

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

CRIMINAL APPEAL NO. AAU 35 OF 2015
(High Court HAC 141 of 2010)

BETWEEN : **JOSEVA QIOKATA** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Calanchini P**

Counsel : **Mr T Lee for the Appellant**
Mr S Babitu for the Respondent

Date of Hearing : **27 March 2019**

Date of Ruling : **24 May 2019**

RULING

[1] Following a trial in the High Court at Lautoka the appellant was convicted of rape and sentenced to 9 years 10 months imprisonment with a non-parole term of 8 years. This is his timely application for leave to appeal against conviction pursuant to section 21(1) of

the Court of Appeal Act 1949 (the Act). Section 35(1) of the Act gives to a single judge of the Court of Appeal power to grant leave. The test for granting leave to appeal against conviction is whether the appeal is arguable before the Court of Appeal (Naisua –v- The State [2013] FJSC 14; CAV 10 of 2013, 30 November 2013).

[2] There are three grounds of appeal:

- “1. *The Learned Judge erred in law when he failed to give a special warning to the assessors in the summing up about the unreliability of the dock identification without laying prior foundation through a photo identification or the identification parade unless with your appellant’s objection.*
2. *The Learned trial judge erred in law and in fact when he allowed the State to lead the contents of the medical report of the complainant under the headings of history relayed by the patient, professional opinion and the summary and conclusion through the medical doctor called when the complainant had not stated anything in her evidence during the trial in relation to the 3 mentioned heading when is hearsay thus prejudiced the appellant.*
3. *The Learned trial judge erred in law and in fact when he failed to consider the fact there was more than reasonable doubt in the prosecution case in relation to Ana Roko’s (PW2) evidence.”*

[3] The first ground relates to the issue of dock identification. However the issue at the trial was not identification. The appellant was known to the complainant. The complainant’s husband had accompanied the appellant to a night club on the night that the offence occurred. The defence raised by the appellant at the trial was that the incident never took place. This ground is not arguable.

[4] The second ground of appeal relates to the medical evidence. It would appear that the appellant is alleging that there was no medical examination or that the complainant did not make her statements alleged by the doctor in his report and in his evidence.

- [5] However in his judgment the learned trial judge has accepted the medical evidence and has categorically rejected the appellant's version of events and points out that the alibi about being at the night club at the time of the incident was a recent invention.
- [6] The third ground of appeal relates to the reliability of the evidence of Ana Roko. The appellant submits that the evidences cast some doubt on the conviction. However the learned trial judge has stated in his brief judgment that he accepts the evidence of the complainant and the medical evidence and as a result of which he is satisfied beyond reasonable doubt that the appellant is guilty.
- [7] For these reasons leave to appeal against conviction is refused.

Order:

Leave to appeal conviction is refused.



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL