

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

**CRIMINAL APPEAL NO. AAU 07 OF 2022**  
**High Court Criminal Case No. HAC 187 of 2020**

**BETWEEN** : **MOHAMMED FARIYAZ HUSSAIN**

**Appellant**

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

**Respondent**

**Coram** : **Mataitoga, RJA**

**Counsel** : **Mr. S. P. Gosai for the Appellant**  
**Ms. N. Shameem for the Respondent**

**Date of Hearing** : **6 November 2023**

**Date of Judgment** : **13 December 2023**

## **RULING**

- [1] The Appellant (Mohammed Fariyaz Hussain) was charged with 2 counts of Rape contrary to section 207(1) & (2)(b) of the Crimes Act 2009 and 1 count of Sexual Assault contrary to section 210(1) (a) of the Crimes Act 2009. He was tried in the High Court at Suva without assessors before Justice R.D.R.T Rajasinghe on 5 January 2022. He was found guilty on all the charges set out in the indictment. The appellant was convicted on 21 December 2021 and was sentenced on 5 January 2022 to 12 years 11 months with a non-parole period of 8 years and 11 months.
- [2] The indictment filed by the Director of Public Prosecutions against the appellant are as follows:

### **COUNT ONE**

#### *Statement of Offence*

#### **SEXUAL ASSAULT:**

#### *Particulars of Offence*

MOHAMMED FARIYAZ HUSSAIN on the 14<sup>th</sup> day of May, 2020 at Nasinu in the Central Division, unlawfully and indecently assaulted SHAZIA SHAINAZ BI by sucking the unclothed breasts of the said SHAZIA SHAINAZ BI.

### **COUNT TWO**

#### *Statement of Offence*

**RAPE:** Contrary to Section 207 (1) and 2 (b) of the Crimes Act 2009.

#### *Particulars of Offence*

MOHAMMED FARIYAZ HUSSAIN on the 14<sup>th</sup> day of May, 2020 at Nasinu in the Central Division, penetrated the vagina of SHAZIA SHAINAZ BI with his fingers, without the consent of the said SHAZIA SHAINAZ BI.

## COUNT THREE

### *Statement of Offence*

RAPE: Contrary to Section 207 (1) and 2 (a) of the Crimes Act 2009.

### *Particulars of Offence*

MOHAMMED FARIYAZ HUSSAIN on the 14<sup>th</sup> day of May, 2020 at Nasinu in the Central Division, penetrated the vagina of SHAZIA SHAINAZ BI with his penis, without the consent of the said SHAZIA SHAINAZ BI.

- [3] This trial was before a trial judge without assessors in the High Court after the amendment to the CPA 2009 in 2021.

### Brief Facts

- [4] The appellant is the stepbrother of the Complainant. The Complainant has been studying at a boarding school since 2018. Her parents are separated. Her mother had been living with the appellant's father in a flat at Davuilevu Housing. Due to the lockdown caused by the Covid pandemic in March 2020, the Complainant had gone to her mother's place to stay. She had been with her mother since March 2020. The Complainant, her mother, stepfather, her brother had been living in the flat which is just annexed to the flat occupied by Razil Housain. Razil is one of the sons of the Complainant's stepfather's brother. The appellant used to visit the flat occupied by the Complainant, and sometimes he stayed there. The appellant had been teasing the Complainant, saying he wanted to marry her one day. The Complainant had complained this to her mother, but she had told her to ignore him.
- [5] On the 14th of May 2020, after 1.30 pm, the mother and the stepfather went to the town. Before they left, the mother had asked the appellant to go and stay at Razil's place until they returned as the Complainant was alone at their flat. The appellant had gone to Razil's flat accordingly. The Complainant had attended to the house chores after her parents left.

[6] After a while, she had heard the sound of the shower of the bathroom of Razil's flat. The Complainant had thought it was the appellant who was having a shower. She then hurriedly went out to drop the garbage. Once she dropped the garbage, the appellant came and held her hand from behind. He then pushed her to the bedroom and threw her onto the bed. She fell on the bed, facing downward. The appellant had turned her up and covered her mouth when she tried to scream. She had tried to push him away, but he had overpowered her. He then removed his clothes with one hand while covering her mouth with his other hand. He then got on top of her stomach and stayed in a sitting position. While staying in that position, he had forcefully removed her pants and undergarment. Meanwhile, she had tried to scream, but he had slapped her to stop it. He then, using both hands, pulled up her long dress. Her lips and mouth got injured due to the slapping of the appellant. She was bleeding from her mouth. The appellant had then kissed her lips and then sucked both breasts. He then inserted his fingers into her vagina.

[7] The Complainant had tried to push him away, but he pushed her back on the bed and continued his act. The appellant then lay on top of her and penetrated her vagina with his penis. He did it for a while and then got out of the bed. The appellant left the bedroom, leaving the Complainant alone. She stayed in bed for a while and then got up and went to the bathroom. The Complainant had not told her mother of this incident. The appellant had told her during this alleged sexual assault not to tell her mother about this incident. Furthermore, the appellant had told her she would not be able to marry anyone. The Complainant explained that her relationship with her mother was not close. She feared that if she told her mother about this incident, it would eventually lead to her separation from her partner, the appellant's father. With this fear in her mind, the Complainant had not informed her mother about this incident. She had gone back to school on the 17th of May 2020. The Complainant had told her best friend Ayesha Bibi about this incident when they met. The Complainant had requested Ayesha Bibi not to tell anyone as she was scared of her future. Ayesha had relayed this matter to the complainant's mother, who had informed the principal of their school. The matter was then eventually reported to the Police, and the Complainant was medically examined on the 24th of June 2020.

[8] The appellant claim that he was not present at his father's flat on the 14th of May 2020, when this alleged incident allegedly occurred. According to the appellant, he had gone to his cousin Riaz's place at Cunningham in the evening of the 13th of May 2020. He had spent the night there. The following day, which was the 14th of May 2020, the appellant worked at Riaz's place. According to Riaz and his father, the appellant was at their place on the evening of the 13th of May 2020. In order to establish his Defence of alibi, the accused called four witnesses. Jessamine Bibi, the wife of Razil, stated in her evidence that the appellant was not present at her flat on the 14th of May 2020, and no one went out from the second flat during the day. The appellant's father said in his evidence that if he went out with his wife, they used to take the Complainant and her brother as well. Usman, the father of Riaz, stated that the appellant stayed at his place doing work during the whole day on the 14th of May 2020. According to the evidence given by Riaz, he had gone to work on the 14th of May 2020. However, he went home during his lunch break to drop the welding rod. When he went home during the lunch break, he saw the appellant was still working at his place.

### **The Appeal**

[9] On 4 February 2022, the appellant through his counsel filed Notice of Appeal and Grounds of Appeal pursuant to section 21 of the Court of Appeal Act against conviction and sentence. The appeal was timely. The appellant submitted 22 grounds against conviction and 1 against sentence.

[10] This appeal falls to be decided under section 21(1)(b) of the Court of Appeal, which requires leave to appeal to be granted before the appeal grounds may be considered by the court. This is so because the grounds of appeal submitted claimed that there were errors of law and fact by the trial judge in reaching his judgement in the High Court during the trial of the case.

[11] For leave to be granted at this stage, the principles governing the court's determination whether to grant leave or not, is an assessment whether the grounds and submissions of

appeal urged on the Court have a reasonable prospect of success: In **Waqasaqa v. State** [2019] FJCA 144, the Court of Appeal stated the governing principles in these terms.

[3] *For many years the accepted test for granting leave to appeal against conviction has been stated as being whether there is a ground of appeal that is arguable. The test was considered by the Supreme Court in **Naisua v. The State** [2013] FJSC 14; CAV 10 of 2013, 30 November at paragraph 18:*

*“It is settled that the test for granting leave to appeal against conviction on mixed grounds of law and fact in the Court of Appeal is whether an arguable point is being raised for the Full Court’s consideration \_\_\_\_\_. We must add that it is not appropriate to reach any conclusion on the merits of the proposed grounds when considering leave. That conclusion should be left to the Full Court.*

[4] *The Supreme Court appears to draw a distinction between considering the appeal in its totality and considering the merits of any of the proposed grounds of appeal. At the leave stage the single judge of the Court should step back and assess whether the appeal is genuinely arguable before the Full Court. Although a particular ground of appeal may raise an arguable point, it does not necessarily follow that the appeal is arguable before the Full Court. Issues raised in grounds of appeal may fall in favour of the appellant as arguable. However, when considered in the context of the appeal as a whole it may become apparent that the appeal is not arguable before the Full Court. The question for this Court is what did the Supreme Court in **Naisua** (supra) mean when it referred to the test as being whether there is an arguable point raised for the Full Court’s attention without considering the merits of the proposed grounds*

[5] *The nature of the test has become a matter of some interest more recently because of the significant increase in the number of successful applications for leave to appeal against conviction. In a recent decision of this Court in **Sadrugu v. The State** [2019] FJCA 87; AAU 57 of 2015, 6 June 2019 (per Prematilaka JA) the test for leave to appeal against conviction was considered in terms of how does the Court distinguish between arguable and non-arguable appeals at the leave stage. In paragraph 13 of that decision the Judge concluded, having reviewed a number of authorities, that:*

*“\_\_\_\_\_ the test of reasonable prospect of success as described in Smith [2011] ZASCA 15; [2012] 1 SACR 567 (SCA) should be used to differentiate arguable grounds from non-arguable grounds at the stage of leave to appeal.”*

[6] *For my part and more in keeping with the observations of the Supreme Court in Naisua (supra) I would suggest that the test be reworded so that the test is understood to refer to the appeal itself as having a reasonable prospect of success rather than any particular ground of appeal.”*

[12] In making this assessment I will review the grounds of appeal submitted and decide if the appeal as a whole, not each of the grounds submitted, have a reasonable prospect of success. The grounds of appeal submitted by counsel for the appellant are as follows:

**Ground 1:**

*THAT for the first grounds of appeal the appellant humbly raise that the Learned Trial Judge erred in law and in fact by failing to consider the evidence by the defense witnesses that for the alibi of the accused, the accused prior to the date of offence was at his cousin’s place where he stayed overnight and on the alleged day of offence was at his cousin’s place doing welding works.*

**Ground 2:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider the evidence by the fourth defense witness, Mohammed Riaz Hussain that he had left home in the morning when the appellant was at his place, he returned around midday, the appellant was still at his place doing welding works and when he finally returned home from work the appellant was still at his place.*

**Ground 3:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider the evidence by the first defense witnesses Jessamine Bibi that she was at home in the front flat on the date of the alleged incident and she had not seen anyone enter or leave the second flat, where the complainant resided which is adjoined to the front flat.*

**Ground 4:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider that the prosecution’s case at paragraph 4 of the Judgment dated 21<sup>st</sup> December 2021, that on 14<sup>th</sup> of May 2020, the mother and stepfather went to town and before leaving they asked the accused and the complainant to go to Razil Husain’s house and the accused had gone accordingly, which contradicts the evidence of Razil Husain’s wife’s evidence Jessamine Bibi that she had not seen the accused that day. Furthermore, in cross-examination of Jessamine Bibi stated at paragraph 46 of the Judgment dated*

21<sup>st</sup> December, 2021, that she might have missed anyone going in or coming out but she never confirmed that the accused had gone to stay at her place whilst the father and the mother of the complainant returned, which creates reasonable doubt.

**Ground 5:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to consider the evidence of the defense that the whereabouts of the accused was not properly established as no one had seen him enter the premises of the complainant nor leave after the alleged incident.*

**Ground 6:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider and attached any credible weight to the evidence provided by the four defense witnesses and as such caused substantial miscarriage of justice.*

**Ground 7:**

*THAT the Learned Trial Judge erred in law and in fact in convicting the appellant on the charge of rape when there were many contradictions and discrepancies in the testimony of the complainant and the evidence of the complainant was not credible against the appellant.*

**Ground 8:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to take into consideration of the evidence of the first defense witness Jessamine Bibi when in cross-examination she had stated that she did not hear any shouts or sound from flat two, whilst the Learned Trial Judge dwelled on the evidence of the complainant that the accused had covered her mouth, whilst such evidence is very dangerous as in cases of rape, as there ought to be some commotion or struggle and the fact is that both flats are only separated by a wall, which is mentioned in the prosecution's case at paragraph 3 at line 9 of the Judgment dated 21<sup>st</sup> December, 2021, which reads as "The complainant, her mother, stepfather, her brother had been living in the flat which is just annexed to the flat occupied by Razil Hussain.*

**Ground 9:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider that in his judgment at paragraph 68 that the accused had slapped the complainant to stop her from screaming, whilst Jessamine Bibi had in her evidence stated that she had not heard any "shouts or sound".*



**Ground 10:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to consider the fact that Jessamine Bibi had been outright in her evidence stating that the accused had not come to her place and she had not seen him in the vicinity and the Learned Trial Judge stating that the witness gave evidence which was not probative at paragraph 45 of the Judgment dated 21<sup>st</sup> December 2021, and as such caused substantial miscarriage of justice.*

**Ground 11:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to establish a crime scene reconstruction as the place of alleged rape and a defense witness as an alibi was present within the closet vicinity and proximity of the crime scene.*

**Ground 12:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider the fact that the accused was also charged for inserting his fingers into the vagina of the complainant, which then enabled him to either hold the complainant down using one hand or to use closing the mouth of the accused which again creates doubt if she tried to shout or free herself given the latter use of the second hand which was not in use to insert her vagina.*

**Ground 13:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to consider the fact that the matter was only reported after about forty days and the medical examination was done approximately the same time which is reasonable delay for proper medical findings and there could be many reasons for the injuries to the vagina, as the medical examination was done approximately 40 days later.*

**Ground 14:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider the evidence of the accused that he liked the complainant and referred to her as his girlfriend at paragraph 31 of the Judgment dated 21<sup>st</sup> December 2021 and apart from the evidence of the complainant that the accused teased the complainant, no other malice or aggravation on part of the accused was established by the prosecution in their evidence and taking such evidence in consideration such caused substantial miscarriage of justice.*

**Ground 15:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to consider the fact the prosecution case stated that the accused had slapped the complainant and she had bled from her mouth but no complaints of the*

*alleged rape being reported to the mother which the complainant in her evidence stated was not done out of fear, raises questions as the wounds or injuries as alleged afflicted on the complainant would have raised serious questions and explanations.*

**Ground 16:**

*THAT the Learned Trial Judge erred in law and in fact by failing to consider when he stated at paragraph 32 of the Judgment dated 21<sup>st</sup> December 2021, “Do you know if he came to your house on Thursday?”, and the answer was straight forward saying “Yes, my Lord he worked at my house on Thursday. ”, whilst witness Usman could not specifically remember the dates but he was sure of the day when the accused was at his place and to attach weight of him being unreliable and a trained witness is a miscarriage of justice.*

**Ground 17:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to take into consideration of the appellant’s evidence when the prosecution relied on his caution interview, whereby the explanations given by the appellant was satisfactory and credible, whilst the testimony of the appellant was very forthright in his answers compared to that of the complainant.*

**Ground 18:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to take into consideration the explanation by the appellant that he was confused as the caution interview was conducted in English language and he only understood Hindi and as a matter of fact the caution interview states that the education level of the appellant is only up to Class One.*

**Ground 19:**

*THAT the Learned Trial Judge erred in law and in fact in not finding the accused evidence credible but did not give reasons for his findings.*

**Ground 20:**

*THAT the Learned Trial Judge erred in law and in fact when he kept objecting the defense counsel for leading questions but failing to give him opportunities to rephrase his questions and further considered the conduct of the learned defense counsel for asking leading questions and using the same to punish the accused is unfair and as such caused a substantial miscarriage of justice.*

**Ground 21:**

*THAT the Learned Trial Judge erred in law and in fact when he failed to attach any credible weight of the defense questioning of Mohammed Feroz to be recorded on basis of leading questions.*

**Ground 22:**

*THAT the Learned Trial Judge erred in law and in fact when he kept saying that whatever he writes forms part of the evidence rather than recording everything that was said thus prejudicing the appellant's case.*

**Sentence:**

**Ground 1:**

*THAT the appellant appeals against the sentence being manifestly harsh and excessive and wrong in the principle in all the circumstances of the case and the Learned Trial Judge erred in law and in fact in taking irrelevant matters into consideration when sentencing the appellant and not taking into consideration relevant matters and facts.*

**Assessment of the Grounds of Appeal**

[13] The appellant has submitted 22 grounds of appeal against conviction and 1 ground against sentence. As regards the 22 grounds submitted against conviction, I will deal with them according the legal issues the grounds submitted raises and assess whether the grounds urged on behalf of the appellant, are supported by the submissions made by the appellant. These areas are: alibi evidence; alleged contradiction/inconsistencies; caution interview; rape & delay in medical examination [grounds 12 &13] and handling of leading questions – grounds 19-22. I find that all the 22 grounds are adequately covered by discussing them under those headings.

**Alibi Evidence**

[14] As a matter of law, an accused person may rely on a factual defense such as an alibi. An alibi exists where a person was not at the scene of the crime and can adduce evidence that they were elsewhere. An alibi exists where an accused person was at a particular place at

the time the offence was allegedly committed and therefore could not have committed the offence or would have been unlikely to have committed the offence. The accused does not have the burden of proving that they were not at the scene of the crime. The prosecution must prove that the accused was at the scene of the crime. In other words, the prosecution must disprove the alibi.

[15] In Fiji, when a person is charged with an offence on indictment and claim alibi defense, section 125 Criminal Procedure Act 2009 (CPA 2009) requires that the defense give notice to the prosecution of the particulars of the alibi (Section 125(3) CPA 2009). Failure to lodge Notice of Alibi evidence may result in the evidence being disallowed: **Mohammed Jabba v. State** [2014] FJCA 138 (AAU 026/2012). This notice must include the names and addresses of any person who they intend to call to give evidence in support of the alibi unless those details cannot be obtained by taking reasonable steps. The requirement to give notice of an alibi exists so that the prosecution has the opportunity to investigate the alibi and adduce evidence to rebut the evidence supporting the alibi. It must be given 21 days before the date set for the trial. If the defense calls a person to give evidence in support of their alibi and the person's details have not been provided to the prosecution, the evidence may be disallowed. In this situation, the court will consider whether the accused was aware of the person's details and whether they took steps ascertain the person's details and provide them to the prosecution.

[16] The appellant argues at grounds 1,2, 3, 6, 8, 16 and 10 that the appellant was not at the scene of the crime at material time but was doing welding works at his cousin's place in Cunningham. After reviewing the judgement in the High Court and in particular the discussion regarding alibi evidence claimed in the case and the inconsistent evidence given by the appellant himself about the dates he was at work at his cousin's [Riaz] place. The trial judge at paragraphs 7, 10, 21-57 of the judgement discussed in detail the evidence adduced by both parties and the issue alibi evidence, which highlighted the inconsistencies in the evidence of the appellant as to the dates he as working at his cousin's place Riaz and whether he was at the house in Cunningham where the crime alleged took place. The evidence regarding the claim of alibi was difficult to believe when the witnesses called by

the counsel of the appeal suffered from selective amnesia. At paragraph 32 of the judgement, the trial judge stated as follows:

*‘Having carefully observed the manner and how Usman gave evidence, I find him a witness was trained to remember or memorize specific acts. Usman could not remember the dates where the accused came and worked as his son’s place; however, he could conveniently recall the days the accused came to work at this son’s place. ....[After referring to some evidence the trial judge concluded] This answer supports the proposition that the evidence of Usman is untrue, thus making him an unreliable witness.’*

[17] I conclude that this ground has no merit and is dismissed.

**Inconsistent/contradictory statements etc.**

[18] Grounds of appeal 4, 5, 7, 8, 10, 11, and 15 are relevant under this cluster of legal issues raised by the appellant. The core discrepancy alleged by the appellant is that Jasmine Bibi’s evidence contradicts the complainant evidence which states her parents had told the appellant to go to Razil’s house but Razil’s wife Jasmine Bibi evidence was that the appellant had not gone to her house. It is not surprising that according to Jasmine Bibi’s evidence she saw the appellant at the house, after all the prosecution evidence was that despite being told to go to Razil’s house, the appellant had gone somewhere and returned after the parents have left.

[19] The discussion by the trial judge of Jasmine Bibi’s evidence is set out in paragraphs 41- 47 of the Judgment. These discussion by the trial Judge, showed the weakness in the defense claim. At paragraph 45 he stated

*“The aforementioned leading questions are directly linked to the disputed issues for which this particular witness was called to give evidence. Hence, I do not find much probative value in those answers given by Jasmine Bibi.”*

[20] In **Jabba v. State** [2014] FJCA 138 (AAU 026/2020 the Court of Appeal held that a claim of inconsistencies/contradictions should indicate that the inconsistency goes to credit and

the weight to be attached to the evidence. None of this were specified in the Notice of Appeal and the submission that supported it. This appeal ground has no merit.

### **Caution Interview Statements**

- [21] The basis of this claim is that the use of the cautioned interview and charge statements of the appellant during the trial is unfair. The appellant claims unfairness arising from the fact that since his level of education is class 1, he did not fully understand the questions which were in English, that were put to him and the answers he gave was credible and forthright compared to evidence given by the appellant. He highlighted that he knew Hindi mainly, it is likely that the original interview was in Hindi and later translated to English but that may be evident when the full court record is available.
- [22] The grounds of appeal relevant here are grounds 17 and 18 of the appellant's submission. Two things to note about these grounds of appeal: first, these grounds do contradict each other, second, the cautioned interview statement of the appellant was not used as primary evidence to prove the charge. The prosecution sought leave of the court to use the cautioned interview statement of the appellant in order to establish the inconsistent denial made by the appellant, thus impeaching the appellant's credibility as a witness: **Paragraph 29 of the Judgement**. This ground has no merit and is dismissed.

### **Rape and Delayed Medical Examination**

- [23] The appellant appeal grounds covering the impossibility of rape due the manner in which he held the complainant (ground 12) and the delayed medical examination (ground 13), are 12 and 13. The trial judge was clear in discussing the issue raised by these two grounds at paragraph 64-69 of the judgement. The trial judge at paragraphs 67, 68 and 69, addressed counsel for the appellant's submission that it was impossible for the appellant to remove his clothes and that of the complainants with one hand while covering the complainant mouth. The trial judge accepted that it was possible and probable that the appellant pushed the complainant from behind and threw her onto the bed. The trial judge further accepted

that it was possible and probable to remove his clothes and the complainant's clothes as he used his hands to cover her mouth only when she tried to scream. This ground has no merit.

- [24] On the ground 13, complaining about the delayed medical examination for about 40 days. It cannot now be raised as it relates to a trial issue and should have been raised at the trial. The appellant was represented by a senior counsel at his trial and this issue was not raised. This is dismissed.

### **Leading Questions**

- [25] Grounds 20 to 21 argues that the trial judge did not give adequate opportunities to defense counsel to rephrase question after the court had disallowed leading questions. The Judgements clearly record portions of leading questions being asked by counsel for the appellant that were leading questions. The court gave counsel repeated opportunities to rephrase them, only to find counsel asking leading questions again: **see paragraphs 41 to 53 of the judgement.** This is disrespectful conduct on the part of the senior counsel. These grounds are dismissed. As having no merit.

- [26] Ground 22 of the appellant's ground is frivolous as having no prospect of success. It is not supported by any evidence to show the prejudice claimed against the appellant. It is dismissed as having no merit.

### **Against Sentence**

- [27] The appellant claims that the trial judge erred in law and fact in imposing the sentence it did given the evidence in this case. But he failed to specify where the trial judge may have erred and acted upon wrong principle, or allow extraneous or irrelevant matters to guide him or he took into account irrelevant consideration as required by **Kim Nam Bae v. State** [1999] FJCA 21, (AAU 0015/9198S). In this case, the approach adopted is correct in that the ultimate sentence is the focus not the mathematics of sentencing. In this case, the

sentence imposed was within the permissible range of sentence: **Sharma v. State** [2015] FJCA 178. No error on the part of the trial judge as regards sentence.

[28] The appellant sentence appeal ground is dismissed as having no merit.

### **Overall Assessment**

[29] In light of the above review of the grounds and the relevant legal principles, I conclude as follows:

1. Leave to Appeal is dismissed
2. Orders of the High Court affirmed.

  
Isikeli U. Maitoga  
Resident Justice of Appeal

