

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

**CRIMINAL APPEAL NO. AAU 147 of 2016**

(High Court Action No: HAC 6 of 2016)

**BETWEEN** : **SULIO VUNIAMATANA TUINAYAU**

*Appellant*

**AND** : **THE STATE**

*Respondent*

**Coram** : **Chandra, RJA**

**Counsel** : **Ms S Nasedra for the Appellant**

**Ms S Tivao for the Respondent**

**Date of Hearing** : **23 July, 2019**

**Date of Ruling** : **15 October, 2019**

## RULING

- [1] The Appellant was charged with one count of Sexual Assault contrary to section 207(1) and (2)(c) and (3), and with one count of Sexual Assault contrary to Section 210(1)(a) of the Crimes Act, 2009.
- [2] After trial the Appellant was found guilty of both counts with the learned Trial Judge concurring with the opinion of guilt brought in unanimously by the Assessors.
- [3] The Appellant was sentenced to a term of 12 years imprisonment with a non-parole term of 8 years imprisonment.
- [4] Although the Appellant filed a timely appeal with six grounds of appeal against conviction and three grounds against sentence, an amended notice of appeal was filed on leave being granted appealing against conviction only and abandoning the appeal against sentence.
- [5] In the amended notice of appeal only the following ground of appeal against conviction was urged:

*“That the Learned Trial Judge erred in law and fact when he failed to properly consider the issue of delayed reporting of the complaint thus questioning the credibility of the complainant and the veracity of her complaint.”*

- [6] The victim who had been 9 years at the time of the alleged incidents, had been living in the same house in Kadavu where the Appellant, Grandfather also lived. The Appellant was alleged to have penetrated the mouth of the victim with his penis and on another day indecently assaulted the victim by touching her vagina. The victim had told the Appellant's wife what had happened but she had cried and told the victim not to tell anyone. Sometime later the victim had told her aunt about the incident who in turn had conveyed it to the victim's grandmother who had prompted that the matter be reported.
- [7] The victim, her aunt and her grandmother had given evidence at the trial. There had been inconsistencies in the evidence of the victim and the other witnesses which had been placed before the assessors.

- [8] The ground of appeal against conviction is to the effect that the learned Trial Judge had not properly considered the issue of delayed reporting of the complainant.
- [9] The learned trial Judge in his summing up to the Assessors had at paragraphs 9 and 12 stated about how victims of sexual offences may react and that there are instances where there are delays in reporting and that a late complaint does not necessarily signify a false complaint.
- [10] Even if there is belated complaint, the evidence of the victim may be credible and if the trial Judge is convinced about the veracity and credibility of the complainant, a conclusion reached by a trial Judge in believing the evidence of such a victim cannot be faulted.
- [11] The learned trial Judge found the evidence of the victim to be credible and in his judgment stated that the delay in complaining is justified through the evidence. It is trite law that there is no need of corroboration in sexual offences.
- [12] As the learned trial Judge had considered the delay in reporting the matter and had also placed the matter before the Assessors I do not see any merit in the grounds of appeal.
- [13] The application for leave to appeal against conviction is refused.

**Orders of Court:**

*Application for leave to appeal against conviction is refused.*



  
Hon. Justice Suresh Chandra  
RESIDENT JUSTICE OF APPEAL