

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

CRIMINAL APPEAL NO. AAU110 OF 2014
(High Court Criminal Case No. HAC 151 of 2011)

BETWEEN : **ROHIT PRASAD**
Appellant

AND : **THE STATE**
Respondent

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

Counsel : **Mr. M. Yunus for the Appellant**
Mr. M. Babitu for the Respondent

Date of Hearing : **8 July 2016**

Date of Ruling : **15 July 2016**

RULING

[1] This is an untimely application for leave to appeal against conviction and sentence. The appellant was charged with two counts of rape of his juvenile step-daughter. He pleaded not guilty to the charges. Following a trial he was convicted and sentenced to 12 years 9 months imprisonment with a non-parole period of 12 years. The appeal is about three months late. The appellant has not provided any compelling reasons for the late appeal. The question is whether there is a ground of appeal that will probably succeed (*Kumar v State* unreported Cr App No CAV0001/09; 21 August 2012).

[2] The grounds of appeal are as follows:

Appeal Against Conviction

1. The learned trial Judge erred in law and in fact when he failed to direct the assessors that evidence of recent complaint is not evidence of the facts complained of and cannot be regarded as corroboration but goes to the consistency of the conduct of the complainant with her evidence given at trial.
2. The learned trial Judge erred in law and in fact when he directed the assessors that believing the doctor's evidence meant there was corroboration of sexual intercourse when she had not examined the victim.
3. The Appellant was prejudiced due to lack of legal representation.

Appeal Against Sentence

1. The learned trial Judge erred in principle and also erred in exercising his sentencing discretion to the extent:
 - a) That he did not give enough discount for the Appellant's mitigating factors;
 - b) That the non-parole period is too close to the head sentence resulting in much more severe punishment.

[3] All three grounds against conviction can be dealt together. The victim's evidence was that the appellant forcefully had sexual intercourse with her on the two occasions as alleged in the charges. The first incident took place in April 2011. The victim said she did not report to anyone because the appellant had threatened to kill her if she complained. The second incident took place on 27 July 2011. The following day she told one Vicky about the rape. Vicky was called to give evidence of the complaint made to him by the victim. On 28 July 2011, the victim was medically examined. The doctor found that the victim's hymen was not intact. There was no other significant finding. The medical evidence was led at the trial. The appellant who was unrepresented at the trial gave evidence. His defence was that the victim's grandparents had got the victim to fabricate the allegations in order to separate him from his wife.

[4] In the summing-up, the trial judge told the assessors that Vicky and the doctor corroborated the victim's evidence. It is settled law that recent complaint cannot be considered as corroboration of the victim's evidence (*Raj v Sate* unreported Cr App No CAV0003/14; 20 August 2014). While the medical evidence supported the victim's claim of sexual intercourse, it did not implicate the appellant to the alleged crime to be considered as corroboration of the victim's evidence. The appellant contends that he could not seek re-directions because he was unrepresented at the trial. In that regard he was prejudiced due to lack of legal representation.

[5] As far as the sentence is concerned, the appellant contends that the trial judge did not give sufficient weight to his mitigating factors. The only compelling mitigating factor was the appellant's previous good character. In his sentencing remarks, the trial judge gave a reduction of 2 years for the mitigating factors. In my judgment sufficient weight was given to the mitigating factors. My only concern is that the trial judge did not justify why he fixed the non-parole period too close to the head sentence.

Result

[6] Enlargement of time granted.
Leave granted.



A handwritten signature in blue ink, appearing to read 'D. Goundar'.

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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