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

CRIMINAL APPEAL NO.AAU 147 of 2019
[In the High Court at Suva Case No. HAC 346 of 2018]

BETWEEN	:	**ALANI TUBUNAVAU**	
			Appellant
AND	:	**STATE**	
			Respondent
Coram	:	**Prematilaka, JA**	
Counsel	:	**Appellant in person**	
	:	**Mr. R. Kumar for the Respondent**	
Date of Hearing	:	**31 December 2020**	
Date of Ruling	:	**04 January 2021**	

RULING

[1] The appellant had been indicted in the High Court of Suva on one count of rape contrary to section 207(1) and (2) (b) of the Crimes Act, 2009 and one count of sexual assault contrary to Section 210 (1) (a) of Crimes Act, 2009 committed at Naimataga Settlement, Lami, in the Central Division on 09 September 2018.

[2] The information read as follows.

'FIRST COUNT

Statement of Offence

Rape: *contrary to Section 207 (1) and (2) (b) of the Crimes Act, 2009.*

Particulars of Offence

ALANI TUBUNAVAU *on the 9th of September 2018 at Naimataga Settlement, Lami, in the Central Division, penetrated the vagina of* ***TC****, with his finger without her consent.*

SECOND COUNT

Statement of Offence

Sexual Assault: *contrary to Section 210 (1) (a) of Crimes Act, 2009.*

Particulars of Offence

ALANI TUBUNAVAU *on the 9th of September 2018 at Naimataga Settlement, Lami, in the Central Division, unlawfully and indecently assaulted* ***TC****, by fondling her breasts.*

[3] At the conclusion of the summing-up on 12 September 2019 the assessors' unanimous opinion was that the appellant was guilty of both counts as charged. The learned trial judge had agreed with the assessors in his judgment delivered on 13 September 2019, convicted the appellant and sentenced him on 30 September 2019 to 10 years, 02 months and 09 days of imprisonment with a non-parole period of 06 years, 02 months and 09 days.

[4] The appellant's timely application for leave to appeal against conviction and sentence had been filed on 21 October 2019. His written submissions have been tendered on 03 July 2020 and the state had tendered its written submissions on 04 November 2020. The appellant had also filed a response to the respondent's submissions on 19 November 2020. Both parties relied on their respective written submissions at the leave to appeal hearing.

[5] In terms of section 21(1)(b) and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144: AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20

November 2013)] from non-arguable grounds. This threshold is the same with leave to appeal applications against sentence as well.

[6] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable there must be a reasonable prospect of its success in appeal**. The aforesaid guidelines are as follows.

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[7] Grounds of appeal urged on behalf of the appellant are as follows.

> ***Conviction***
>
> *(i) That the learned Trial Judge erred in law and fact by finding the appellant guilty on both counts without independently assessing the independent expert evidence of the medical report which indicated consensual sex discrediting the credibility of the complainant in a recent complaint report case.*
>
> *(ii) That the learned Trial Judge erred in law and fact by failing to independently analyze the relevant inconsistency in the evidence which was significant to create a reasonable doubt about the elements of the offence. Failure to do so has caused weakness in the prosecution case making the conviction to be unsafe.*
>
> *(iii) That the learned Trial Judge erred in law and fact by misdirecting the assessors upon the facts and law and conduct where he repeatedly described the age of the complainant in his summing up and how a child of a particular age, behave, think, talk and the way they describe things. The misdirection and excessive judicial intervention during the course of summing up caused a gross miscarriage of justice.*

Sentence

i. That the learned sentencing Judge failed to give out an order for parole detailing and specifying the requirements about the completion of the non-parole period.

ii. That the sentencing Judge mistook the facts by finding the appellant guilty and sentencing the appellant an inconsistent and irrelevant evidence.

iii. That the sentence is harsh and excessive in all the evidence and circumstances of this case.

[8] The learned trial judge has summarized the facts as follows in the summing-up.

35. The complainant said in her evidence that she is 15 years old and her date of birth is 17/09/2003. She moved to Naimataga in Lami last year in order to attend a particular school from form 3. Prior to that she was living in Nabudrau where she was brought up by her grandparents. At Naimataga she was living with her aunt who was married from that village. She said that she is not yet familiar with Naimataga. On 09/09/18 which was a Sunday, she was sent by her Aunt in the morning to by potatoes. Since potatoes were not available in the shop closest to where she was residing, the aunt sent her to Jeke Store which was the furthest. On her way, she met the accused initially with another boy. The other boy left and the accused asked her questions including where she is living and where she is going. She answered his questions. She said that she recognized their faces but did not know their names by that time. When she reached the round-about near the footpath to go to the Jeke Store, he was still following her. She went up the stairs to Jeke Store and noticed that it was closed. When she came down the stairs the accused was still there.

36. He grabbed her hand and asked her to come with him to his house and she refused and said that she was sent to buy something and she wants to go home. Then the accused grabbed her by her shoulders and started to kiss her mouth and bit her lips. When the accused grabbed her, she could smell liquor from him. The accused also started to touch and fondle her breast from one hand and then touched her vagina with the other hand. She said that the accused put his hands under her clothes when he touched her breasts and the vagina. She said that the accused fondled her vagina using his fingers and he put his finger in and took it out. Because the accused was drunk, she felt that the accused would do something if she wanted to leave. She said that she did not agree for the accused to touch her breasts or penetrate her vagina. When the accused heard someone coming, he left her. Then she saw Sefa and his wife whose voice the accused heard."

01st ground of appeal

[9] The trial judge had analyzed the medical evidence at paragraphs 47-49 of the summing-up.

> *47. The third prosecution witness was the doctor who examined the complainant ("PW3"). He said that he has been practicing as a medical doctor for 9 years and has been in the field of obstetrics and gynecology for the last 6 years. He recalled examining the complainant on 09/09/18. He tendered the report her prepared on the findings of his examination as PE1. He said that the medical examination was conducted at 5.45pm. As he had noted in the report, he observed 0.5cm bruise on the complainant's lower lip. There were no visible injuries on the breasts. He found superficial bruises around the vaginal introitus. This was on both sides of labia. The hymen was dilated circumferentially. He noted that the injuries were fresh. He said that the vaginal introitus is the entry point to the vagina. In his opinion, the injury he noted could have been caused by inserting a finger. He said that these injuries can be from a possible penetration or early penetration in 'consensual sex'. He said that fresh injury means that the injury had occurred within an hour up to 03 days and a maximum of 07 days. He was not cross-examined.*
>
> *48. The third prosecution witness gave his medical opinion based on what he said he observed and his experience. You are not bound to accept that evidence. You will need to evaluate that evidence for its strengths and weaknesses, if any, just as you would with the evidence of any other witness. It is a matter for you to give whatever weight you consider appropriate with regard to the observations made and the opinion given by the third prosecution witness. Evaluating his evidence will therefore include a consideration of his expertise, his findings and the quality of the analysis which supports his opinion.*
>
> *49. According to the medical opinion, there was an injury, a superficial bruise that was noted around the complainant's vaginal introitus. The doctor explained that the introitus is the entrance to the vagina. When he explained his observation 'superficial bruise', he said that it was just on the upper layer of the vaginal skin. Therefore, according to the medical evidence, if the injury was noted around the entrance to the vagina, it appears that the medical evidence does not support the fact that the complainant's vagina was penetrated. However, according to law, corroboration of the complainant's evidence is not necessary when it comes to an offence of a sexual nature.*

[10] The trial judge had analyzed the medical evidence in the judgment at paragraphs 7-13.

> *7. With regard to the first count, the allegation is that the accused penetrated the complainant's vagina with his finger, without her consent. The complainant first said that the accused fondled her vagina with his fingers and she said that the accused put his finger in and took it out. The complainant*

was medically examined on the same day. PW3, the doctor who medically examined the complainant said that he observed fresh superficial bruises around the vaginal introitus and he described the introitus as the entrance to the vagina.

8. Therefore, according to PW3, there were no injuries noted by him consistent with the penetration of the complainant's vagina. The injuries he had observed were clearly outside the vagina. He also did not explain whether it is possible according to the medical literature not to find any injuries consistent with vaginal penetration even if there had been such penetration, depending on the circumstances.

9. Accordingly, on the face of it, not only that the medical evidence does not support the evidence of the complainant, it is also inconsistent with the evidence of the complainant who clearly said that the accused penetrated her 'vagina'.

[11] Having referred to the decision in **Volau v State** [2017] FJCA 51; AAU0011.2013 (26 May 2017) the judge had gone onto say:

12. His Lordship Prematilake J in the above dictum clearly emphasized the need for the prosecution to use the term vulva in the particulars of the offence depending on the complainant's statement and the medical report. It is clear that this is a case where the particulars of the offence should have included the word 'vulva' so that it would have read '. . . penetrated the vulva or vagina . . .'

13. Given the evidence in this case, there is no doubt that the 15 year old complainant was simply referring to her sexual organ when she used the word 'vagina' and not the medical definition of that word. Therefore, I am satisfied beyond reasonable doubt that the complainant's vulva was penetrated by the accused and that it was done without her consent. Accordingly, the evidence in this case is sufficient to prove the first count of rape beyond reasonable doubt.'

[12] The appellant complains that the medical evidence had indicated consensual sex discrediting the complainant and the trial judge had erred in finding the appellant guilty on both counts. He seems to rely on the doctor's evidence that the injuries can be from a possible penetration or early penetration in 'consensual sex'.

[13] However, that piece of evidence cannot be considered in isolation. The doctor who had not been cross-examined by the defense had found fresh superficial bruises *i.e.* occurring within an hour or 03 days, around the vaginal introitus *i.e.* the entry point to the vagina, on both sides of labia which could have been caused by inserting a finger.

The doctor seems to have been of the view that the injuries could have been the result of a penetration from consensual sex but not to the exclusion of forcible penetration.

[14] The appellant on his part had admitted touching the complainant's breasts and also the complainant's vagina on top of her clothes with the complainant's consent. Therefore, the crucial issues were the act of penetration and the consent. Thus, medical evidence clearly corroborates an act of penetration of the vulva, if not the vagina, of the complainant within the time frame spoken to by the complainant. On the issue of consent the assessors had obviously accepted the evidence of the complainant that the appellant inserted his finger without her consent though the medical evidence was not conclusive on that aspect. In any event, medical evidence was only another piece of evidence the assessors and the judge had to take into account along with the evidence of the complainant and her aunt's recent complaint evidence.

[15] The trial judge had given clear directions on this matter in paragraphs 50- 53 on the first count and at paragraphs 54-56 on the second count. Finally, he had directed them at paragraph 57 as follows.

> '57. *Generally, an accused would give an innocent explanation and one of the three situations given below would then arise;*
>
> *(i) You may believe his explanation and, if you believe him, then your opinion must be that the accused is 'not guilty'.*
>
> *(ii) Without necessarily believing him you may think, 'well what he says might be true'. If that is so, it means that there is a reasonable doubt in your mind and therefore, again your opinion must be 'not guilty'.*
>
> *(iii) The third possibility is that you reject his version. But if you disbelieve him, that itself does not make him guilty. The situation would then be the same as if he had not given any evidence at all. You should still consider whether the prosecution has proved all the elements beyond reasonable doubt.'*

[16] In his judgment having directed himself according to the summing-up, considered all the evidence including medical evidence in relation to the issue of penetration and consent, the trial judge had concluded in paragraph 13 that the appellant had not only penetrated the complainant's vulva and he had done so against her consent.

[17] The judgment of a trial judge cannot not 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.

[18] This stance is consistent with the position of the trial judge at a trial with assessors *i.e.* in Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only to offer their opinions, based on their views of the facts and it is the judge who ultimately decides whether the accused is guilty or not (vide **Rokonabete v State** [2006] FJCA 85; AAU0048.2005S (22 March 2006), **Noa Maya v The State** [2015] FJSC 30; CAV 009 of 2015 (23 October 2015] and **Rokopeta v State** [2016] FJSC 33; CAV0009, 0016, 0018, 0019.2016 (26 August 2016).

[19] Therefore, the first ground of appeal has no reasonable prospect of success.

[20] Having considered the evidence against the appellant as a whole, I cannot say that the verdict was unreasonable. There was clearly evidence on which the verdict could be based [vide **Sahib v State** [1992] FJCA 24; AAU0018u.87s (27 November 1992), **Rayawa v State** [2020] FJCA 211; AAU0021.2018 (3 November 2020) and **Turagaloaloa v State** [2020] FJCA 212; AAU0027.2018 (3 November 2020)].

[21] The trial judge also could have reasonably convicted the appellant on the evidence before him (vide **Kaivum v State** [2013] FJCA 146; AAU71 of 2012 (14 March 2013) and **Singh v State** [2020] FJCA 1; CAV0027 of 2018 (27 February 2020)].

