

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

Criminal Appeal No: AAU118 of 2014
[High Court Case No. HAC184/12]

BETWEEN : MINIUSE RARASEA *Appellant*

AND : THE STATE *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Mr. J. Savou for Appellant
Ms P. Madanavosa for State

Date of Hearing : 16 June 2016

Date of Ruling : 23 June 2016

RULING

[1] The appellant was charged with a representative count of rape of a 10-year old boy. Following a trial in the High Court at Suva, he was convicted of the charge and sentenced to 13 years and 8 months imprisonment with a non-parole period of 13 years. This is his timely application for leave to appeal against both conviction and sentence. The grounds of appeal in summary are:

- (i) The trial judge failed to give cogent reasons for not accepting the assessors' not guilty opinions.
- (ii) The summing-up was unbalanced.
- (iii) The conviction is not supported by evidence.
- (iv) The non-parole period is too close to the head sentence.

Conviction appeal

- [2] At trial, the appellant was represented by a private counsel of choice. The only incriminating evidence against the appellant was the victim's testimony. The victim gave evidence of penile penetration of his mouth by the appellant on about ten occasions in a village on the island of Kadavu. The appellant elected not to give evidence. After the summing-up was delivered, the assessors returned with a unanimous opinion of not guilty. The trial judge did not accept that opinion. In his judgment, the trial judge found the victim gave truthful evidence when he implicated the appellant to the sexual act. Consent or lack of it was not an issue because the victim was under the age of 13 years.
- [3] The first ground alleges that the trial judge did not give cogent reasons for not agreeing with the assessors not guilty opinions. In paragraphs 5 and 6 of the judgment, the trial judge gave reasons why he believed the child witness to convict the appellant. This finding was open on the evidence and the trial judge's reasons are cogent in light of the fact that the only incriminating evidence against the appellant was the victim's testimony. Ground one is unarguable.
- [4] The second ground alleges that the trial judge did not give a balanced summing-up. The appellant's contention is that the trial judge failed to direct on all the matters that were elicited under cross-examination of the prosecution witnesses. The appellant's defence was denial of the charge. The trial judge was not required to direct on every aspect of the cross-examination. Evidence elicited in cross-examination that had bearing on the veracity of the prosecution evidence was highlighted by the trial judge in his summing-up. Otherwise, the trial judge quite properly directed the assessors that the appellant was not required to prove anything. Ground two is unarguable.
- [5] The third ground alleges that the conviction is not supported by evidence. In my judgment, the conviction is supported by the evidence of the victim, who was found to be a credible witness by the trial judge. The third ground is unarguable.

Sentence appeal

[6] The only complaint against the sentence is that the non-parole period fixed by the trial judge failed to take into account rehabilitation as one of the purposes of sentence that applied to the appellant. The head sentence is 13 years and 8 months imprisonment. This term is within the tariff for rape of a child. The non-parole period is 13 years. With the current method of calculating remission for good behaviour, the one third remission will apply only to 8 months. This effectively means that the appellant will be incarcerated for 13 years, 6 months and a few days. Arguably the sentence takes away any prospect of rehabilitation by giving no incentive for an early release. The appellant was 24 years old and a person of previous good character when he committed the offence. Apart from deterrence and denunciation, rehabilitation was also a relevant purpose of sentencing that applied to the appellant. The trial judge gave no reasons for not taking into account rehabilitation when fixing the non-parole period. In these circumstances, I am satisfied that there is an arguable error in the sentencing discretion.

Result

Leave to appeal against conviction refused.

Leave to appeal against sentence granted.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal line.

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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State