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

CRIMINAL APPEAL NO.AAU 0150 of 2017
[In the High Court at Suva Case No. HAC 55 of 2014]

BETWEEN	:	**SAMUELA NAVUNISARAVI**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Ms. S. Nasedra for the Appellant**
	:	**Mr. R. Kumar for the Respondent**
Date of Hearing	:	**04 November 2020**
Date of Ruling	:	**05 November 2020**

RULING

[1] The appellant had been indicted in the High Court of Lautoka on two counts of rape contrary to section 149 and section 150 of the Penal Code committed between the 01 October 2006 and 30 November 2006 at Nadi, in the Western Division.

[2] The information read as follows.

COUNT ONE

REPRESENTATIVE COUNT

Statement of Offence

***RAPE**: Contrary to section 149 and section 150 of the Penal Code, Cap 17.*

Particulars of Offence

SAMUELA NAVUNISARAVI *between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of* ***"AB"*** *also known as* ***"EAB"*** *an 8 year old child without her consent.*

COUNT TWO

REPRESENTATIVE COUNT

Statement of Offence

RAPE*: Contrary to section 149 and section 150 of the Penal Code, Cap 17.*

Particulars of Offence

SAMUELA NAVUNISARAVI *between the 1st day of October, 2006 and the 30th day of November, 2006 at Nadi, in the Western Division, had carnal knowledge of* ***"GM"*** *an 8 year old child, without her consent.*

[3] After the summing-up on 30 August 2017 the assessors had unanimously opined that the appellant was guilty of the two charges and in the judgment delivered on 31 August 2017 the learned trial judge had agreed with them and convicted the appellant as charged. On 11 September 2017 the appellant had been sentenced to 13 years 11 months and 02 weeks imprisonment with a non-parole period of 11 years.

[4] The appellant in person had signed a timely notice of appeal against sentence on 09 October 2017. The Legal Aid Commission had subsequently filed amended grounds of appeal against conviction and written submissions on 29 June 2020. The state had responded by its written submission on 17 August 2020. However, there is currently no appeal, timely or untimely, on foot against conviction and no application for enlargement of time had been tendered on behalf of the appellant either. Nevertheless, to be absolutely fair by the appellant, this court will deal with the amended notice of appeal on the basis of principles applicable to enlargement of time. Accordingly, the counsel for the appellant was allowed to make oral submissions based on the criteria applicable to extension of time applications.

[5] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State: Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[6] In ***Kumar*** the Supreme Court held

> *'[4] Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:*
>
> *(i) The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifying the appellate court's consideration.*
> *(iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
> *(v) If time is enlarged, will the Respondent be unfairly prejudiced?*

[7] ***Rasaku*** the Supreme Court further held

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'*

[8] I think the remarks of Sundaresh Menon JC in **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100 shed some more light as to how the appellate court would look at an application for extension of time to appeal.

> *'(a).....*
>
> *(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.*
>
> *(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.*
>
> *(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.*
>
> *(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and*

statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach will be excused.'

[9] Sundaresh Menon JC also observed

> *'27..... It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an entitlement to an extension of time.'*

[10] Under the third and fourth factors in ***Kumar***, test for enlargement of time now is **'real prospect of success'**. In **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019) the Court of Appeal said

> *'[23] In my view, therefore, the threshold for enlargement of time should logically be higher than that of leave to appeal and in order to obtain enlargement or extension of time the appellant must satisfy this court that his appeal not only has 'merits' and would probably succeed but also has a **'real prospect of success'** (see **R v Miller** [2002] QCA 56 (1 March 2002) on any of the grounds of appeal.....'*

Length of delay

[11] The delay in filing the amended notice of appeal dated 29 June 2020 against conviction is about 02 years and 08 ½ months which is very substantial.

[12] In **Nawalu v State** [2013] FJSC 11; CAV0012.12 (28 August 2013) the Supreme Court said that for an incarcerated unrepresented appellant up to 3 months might persuade a court to consider granting leave if other factors are in his or her favour and observed.

> *'In **Julien Miller v The State** AAU0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave. The appellant in that case was 11½ months late and leave was refused.'*

[13] Faced with a delay of 03 years in **Khan v State** [2009] FJCA 17; AAU0046.2008 (13 October 2009) Pathik J observed that *'There are Rules governing time to appeal. The appellant thinks that he can appeal anything he likes. He has been ill-advised by inmate in the prison. The court cannot entertain this kind of application'*

[14] I also wish to reiterate the comments of Byrne J. in **Julien Miller v The State** AAU0076/07 (23 October 2007) that

> *'... that the Courts have said time and again that the rules of time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned within the time prescribed by the relevant legislation.'*

[15] Therefore, delay alone is sufficient to defeat the appellant's appeal if that is the only consideration.