02nd ground of appeal

[22] The appellant complains of inconsistency of the evidence between the complainant's evidence of penetration of her vagina and the medical evidence not revealing injuries in the vagina but in her vulva.

[23] The trial judge had addressed the assessors on how to evaluate inconsistencies in general at paragraphs 10-12 and 40 and particularly on the above issue arising from medical evidence at paragraph 49 of the summing-up.

> *'According to the medical opinion, there was an injury, a superficial bruise that was noted around the complainant's vaginal introitus. The doctor explained that the introitus is the entrance to the vagina. When he explained his observation 'superficial bruise', he said that it was just on the upper layer of the vaginal skin. Therefore, according to the medical evidence, if the injury was noted around the entrance to the vagina, it appears that the medical evidence does not support the fact that the complainant's vagina was penetrated. However, according to law, corroboration of the complainant's evidence is not necessary when it comes to an offence of a sexual nature.*

[24] Then in paragraphs 51-53 the trial judge had directed the assessors as follows.

> *51. You have to assess the evidence and decide whether you are satisfied beyond reasonable doubt that the accused inserted his finger inside the complainant's vagina without her consent.*
>
> *52. If you are satisfied beyond reasonable doubt that the accused did insert his finger inside the complainant's vagina, but you are not sure that the elements relating to consent are proven beyond reasonable doubt, then you should find the accused not guilty of the first count.*
>
> *53. If you are not satisfied beyond reasonable doubt that the accused inserted his finger inside the complainant's vagina where you accept the accused's version that he only touched it on top of her clothes, but you are satisfied beyond reasonable doubt that the accused did that without the complainant's consent, then you should consider whether the accused is guilty of the lesser offence of sexual assault. That is, whether that touching was an assault which is unlawful, indecent and sexual.*

[25] Thereafter, the trial judge had analyzed in detail the same issue in the judgment at paragraphs 7-13 (quoted above) and held that the evidence was sufficient to prove count 01 beyond reasonable doubt. In doing so, the trial judge had more than adequately complied with his obligation under the law.

[26] 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)]

[27] Therefore, the second ground of appeal has no reasonable prospect of success.

03rd ground of appeal

[28] The appellant argues that the trial judge had repeatedly described the age of the complainant in the summing-up and how a child of 15 years would behave, think, talk etc. resulting in a miscarriage of justice.

[29] In **R v JD** [2008] EWCA Crim 2557 [England and Wales Court of Appeal (Criminal Division) Decisions] Lord Justice Latham stated *inter alia* as follows.

> *'11. In our view, there is merit in the submissions from both parties. The judge is entitled to make comments as to the way evidence is to be approached particularly in areas where there is a danger of a jury coming to an unjustified conclusion without an appropriate warning. This was the reasoning behind the directions suggested in Turnbull in relation to identification, and Lucas in relation to the treatment of lies. We think that cases where a defendant raises the issue of delay as undermining the credibility of a complainant fall into a similar category save clearly that the need for comment is in this instance to ensure fairness to the complainant. But any comment must be uncontroversial. It is no part of the judge's task to put before the jury Dr Mason's learning without her having been called as a witness. However, the fact that the trauma of rape can cause feelings of shame and guilt which might inhibit a woman from making a complaint about rape is*

sufficiently well known to justify a comment to that effect. The suggested direction in paragraph 9 above provides an example in very general terms of an appropriate form of directions which should be tailored to the facts of the case. In the present case, the judge was entitled to add to that general comment, the particular feelings of shame and embarrassment which may arise when the allegation is of sexual assault by a partner. He was also entitled to remind the jury of the way in which the complaint in fact emerged, as explained by the complainant herself."

[30] Lord Justice Latham earlier said in the judgment approvingly that the quoted passage under paragraph 09 provides an example in very general terms of an appropriate form of directions which should be tailored to the facts of the case.

> *9. The Solicitor General has also referred us to material which is made available to judges and recorders at the Judicial Studies Board seminars on trials in serious sexual cases. These include material relating to the psychological effects of serious sexual assaults collated by Dr Fiona Mason, and the script of the lecture given to the participants by His Honour Judge Peter Rook QC in May of this year. The latter included the following suggested comment in cases where the issue of delay in, or absence of, reporting of the alleged assault is raised by a defendant as casting doubt on the credibility of the complainant:*
>
> > *"Experience shows that people react differently to the trauma of a serious sexual assault. There is no one classic response. The defence say the reason that the complainant did not report this until her boyfriend returned from Dubai ten days after the incident is because she has made up a false story. That is a matter for you. You may think that some people may complain immediately to the first person they see, whilst others may feel shame and shock and not complain for some time. A late complaint does not necessarily mean it is a false complaint. That is a matter for you."*

[31] Therefore, there is nothing objectionable in the trial judge having mentioned the complainant's age in the summing-up in different places.

[32] Therefore, the third ground of appeal has no reasonable prospect of success.

04th (i) ground of appeal (sentence)

[33] The appellant argues that the trial judge should have given an order specifying as to when the appellant should be released after completing the non-parole period.

[34] Prior to the promulgation of Corrections Service (Amendment) Act 2019 on 22 November 2019, in the matter of sentence the court had an extremely wide discretion to fix a non-parole period as articulated in paragraph [26] of **Timo v State** CAV0022 of 2018:30 August 2019 [2019] FJSC 22). However, the Supreme Court did not recommend any directions by the trial judge to the Fiji Corrections Service to release the appellant on parole upon completing the non-parole period despite noting that the parole board had not been constituted and not in operation.

[35] The Supreme Court in **Tora v State** CAV11 of 2015: 22 October 2015 [2015] FJSC 23 had quoted from **Raogo v The State** CAV 003 of 2010: 19 August 2010 on the legislative intention behind a court having to fix a non-parole period as follows.

> *"The mischief that the legislature perceived was that in serious cases and in cases involving serial and repeat offenders the use of the remission power resulted in these offenders leaving prison at too early a date to the detriment of the public who too soon would be the victims of new offences."*

[36] In **Natini v State** AAU102 of 2010: 3 December 2015 [2015] FJCA 154 the Court of Appeal said on the operation of the non-parole period as follows:

> *"While leaving the discretion to decide on the non-parole period when sentencing to the sentencing Judge it would be necessary to state that* ***the sentencing Judge would be in the best position in the particular case to decide on the non-parole period depending on the circumstances of the case.***"
>
> *'.... was intended to be the minimum period which the offender would have to serve, so that the offender would not be released earlier than the court thought appropriate, whether on parole or by the operation of any practice relating to remission'.*

[37] The trial judge had considered at paragraphs 18 and 19 the fixing of the non-parole period and decided on 07 years as the non-parole period. As pointed out in **Rarasea v State** [2018] FJCA 156; AAU0118 of 2014 (04 October 2018) the trial judge had given reasons why he was fixing the non-parole period at 07 years (06 years, 02 months and 09 days after deducting the remand period). Section 18(4) of the Sentencing and Penalties Act states that any non-parole period so fixed must be at least 06 months less than the term of the sentence. Thus, the non-parole period of 06

years, 02 months and 09 days fixed by the trial judge is in compliance with section 18(4).

[38] Therefore, there is no sentencing error and no reasonable prospect of success in this ground of appeal.

04th (ii) ground of appeal

[39] This ground of appeal is not related to sentence but to conviction and had already been dealt with earlier.

04th (iii) ground of appeal

[40] The appellant argues that the sentence is harsh and excessive. In **Raj v State** [2014] FJSC 12; CAV0003.2014 (20 August 2014) the sentencing tariff for child rape was set between 10-16 years of imprisonment.

> *"[66] The learned sentencing judge was correct in his approach. The Court of Appeal in its judgment at paragraph 18 said:*
>
> *'Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years. There can be no fault in the sentencing approach of the learned Judge referred to above (in para 13), save as to say we do not consider that allowance should have been made for family circumstances. To that extent the appellant was afforded leniency that he did not deserve.'*
>
> *We indorse those remarks."*

[41] In **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018) sentencing tariff was enhanced to 11 to 20 years.

[42] Though the appellant was sentenced on 30 September 2019, the trial judge had still followed the lower tariff of 10-16 years in the case of the appellant. He had picked the lower end of the tariff of 10 years as the starting point. Having considered aggravating and mitigating factors the ultimate sentence had been fixed at 11 years which effectively became 10 years, 02 months and 09 days after deducting the remand period. The sentence is well within tariff and is not at all harsh and excessive. The trial judge had not erred in principle.

[43] When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered **(vide Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015)].

Order

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is refused.

COURT OF APPEAL FIJI

Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL