

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

CRIMINAL APPEAL NO. AAU AAU 151 of 2016
(High Court Action No: HAC 57 OF 2015)

BETWEEN : IOWANE VAKADRANU

Appellant

AND : THE STATE

Respondent

Coram : Chandra, RJA

Counsel : Mr M Fesaitu with Ms Hazelman for the Appellant
Mr M Vosawale for the Respondent

Date of Hearing : 27 February, 2019

Date of Ruling : 25 April, 2019

RULING

- [1] This is an application for leave to appeal made by the Appellant to appeal against his conviction in terms of section 21 of the Court of Appeal Act.

- [2] The Appellant was indicted with 4 counts of Rape contrary to section 207(1) and (2) of the Crimes Act. The first three counts related to the first victim and the fourth count related to the second victim.

- [3] The Appellant was found guilty on all 4 counts of rape on the Assessors returning a unanimous verdict of guilt and the learned High Court Judge concurring with the findings of the Assessors.

- [4] The Appellant was convicted and sentenced to 14 years and 2 months imprisonment with a non-parole period of 12 years and 2 months imprisonment.

- [5] In his notice of appeal he has set out the following grounds of appeal:
 1. The learned Trial Judge erred in law and fact in convicting the Appellant when the guilty verdict is not supported by the evidence in regards to the element of consent and the Appellant is reckless as to whether or not the complainants were consenting.
 2. The learned Trial Judge erred in law and in fact in failing to direct the assessors on the lateness of the report lodged with the police.

- [6] The Appellant was the Pastor of a church that he had established in 2007. The two victims in respect of whom the charges were framed, were members of the church. The first victim

was around 18 years when the Appellant committed the offence on her while the second victim was around 20 years at the time of the offence. The two victims had been given leadership roles in his establishment and he had preached to them. He had isolated them from their families and taken them to Labasa where he had committed the offence. His defence was that the victims had consented freely and voluntarily.

- [7] In respect of the first ground of appeal it has been submitted that the victims had consented to have sex and therefore the Appellant was not guilty of the offences.
- [8] Both victims had given detailed evidence, the transcript of which is not available at present, and would be necessary to arrive at a conclusion regarding whether the victims had consented or not. I would therefore consider it appropriate for the Full Court to consider whether there was consent or not.
- [9] Further, it would be necessary to consider whether there was lack of consent on the part of the first victim as it was submitted on behalf of the Appellant that she was made aware of the sexual acts, which she consented freely to the acts done to her by the Appellant.
- [10] It is also necessary to consider the evidence of the victims with reference to the definition of consent in S.206 of the Crimes Act, specially in relation to S.206(1) where it says that the submission without physical resistance by a person to an act of another person shall not alone constitute consent and also in relation s.206(2) where it says if a person's consent is not freely and voluntarily given if it is obtained (e) by false and fraudulent representations about the nature or purpose of the act.
- [11] The Full Court will be in a better position to consider the effect of S.206 when the entirety of the evidence is available.


- [12] It has been submitted on behalf of the State that there has been no consent of the victims in terms of S.206 and that the learned High Court Judge had very clearly summed up the position in relation to the evidence which resulted in the Assessors bringing in a unanimous opinion of guilt. That this ground is baseless and should be dismissed.
- [13] The Respondent has cited the decision in R v Williams [1923] 1KB 340 where the defendant had deceived a girl of 16 and had sexual intercourse on making her believe that she could get over a breathing problem. A similar analogy has been made to the present case.
- [14] It is my view that this ground is better canvassed before the Full Court where the Court can look into the entirety of the evidence and decide on how Section 206 should be applied specially where consent appears to have been obtained by the exercise of deceptive means. On that basis I would consider this ground to be arguable.
- [15] The second ground relates to the lateness of the report lodged with the Police and that the learned trial Judge failing to direct the Assessors regarding same.
- [16] The entire case against the Appellant rested on the evidence of the two victims given in Court which related to their conduct and not on their reporting of the matter to the Police.
- [17] In any event the learned trial Judge had referred the matter regarding reporting to the Police in his summing up at paragraph 9.

- [18] The Respondent has taken strong objection to this ground on the basis that the Appellant was represented by Counsel at the trial and that Counsel had not sought re-direction on this ground. This is firmly established by authority now and the Supreme Court has held in Alfaaz v State [2018] FJSC 17; CAV 0009.2018 (30 August 2018) the omission to seek re-directions “is in itself sufficient to disregard this ground of appeal.”
- [19] The second ground of appeal is therefore not arguable.
- [20] The Respondent has also submitted that in terms of section 23(3) of the Court of Appeal Act, the Court of Appeal retains the authority to enhance the sentence and that the Respondent would be seeking an enhancement of the Appellant’s sentence in the event this appeal goes before the full bench of the Court of Appeal.
- [21] That is a matter that is left to the Respondent to take up before the Full Bench.

Orders of Court:

Leave to appeal is granted on ground one of the appeal against conviction.




Hon. Justice Suresh Chandra
RESIDENT JUSTICE OF APPEAL