Reasons for the delay

[16] As instructed by the appellant, his counsel in the oral submissions submitted that the appellant was unaware of the process of filing an appeal and was under the impression that sentence appeal was sufficient for both conviction and sentence. The appellant had been defended by two trial counsel from the Legal Aid Commission and therefore it is inconceivable that the appellant had not been advised properly regarding the appeal process. Had the appellant entertained any concerns regarding the conviction he could have challenged it in the same manner that he had challenged the sentence.

[17] Therefore, I am not convinced that the appellant has satisfactorily explained the substantial delay in lodging his appeal against conviction.

Merits of the appeal

[18] In the **State v Ramesh Patel** (AAU 2 of 2002: 15 November 2002) this Court, when the delay was some 26 months, stated (quoted in **Waqa v State** [2013] FJCA 2; AAU62.2011 (18 January 2013) that delay alone will not decide the matter of extension of time and the court would consider the merits as well.

"We have reached the conclusion that despite the excessive and unexplained delay, the strength of the grounds of appeal and the absence of prejudice are such that it is in the interests of justice that leave be granted to the applicant."

[19] Therefore, I would proceed to consider the third and fourth factors in ***Kumar*** regarding the merits of the appeal as well in order to consider whether despite the substantial delay and want of an acceptable explanation, still the prospects of his appeal would warrant granting enlargement of time.

[20] Grounds of appeal against conviction urged on behalf of the appellant are as follows.

(i) That the learned trial Judge erred in law and in fact when he failed to direct the assessors and himself that the evidence of Shane Pickering was unreliable.

(ii) That the learned trial Judge erred in law and in fact when he failed to direct the assessors and himself on the principle of recent complaint and/or delayed reporting.

(iii) That the learned trial Judge erred in law and in fact when he failed to direct the assessors and himself on the issue of the delayed charge against the Appellant.

(iv) That the learned trial Judge erred in law and in fact when he placed more emphasis on the Appellant having to prove his innocence when the burden of proof rested always with the State.

(v) That the learned trial Judge erred in law and in fact when he failed to consider the defective charge under Count 2 of the Information.

[21] The trial judge had summarised the evidence of the prosecution in the judgment as follows.

'[5] The complainants "GM" and "AB" were students of a Primary School, in the year 2006 they were 8 years of age and in class 3. The accused was their class teacher.

[6] Between 1st October, 2006 and 30th November 2006 the accused took the complainant "GM" to the last cubicle in the classroom. The complainant had some errors in her book. The accused made the complainant sit on his lap and he opened her legs with his legs thereby spreading it apart. Whilst sitting on the lap of the accused she would be facing the other side. The accused would pull the side of her underwear and insert his penis inside her vagina.

[7] When the accused inserted his penis into the complainant's vagina she felt his penis and it was painful. This happened on more than one occasion. The complainant did not consent to what the accused had done to her. She did not tell anyone about what the accused was doing to her because she didn't know at that time what he was doing was right or wrong.

[8] The other complainant "AB" informed the court that between 1st October, 2006 and 30th November, 2006 the accused would take her to the last cubicle in the classroom and make her sit on his lap with the book in front of them. The accused would ask questions and at the same time shift her panty to one side since her panty was too tight the accused would pull it down to her ankle.

[9] Whilst sitting on the lap of the accused the complainant would be facing the other side. The accused would rock her back and forth by holding her waist with his hands whilst rocking she could feel his penis on the top layer of her vagina which was her clitoris.

[10] The complainant was scared but did not say anything. This happened on more than one occasion. The complainant did not agree to what the accused had done to her.

[11] The third prosecution witness was Dr Elvira Onghit on 28 November, 2006 the Doctor had examined both the complainants. The specific medical findings for both the complainants were that their hymen was intact. The hymen been intact meant there was no injury on the hymen.

[12] The Doctor's opinion was that on the evidence of both the complainants there was penetration by the glans penis (which was the tip of the penis) of the accused through mild force exerted into the vagina of both the complainants. The Doctor also stated that since no hymnal lacerations were seen it did not mean there could be no penetration of the vagina.

[13] The final witness was Shane Pickering who informed the court that he was a student in the same class as the two complainants. Between 1st October, 2006 to 30th November, 2006 he saw the complainant "GM" sitting on the lap of the accused in between his legs inside the last cubicle when he went to give his attendance book to the accused. The accused told the witness to go back and take his seat.

[22] The trial judge had narrated the evidence of the appellant as follows.

'[14] The accused informed the court that in the year 2006, he was teaching both the complainants. The accused denied all the allegations made against him by both the complainants he also denied what Shane Pickering (PW4) had told the court. Furthermore the accused was of the view that his strictness towards his students prompted such allegations to be made against him. The accused agreed that in his experience as a Teacher an 8 year old would have almost zero knowledge about sexual activity.

[15] The second defence witness Penina Takobe informed the court that in the year 2006 she was teaching the class adjacent to the class of the accused. She was able to see the accused's classroom through the glass. She also stated that at no time she saw the complainants sitting on the accused's lap. Furthermore the witness stated that the cubicle could only fit one person and if the chair was slightly put back the other students would see.

01st ground of appeal

[23] The appellant complains that the third witness for the prosecution Shane Pickering had given inconsistent evidence as stated in paragraphs 67-70 of the summing-up and paragraph 19 of the judgment and the trial judge had failed to direct the assessors and himself in line with the observations in **Singh v The State** [2006] FJSC 15; CAV0007U of 05S (19 October 2006).

67. 'The final witness for the Prosecution was Shane Pickering. In the year 2006 the witness was in the same class as the two complainants. between1st October, 2006 to 30th November, 2006 the witness saw the complainant "GM" sitting on the lap of the accused in between his legs. They were sitting inside the last cubicle of the classroom. He saw the two when he went to give his attendance book to the accused. The witness did not see anyone else other "GM" sitting on the lap of the accused.

68. In cross examination the witness agreed that both the complainants were his good friends. On the day he saw the complainant "GM" sitting on the lap of the accused in the cubicle he had put the Union Jack flag up on his cubicle as was the procedure when the assistance of the teacher was required. The accused had not come to him so he walked over to the accused. The witness was referred to line 4 of his police statement dated 21 February, 2007 which was "I wanted to ask my teacher a question with regards to my pace."

69. The witness agreed that he approached the accused to ask question regarding his pace and not to show his attendance book. Further the witness stated that the version he had given to the Police was true.

70. The witness in further cross examination informed the court that he did not see "AB" sitting on the lap of the accused the witness was again referred to line 6 of his police statement which was "I always see Ashley and Gabriella sit on his lap and not the other girls." The witness agreed that the version given to Police and his evidence in court were two different versions.

[24] Paragraph 19 of the judgment is as follows.

> *'[19] I accept the evidence of Shane Pickering who informed the court he saw the complainant "GM" sitting on the lap of the accused in between his legs inside the last cubicle. This witness had gone close enough to where the accused was sitting to be told to go away. There is no doubt in my mind that when the complainant "GM" was sitting on the lap of the accused he was able to fit himself in the cubicle by sitting on the chair.*

[25] Paragraph [51] of **Singh v The State** (supra) contains a discussion on the cautions and warnings to be given to the assessors in evaluating the evidence of a witness who had made a previous statement on oath directly inconsistent with evidence given in court particularly in the context of accomplice evidence. In the present case Shane Pickering's evidence in court is contrasted with his police statement not given on oath and he is not in the position of an accomplice. Thus, **Singh** is not directly applicable to the current situation.

[26] It appears that the evidence of Shane Pickering, another student of the same class of the victims, was only of corroborative value. The main evidence of the two acts of rape came from the victims. It is also clear that the inconsistency of Shane Pickering's evidence relates to the purpose why he approached the appellant and not on what he actually saw going on between the appellant and one of the victims, GM. Thus, the contradiction was on a peripheral matter. His evidence did not touch the other victim, AB at all.

[27] Therefore, even if the evidence of Shane Pickering were to be completely disregarded there was sufficient evidence of both victims to support the assessors' opinion and the trial judge's conviction. The case against the appellant had to stand or fall on the evidence of the victims and not on Shane Pickering's evidence. The contradictions in Shane Pickering's evidence did not affect the evidence of the victims but if at all they affected his own evidence.

[28] The Court of Appeal decision in **Nadim v State** [2015] FJCA 130; AAU0080.2011 (2 October 2015) is more relevant in evaluating Shane Pickering's evidence.

> *'[13] Generally speaking, I see no reason as to why similar principles of law and guidelines should not be adopted in respect of omissions as well. Because,*

*be they inconsistencies or omissions both go to the credibility of the witnesses (see **R. v O'Neill** [1969] Crim. L. R. 260). But, the weight to be attached to any inconsistency or omission depends on the facts and circumstances of each case. No hard and fast rule could be laid down in that regard. The broad guideline is that discrepancies which do not go to the root of the matter and shake the basic version of the witnesses cannot be annexed with undue importance (see **Bharwada Bhoginbhai Hirjibhai v State of Gujarat** [1983] AIR 753, 1983 SCR (3) 280)*

[29] Therefore, there is no real prospect of success in this ground of appeal.

02nd ground of appeal

[30] The appellant contends that the trial judge had failed to direct the assessors on recent complaint evidence. There is nothing to indicate in the summing-up or the judgment that the prosecution had relied on any evidence that could be regarded as a recent complaint to enhance the credibility of the victims *via* consistency. In fact going by paragraphs 39 and 50 of the summing-up nothing had been revealed in evidence of any recent complaint made by the victims other than the fact that the father of one of the victims, having reported the matter to the police and the doctor having examined both victims on 29 November 2006. In the circumstances, there was no obligation on the part of the trial judge to direct the assessors on recent complaint evidence.

[31] The only way the consistency of the victims' testimony could have been tested was by comparing and contrasting it with their previous statements such as police statements. It does not appear that the defence had been able to point out material omissions or contradictions in the evidence of the victims in cross-examination.

[32] Therefore, there is no real prospect of success in this ground of appeal.

03rd ground of appeal

[33] The gist of the appellant's argument appears to be that the proceedings in the High Court had been initiated in the year 2014 after a considerable delay and the reasons for the delay are not clear from the summing-up or the judgment. The trial had commenced and concluded in September 2017. The appellant seems to argue that because of the long delay of 11 years from the date of offending to the conclusion of

the trial in the High Court there is a doubt of the victims' evidence in so far as whether they could actually recollect of the events that happened in 2006.

[34] Firstly, the reasons for the delay are not clear from the summing-up or the judgment. Thus, where the blame should lie for the delay cannot be ascertained.

[35] Secondly, the complaint of delayed proceedings ordinarily should be relevant in the matter of sentence in that the case against him like the sword of Damocles was hanging over the appellant's head over a prolonged and unduly long period of time which is not a matter that could affect the convictions *per se*.

[36] In any event, the only way to test the victims' testimony was by way of cross-examination and confronting them with any embellishments added at the trail to their contemporaneous statements made to the law enforcement authorities.

[37] I think that the decision in **Longman v The Queen** [1989] 168 Clr 79 is not relevant here as the High Court of Australia was in that case interpreting section 36BF of the Evidence Act, 1906 (W.A.) *vis-à-vis* the traditional warning that it is unsafe to convict on the uncorroborated evidence of the victim or a child of a sexual assault offence. The legal frame work in Fiji is different. Circumstances under which the unlawful and indecent assault had happened in ***Longman*** are significantly different to the appellant's case and in ***Longman*** no complaint had been made for over 20 years. In the present case the complaint of rape had been reported at least within two months and the victims had been medically examined on 28 November 2006.

[38] Therefore, there is no real prospect of success in this ground of appeal.

04th ground of appeal

[39] The appellant argues that the trial judge had placed more emphasis on his 'burden of proof' as opposed to the burden of proof on the prosecution. He refers to paragraphs 18 and 19 of the judgment.

> *'[18] On the other hand I am not satisfied that the accused told the truth in court when he denied the allegations. It was obvious to me that he was very careful in choosing his words as part of his evidence. The accused was not forthright as well. I also do not accept the evidence of defence witness Penina Takobe to the extent that when the chair in the cubicle was slightly put back*

the other students would be able to see who was sitting on the chair in view of what Shane Pickering (PW4) told the court.

[19] I accept the evidence of Shane Pickering who informed the court he saw the complainant "GM" sitting on the lap of the accused in between his legs inside the last cubicle. This witness had gone close enough to where the accused was sitting to be told to go away. There is no doubt in my mind that when the complainant "GM" was sitting on the lap of the accused he was able to fit himself in the cubicle by sitting on the chair.

[40] However, the above paragraphs in the judgment cannot be considered in isolation. The trial judge had considered the prosecution evidence from paragraph 5 to 13 of the judgment and stated as a conclusion that

'[16] I accept the evidence of both the complainants as truthful and reliable. I have no doubts in my mind that both the complainants told the truth in court their demeanour was consistent with their honesty. The complainants were able to recall what had happened to them a decade ago. The complainants were forthright and straight forward in their evidence and were able to withstand cross examination. This also applies to the other prosecution witnesses their demeanour in court, the way they answered questions and gave evidence leads to the inescapable conclusion that they were truthful and can be believed.

[17] The fact that the complainants who were 8 years of age at the time did not complain to anyone or resist what was been done to them does not in any way affect the reliability of their evidence.

[20] I am satisfied beyond reasonable doubt that it was the accused who between 1st October 2006 and 30th November, 2006 had unlawful carnal knowledge of both the complainants "AB" and "GM" without their consent.

[22] I agree with the unanimous opinion of the assessors. On the evidence before the court it was open to the assessors to reach such a conclusion.

[41] The judge had correctly dealt with the burden of proof and standard of proof in paragraphs 9 and 10 of the summing-up and even in the judgment he had accepted that the prosecution had proved its case beyond reasonable doubt. What the trial judge had said in the impugned paragraph 18 of the judgment is that the appellant's evidence had not been able to create a reasonable doubt in the prosecution case as an addendum. It certainly is not an attempt to transfer the burden of proof. Therefore, there is no substance in the appellant's complaint.

[42] The judgment of a trial judge cannot be considered in isolation without necessarily looking at the summing-up, for in terms of section 237(5) of the Criminal Procedure Act, 2009 the summing-up and the decision of the court made in writing under section 237(3), should collectively be referred to as the judgment of court. A trial judge therefore, is not expected to repeat everything he had stated in the summing-up in his written decision (which alone is rather unhelpfully referred to as the judgment in common use) even when he disagrees with the majority of assessors as long as he had directed himself on the lines of his summing-up to the assessors, for it could reasonable be assumed that in the summing-up there is almost always some degree of assessment and evaluation of evidence by the trial judge or some assistance in that regard to the assessors by the trial judge.

[43] On the other hand the trial judge had more than adequately performed his role in agreeing with the assessors in the judgment. What could be identified as common ground arising from several past judicial pronouncements is that when the trial judge agrees with the majority of assessors, the law does not require the judge to spell out his reasons for agreeing with the assessors in his judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and reasons for his agreement with the assessors in a concise judgment as it would be of great assistance to the appellate courts to understand that the trial judge had given his mind to the fact that the verdict of court was supported by the evidence and was not perverse so that the trail judge's agreement with the assessors' opinion is not viewed as a mere rubber stamp of the latter [vide **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014), **Kaiyum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018)]

[44] Therefore, there is no real prospect of success in this ground of appeal.

05th ground of appeal

[45] The appellant argues that count No.2 in the information is defective in that it had not specified whether the act of rape had been a penile or digital rape. The basis of this complaint appears to be the evidence of GM and AB as given in paragraphs 36 and 48

of the summing-up where both victims had stated that the appellant used to pinch the side of the vagina when a wrong answer was given before indulging in the act of penile rape.

[46] Why the appellant's ground of appeal is focused only on count 2 is not clear as both victims had given the same evidence on the appellant having pinched the side of the vagina. Secondly, if the appellant had any difficulty in understanding the gist of the counts in the information his counsel could have raised it at a pre-trial stage and not waited to take it up as an appeal point. I cannot see how that the appellant's defence had been prejudiced in any way by lack of more details in both counts. Under the Penal Code the prosecution was not expected to state in the information whether the rape was penile or digital as both were categorised as carnal knowledge. The appellant having had the benefit of disclosures and then the evidence of the victims would have had no difficulty in facing the charges on the basis that he was alleged to have committed penile rape of two victims.

[47] In **Saukelea v State** [2019] FJSC 24; CAV0030.2018 (30 August 2019) the Supreme Court remarked as to how to assess the weight of similar complaints:

> *'[36] The main consideration in situations similar to this where there is some infelicity or inaccuracy of drafting is whether the accused knew what charge or allegation he or she had to meet: **Koroivuki v The State** CAV 7 of 2017: [2017] FJSC 28. Secondly it was important that the accused and his counsel were not embarrassed or prejudiced in the way the defence case was to be conducted: **Skipper v Reginam** Cr. App. No. 70 of 1978 29th March 1979 [1979] FJCA 6. The Court of Appeal whilst not conceding merit in the point properly applied the proviso under section 23 of the Court of Appeal Act and dismissed the ground of appeal. Similarly in this Court. Ground 2 fails.'*

[48] Therefore, there is no real prospect of success in this ground of appeal.

Prejudice to the respondent

[49] I also see a great deal of prejudice caused to the respondent as a result of an extension of time due to the lapse of time since the commission of the alleged offences in 2006. It would be grossly unfair by the victims to be called upon to testify in court once again (depending on the outcome of the appeal) after more than 14 years. Therefore all factors and particularly the merits of the appeal do not favour an enlargement of time.

Order

1. Enlargement of time to appeal against conviction is refused.

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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL