In the teeth of the development of law, even the prosecution is not required to elicit and lead such corroborative evidence. The learned trial judge has categorically instructed the assessors that the prosecution case entirely rested on the testimony of the complainant. He did not stress the need for corroboration.

[41] In **Peniasi Senikarawa v State** Criminal AppealNo.AAU 005 of 2004 (24 March 2006) Court of Appeal allowed the appeal on the basis that there was no consistency between the complainant and her mother to whom the complaint was made. It was held that there was no evidence of recent complaint 'fit' to be put to the assessors

[42] In **State v Waisea Volavola** Cr. App. HAA 106/2002 S dealing with 'recent' complaint it was held at p13:

> ... *"however, her silence could easily have been consistent with her shame at the incident, connected with cultural taboos in relation to discussing sexual matters with elders. To say that an absence of recent complaint confirms consent is an error on both fact and law. On the facts of this case there was nothing to suggest that her silence meant consent to sexual intercourse."*

[43] Although the issue in *Waisea Volavola* (supra) was based on consent, the rationale is equally applicable in the instant case also. Since there appears to be a delay of few days it can be justified on the same basis.

[44] With regard to inconsistency and delay, in **Raj v State** CAV 003 of 2014 (20 August 2014) the Supreme Court observed that the rule made in **Peniasi Senikarawa's** case was too inflexible, held that :

> *"Complainants explanation as to why a report was not made immediately, or in its fullest detail, is to be expected. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it"*

[45] In the instant case, the explanation of the complainant was that he was scared of the father as he thought father might hit him, if he were to inform him. That reason may have influenced him even not informing the grandfather too at the earliest opportunity.

[46] Further, there was no reason for the complainant to falsely implicate the Appellant. At least no suggestion was made to him during the cross examination for giving false evidence. Similarly, the appellant was a family friend and distantly related to the mother of the complainant. When the father and mother gave evidence they were not questioned about any animosity in lodging a complainant against the appellant. Even the father testified and told that grandfather never asked him to lodge a complaint against the appellant. When Talim, (grandfather) gave evidence it was not suggested to him that he was giving false evidence due to animosity. On the other hand a 9 year old child is very unlikely to be influenced by the grandfather to frame another elderly person. This is because the father of the complainant appears to be very strict person and a child would think twice before falsely implicating a person.

[47] In the teeth of above analysis, it is amply clear that the prosecution case was solid, cogent and convincing. Any reasonable panel of assessors would have come to the same opinion of guilt.

[48] In any event, in the present case the learned trial judge in many instances warned the assessors not to have any regard to the complaint. He was not only very fair, cautious and generous in his direction to the assessors. The following excerpts from the summing up demonstrate this point:

> Paragraph 31
>
> *"In a case of sexual offences, recent complaint evidence is led to show consistency on the part of the complainant. In this case the complaint was not really volunteered. It was brought to the light of another, the all knowing grandfather Talim. Second, the complaint was made some days after the last incident and could hardly be regarded as recent."*
> (emphasis added)

Paragraph 32

" Mr. Kohli points out that the complaint made to Talim is not consistent with what the complainant said in his evidence. While the evidence is before you, very little assistance however can be derived from this particular evidence for the reasons I have given." (emphasis added)

Paragraph 34

"The only evidence that implicates the Accused is of the complainant. My direction to you is to place little weight on the recent complaint and the medical evidence and to concentrate instead on whether you believe the account given by the complainant in the witness box, and when cross-examined by the defence."

[49] Another point is that the defence never raised any issue or objection for producing the evidence of Talim, at the pre trial deliberations. Even when Talim was giving evidence, the defence never raised the issue or objected to leading evidence of complaint. The defence could have as per section 290(1)(d) made an application before the judge to challenge the inadmissibility of the evidence. The section reads as follows:

"290(1)- Prior to the trial of any criminal proceeding either party may make application to the court having control of the proceeding for any order necessary to protect the interests of either party or to ensure that a fair trial of all the issues is facilitated, and such applications may relate to-
(d) a challenge to the use of any report or other evidence that may unfatrly prejudice the defence case.

[50] Upon the expression of the opinion of the assessors the learned trial judge directed himself with regard to law and the evidence and found the complainant to be truthful. He concurred with the opinions of the jurors and convicted the appellant for rape. Since the learned trial judge also independently considered the facts I see no reason to vary the verdict.

[51] In view of the above reasons, I hold that there is no merit on ground three of the appeal

Ground 4 - Sentence is harsh and excessive

[52] Counsel for the appellant argued that children are always vulnerable and the learned trial judge has considered such vulnerability to make the offending serious. Accordingly, he has taken vulnerability in to account when picking the starting point of 10 years. Counsel submitted that the vulnerability was taken into consideration later also as an aggravating factor and he submitted that the learned trial judge has erred. Therefore the sentence was harsh and excessive.

[53] The learned trial judge has very meticulously approached his decision with regard to sentence. He has laid down the scheme of his approach at pages 48-51 of the record. He stressed the need to consider the circumstances surrounding the case and noted following factors:

a. Age of the complainant was 9 years and the vulnerability

b. The age gap between 9 year old complainant and 53 year accused and the vulnerability

c. Moral responsibility to protect the child and the breach of the trust. The appellant was a relation from the side of the mother and a regular visitor to the house.

d. The accused was armed with a knife.

e. Physical and psychological harm

f. In view of the law reforms brought under sec 207 of the Crimes Decree sentencing should be same whether it is penile penetration of mouth, vulva, vagina or anus, or digital penetration of vagina or anus.

g. Sexual violence against children are becoming too prevalent and those are committed by persons who are in position of trust.

[54] However, he has considered only two aggravating factors i.e the vulnerability due to the age difference and the breach of trust. It appears the learned Judge picked the starting point as 10 years after considering the vulnerability due to the tender age of 9 years of the complainant. Surely there is a distinction between the age and the age gap of the complainant and the offender. He has not picked up the starting point on the

basis of age difference. Therefore, learned trial judge has not erred in computing the aggravating factors.

[55] There is no merit in the argument that all children are vulnerable and therefore it should not be taken in to account. One has to understand all children cannot be placed in one category. Younger children may be more vulnerable than a child of 16- 18 years. Starting point can be fixed depending on the nature and age of the child and seriousness of offending.

[56] At the time the appellant was sentenced the accepted tariff for rape of a child was between 10 to 14 years. However, the Supreme Court Fiji in **Anand Abhay Raj v State** (supra) decided that the tariff for such category should be between 10 to 16 years.

[57] In the instant case the learned trial judge has used the sentencing tariff decided by several previous judgments and decided it should be between 10 to 14 years. He has considered mitigating factors and finally given a sentence of 12 years which was within the tariff. Therefore the learned trial judge acted in a fair and reasonable manner. He had carefully laid down the sentencing rationale. The appellant was fortunate that sentencing was decided prior to **Raj's** case.

[58] The guiding principles or 'yardstick' when an appeal court should interfere with a sentence, has been decided by several judgments. The principle are, if the trial judge:

i. Acted on a wrong principle;
ii. Relied on extraneous or irrelevant matters;
iii. Mistook the facts

[59] In the instant case I am of the view that the learned trial judge has acted on the basis mentioned above. Therefore I am of the view that there is no necessity to interfere as the sentence is not harsh and excessive.

[60] Therefore I hold that there is no merit on ground four.

Conclusion

[61] In view of the reasons given above, I hold that there is no merit in respect of the three grounds of appeal raised with regard to conviction and one ground of appeal raised with regard to the sentence. The appellant has failed to establish the ground of appeal.

[62] I would dismiss the appeal, and affirm the conviction and sentence imposed by the learned High Court Judge.

Temo, JA

[63] I agree with the reasons and conclusions of Jayamanne, JA.

Orders of the Court:

1. *Appeal against conviction is dismissed.*
2. *Appeal against sentences is dismissed.*

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Hon. Mr. Justice W. Calanchini
PRESIDENT, COURT OF APPEAL

.....
Hon. Mr. Justice S. Jayamanne
JUSTICE OF APPEAL

.....
Hon. Mr. Justice S. Temo
JUSTICE OF APPEAL