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

CRIMINAL APPEAL NO. AAU 21 of 2022
[In the High Court at Suva Case No. HAC 101 of 2020]

BETWEEN	:	**RAJNESH BALA**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Prematilaka, RJA**
Counsel	:	**Mr. A. K. Singh for the Appellant** **Ms. S. Shameem for the Respondent**
Date of Hearing	:	**07 December 2023**
Date of Ruling	:	**18 December 2023**

RULING

[1] The appellant had been charged in the High Court at Suva with one count of sexual assault (count one) and one count of rape (count two). Both were representative counts involving the same complainant. The prosecution alleged that between 01 February 2016 and 31 March 2018 the appellant committed numerous sexual assaults, and that between 01 March 2018 and 30 November 2019, he committed numerous acts of rape, against the same complainant. The appellant is the de-facto partner of the victim's biological mother and therefore her stepfather. At the time of alleged incidents the victim was a child.

[2] After trial before a judge alone, the trial judge had convicted the appellant on both counts and sentenced him on 15 March 2022 to 04 years of imprisonment for sexual assault and 14 years of imprisonment for rape (both to be served concurrently) with a non-parole period of 12 years.

[3] The appellant's appeal against conviction and sentence is timely.

[4] 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. For a timely appeal, the test for leave to appeal against conviction is **'reasonable prospect of success'** [see **Caucau v State** [2018] FJCA 171; AAU0029 of 2016 (04 October 2018), **Navuki v State** [2018] FJCA 172; AAU0038 of 2016 (04 October 2018) and **State v Vakarau** [2018] FJCA 173; AAU0052 of 2017 (04 October 2018), **Sadrugu v The State** [2019] FJCA 87; AAU 0057 of 2015 (06 June 2019) and **Waqasaqa v State** [2019] FJCA 144; AAU83 of 2015 (12 July 2019) that will 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 (15 July 2014) and **Naisua v State** [2013] FJSC 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds [see **Nasila v State** [2019] FJCA 84; AAU0004 of 2011 (06 June 2019)].

[5] Further guidelines to be followed when a sentence is challenged in appeal are whether the sentencing judge (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to guide or affect him (iii) mistook the facts and (iv) failed to take into account some relevant considerations [vide **Naisua v State** [2013] FJSC 14; CAV0010 of 2013 (20 November 2013); **House v The King** [1936] HCA 40*;* (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015].

[6] The trial judge had summarized the facts in the sentencing order as follows:

> *[1] The victim was born on 20 January 2002. After her parents separated when she was about 10 years old, she moved to live with her father and stepmother in New Zealand. In 2015 she returned to Fiji to live with her biological mother who at the time was staying in Lautoka.*
>
> *[2] The Accused is the de-facto partner of the victim's biological mother. In 2017, the victim's mother moved to Suva to live with the Accused. At the time the Accused was a divorcee with a teenage son living with him.*
>
> *[3] Shortly after the victim moved to Suva the Accused carried out a campaign of sexual abuse against the victim between 2017 and 2019. The victim was 15 years old when the abuse started. The Accused was in his early forties.*

[4] The victim did not report the abuse to anyone because the Accused had instilled fear in her that she would be removed from her home by the Social Welfare if she complained. She reported the sexual abuse to her teachers after she turned 18 years of age in 2020. Apparently, her mother had turned a blind eye to the abuse when she complained to her in 2019.

[5] The appellant was arrested and charged with one representative count of sexual assault and one representative count of rape. He was tried and convicted of the two charges.

[7] The prosecution had called 04 witnesses and the appellant had given evidence and called 04 other witnesses on his behalf.

[8] The grounds of appeal urged by the appellant are as follows:

Ground 1:

THAT the Learned Trial Judge erred in law and fact when he failed to properly consider:

(a) the totality of the evidence for the appellant negating opportunities of offending the negation of which was not adequately addressed;
(b) the possibility of fabrication and the absence of early or recent complaint or reporting evidence showing an incredible complainant affecting 'truthfulness 'of the complainant; and
(c) the inconsistencies and contradictions on the issue of dates and time are material to the issue of whether the act constituting the crime occurred in fact

The failure of which led to a judgment that was unsafe and unsatisfactory and amounts to a miscarriage of justice.

Ground 2:

THAT the Learned Trial Judge erred in fact and law when he failed to properly:

(a) identify why he choose to believe the complainant over the raft of credible evidence by the appellant on the allegations;
(b) outline the basis of the court's finding of guilt over the overwhelming evidence provided in court in favour of the appellant [paragraph 41]; and
(c) summaries why the court did not believe the denial of the appellant [paragraph 44]

The failure of which resulted in a judgment was preserve and amounts to a miscarriage of justice.

Ground 3:

THAT the Learned Trial Judge erred in fact and law in not properly addressing the inconsistent evidence/statements led at trial by the complainant and other prosecution witnesses which is absent in the judgment and such absence resulted in an unsafe judgment.

Ground 4:

THAT the sentence is manifestly harsh and excessive.

Ground 1 (a)

[9] Having carefully considered the appellant's defence that allegations have been fabricated by the complainant because he had been strict on her and that he was never home alone with the complainant and that if he was not working overtime, he would be training or playing soccer for a local club after work or in the weekends, the trial judge had concluded that he did not believe that there was no occasion where the appellant and the complainant were alone at their home at Lakeba Street between 2017 and 2020.

Ground 1 (b)

[10] Similarly, the trial judge had indeed been mindful of the delay in reporting and accepted that the victim could have complained and had opportunities to do so but considered her account that she did not complain to anyone because the appellant had instilled fear in her that nobody will believe her or that she would be removed from her home by the Social Welfare if she complained and therefore, she waited until turning an adult when she reported the abuse to her school teachers, as a reasonable explanation for the delay – see the 'totality of circumstances' test adopted by the Court of Appeal in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018) to similar complaints.

Grounds 1 (c) and 3

[11] As for inconsistencies, the trial judge had admitted that there were some contradictions and inconsistences in the dates and times of the events, but according to him the contradictions and inconsistencies were peripheral and not material in determining the

truth of the charges. He had also pointed out that the event took place between 2017 and 2019 and over passage of time, witnesses' memories fade but it does not mean that the witnesses were not telling the truth.

[12] The existence of inconsistencies by themselves would not impeach the creditworthiness of a witness and that it would depend on how material they are – **Laveta v State** [2022] FJCA 66; AAU0089.2016 (26 May 2022). 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 **[Nadim and another v The State** [2015] FJCA 130; AAU0080.2011 (2 October 2015) & **Krishna v The State** [2021] FJCA 51; AAU0028.2017 (18 February 2021)].

Ground 2

[13] Having examined the judgment in its totality, I cannot see any inadequacy of consideration given to matters set out under 2 (a) to (c) although they are succinct. The trial judge had considered both the prosecution and defence evidence and had dealt with both versions in sufficient details and evaluated and analysed them separately but reminded himself that the burden of proof beyond reasonable doubt lied fairly and squarely on the prosecution and rejection of the defence version would not relive the prosecution of its burden and if the account given by the appellant is or may be true, then he must be found not guilty.

[14] The trial judge's reasons as to why he believed the victim's narrative is to be found at paragraphs 33-37 and 39-41 of the judgment which included his opinion that the complainant struck him as an honest witness. Similarly, his reasons as to why he did not believe the defence narrative are found at paragraph 38 in that the trial judge did not believe that there was no occasion where the appellant and the complainant were alone at their home at Lakeba Street between 2017 and 2020 which was the gist of the appellant's defence.

[15] By no stretch of argument, could I say that the trial judge had not considered the totality of evidence. It has been said many a time that the trial court has a considerable

advantage of having seen and heard the witnesses. It was in a better position to assess credibility and weight and the appellate court should not lightly interfere and there was undoubtedly evidence before the trial court that, when accepted, supported the verdict [see **Sahib v State** [1992] FJCA 24; AAU0018u.87s (27 November 1992)]. It appears from the judgment that upon the whole of the evidence it was open to the trial judge to be satisfied of appellant's guilt beyond reasonable doubt [vide **Kumar v State** AAU 102 of 2015 (29 April 2021), **Naduva v State** AAU 0125 of 2015 (27 May 2021)]. Similarly, on the evidence available on record the trial judge also could have reasonably convicted the appellant on the evidence before him (see **Kaiyum v State** [2013] FJCA 146; AAU71 of 2012 (14 March 2013). Therefore, the verdict of guilty cannot be termed as unreasonable or not supported by evidence (see section 23(1)(a) of the Court of Appeal Act).

[16] To be fair by the appellant, his contention that the reasons given by the trial judge as to why he believed the victim over the appellant needs an in-depth analysis.

[17] In **Abdel Naser Qushair v Naji Raffoul** [2009] NSWCA 329 Sackville AJA (Campbell JA and Bergin CJ in Eq agreeing) it was held at [52]:

> *[52] The principles relating to the obligation of a trial judge to give adequate reasons for making findings of fact, including findings said to be demeanour based, were summarised by McColl JA (with whom Ipp JA and Bryson AJA agreed) in Pollard v RRR Corporation Pty Ltd [2009] NSWCA 110. Her Honour's statement of the principles was accompanied by detailed citation of authority. The following is a summary, with reference only to some of the leading authorities:*
>
> *(i) The giving of adequate reasons lies at the heart of the judicial process, since a failure to provide sufficient reasons can lead to a real sense of grievance because the losing party cannot understand why he or she lost (at [57]): see Beale v Government Insurance Office of NSW (1997) 48 NSWLR 430, at 442, per Meagher JA.*
>
> *(ii) While lengthy and elaborate reasons are not required, at a minimum the trial judge's reasons should be adequate for the exercise of a facility of appeal, where that facility is available (at [56]): see Soulemezis v Dudley (Holdings) Pty Ltd (1987) 10 NSWLR 247, at 260, per Kirby P; at 269, per Mahoney JA.*

(iii) The extent and content of the reasons will depend on the particular case and the issues under consideration, but it is essential to expose the reasoning on a point critical to the contest between the parties (at [58]): see Soulemezis v Dudley, at 259, per Kirby P; at 280, per McHugh JA. This may require the judge to refer to evidence which is critical to the proper determination of the issue in dispute (at [62]): Beale v GIO, at 443, per Meagher JA.

(iv) Where credit issues are involved, it is necessary to explain why one witness is preferred to another. Consequently, bald findings on credit, where substantial factual issues have to be addressed, may not comply with the common law duty to give reasons (at [65]): Palmer v Clarke (1989) 19 NSWLR 158, at 170, per Kirby P (with whom Samuels JA agreed).

(v) Where an appellate court concludes that the trial judge has failed to give adequate reasons, the court has a discretion whether or not to direct a new trial. If, despite the inadequate reasons, only one conclusion is available, a new trial may not be necessary (at [67]).'

[18] Harrison AsJ in **Zeait v Insurance Australia Limited t/as NRMA Insurance** [2016] NSWSC 587 said:

'[28] It is trite law that if a court fails to give sufficient reasons for its decision it constitutes an error of law: see Wang v Yamamoto [2015] NSWSC 942; and Jung v Son [1998] NSWCA 120.

[29] In Wang v Yamamoto at [35]-[38], I stated:

"[35] It is not in dispute that a Magistrate is obliged to provide adequate reasons and not to do so constitutes an error of law: see Stoker v Adecco Gemvale Constructions Pty Ltd [2004] NSWCA 449 at [41] per Santow JA.

[36] In Beale v Government Insurance Office of NSW (1997) 48 NSWLR 340 Meagher JA at 422 stated:

A failure to provide sufficient reasons can and often does lead to a real sense of grievance that a party does not know or understand why the decision was made: Re Poyser and Mills Arbitration [1964] 2 QB 467 at 478. This court has previously accepted the proposition that a judge is bound to expose his reasoning in sufficient detail to enable a losing party to understand why it lost.

[37] In Stoker, Santow JA at [41] said that "It is sufficient if the reasons adequately reveal the basis of the decision, expressing the specific findings that are critical to the determination of the proceedings." However, "the extent and the content of reasons will depend upon the particular case under consideration and the matters in issue. While a judge is not obliged to spell out every detail of the process of reasoning to a finding, it is essential to expose the reasons for resolving a point critical to the contest between the parties": see Pollard v RRR Corporation Pty Limited [2009] NSWCA 110, McColl JA at [58] (with whom Ipp JA and Bryson AJA agreed).

[38] In Soulemezis v Dudley (Holdings) Pty Ltd (1987) NSWLR 247, McHugh JA at 281 stated:

> *"In a case where a right of appeal is given only in respect of a question of law, different considerations apply from the case where there is a full appeal. An ultimate finding of fact, which is not subject to appeal and which is in no way dependent upon the application of a legal standard, can be treated less elaborately than an issue involving a question of mixed fact and law. If no right of appeal is given against findings of fact, a failure to state the basis of even a crucial finding of fact, if it involves no legal standard, will only constitute an error of law if the failure can be characterised as a breach of the principle that justice must be seen to be done. If, for example, the only issue before a court is whether the plaintiff sustained injury by falling over, a simple finding that he fell or sustained injury would be enough if the decision simply turned on the plaintiff's credibility. But, if, in addition to the issue of credibility, other matters were relied on as going to the probability or improbability of the plaintiff's case, such a simple finding would not be enough."*

[19] In **Jung v Son** (supra), Stein JA stated (at 6):

"While a judge does not have to state reasons for every aspect of the case, his reasons must be sufficient to satisfy the requirements of Pettittv Dunkley [1971] 1 NSWLR 376. The reasons must be sufficient to enable an appellate tribunal to gain a proper understanding of the basis of the verdict. Not to do so is an error of law (Asprey JA at 382 and Moffitt JA at 388). Failure to give reasons also makes it impossible for an appellate tribunal to give effect to a plaintiff's right of appeal. Issues critical to the case, as these were, must be dealt with by reasons (Samuels JA in Mifsud v Campbell (1991) 21 NSWLR 725 at 728)."

In short, the judicial officer should make it clear what he or she is deciding and why.'

[20] The Supreme Court of Canada in **R. v. Sheppard** 2002 SCC 26; [2002] 1 SCR 869 (2002-03-21) made very pertinent pronouncements on the duty of a trial judge to give reasons.

> *'Held: …….. The trial judge erred in law in failing to provide reasons that were sufficiently intelligible to permit appellate review of the correctness of his decision.*
>
> *The requirement of reasons is tied to their purpose and the purpose varies with the context. The present state of the law on the duty of a trial judge to give reasons, in the context of appellate intervention in a criminal case, can be summarized in the following helpful but not exhaustive propositions:*
>
> 1. *The delivery of reasoned decisions is inherent in the judge's role. It is part of his or her accountability for the discharge of the responsibilities of the office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large.*
>
> 2. *An accused person should not be left in doubt about why a conviction has been entered. Reasons for judgment may be important to clarify the basis for the conviction but, on the other hand, the basis may be clear from the record. The question is whether, in all the circumstances, the functional need to know has been met.*
>
> 3. *The lawyers for the parties may require reasons to assist them in considering and advising with respect to a potential appeal. On the other hand, they may know all that is required to be known for that purpose on the basis of the rest of the record.*
>
> 4. *The statutory right of appeal, being directed to a conviction (or, in the case of the Crown, to a judgment or verdict of acquittal) rather than to the reasons for that result, not every failure or deficiency in the reasons provides a ground of appeal.*
>
> 5. *Reasons perform an important function in the appellate process. Where the functional needs are not satisfied, the appellate court may conclude that it is a case of unreasonable verdict, an error of law, or a miscarriage of justice within the scope of s. 686(1)(a) of the Criminal Code, depending on the circumstances of the case and the nature and importance of the trial decision being rendered.*
>
> 6. *Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated.*

7. *Regard will be had to the time constraints and general press of business in the criminal courts. The trial judge is not held to some abstract standard of perfection. It is neither expected nor required that the trial judge's reasons provide the equivalent of a jury instruction.*

8. *The trial judge's duty is satisfied by reasons which are sufficient to serve the purpose for which the duty is imposed, i.e., a decision which, having regard to the particular circumstances of the case, is reasonably intelligible to the parties and provides the basis for meaningful appellate review of the correctness of the trial judge's decision.*

9. *While it is presumed that judges know the law with which they work day in and day out and deal competently with the issues of fact, the presumption is of limited relevance. Even learned judges can err in particular cases, and it is the correctness of the decision in a particular case that the parties are entitled to have reviewed by the appellate court.*

10. *Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court's explanation in its own reasons is sufficient. There is no need in that case for a new trial. Such an error of law at the trial level, if it is so found, would be cured under the s. 686(1)(b)(iii) proviso.*

In the circumstances of this case, the majority of the Court of Appeal correctly concluded that the reasoning of the trial judge was unintelligible and therefore incapable of proper judicial scrutiny on appeal. There were significant inconsistencies or conflicts in the evidence. The trial judge's reasons were so "generic" as to be no reasons at all. The absence of reasons prevented the Court of Appeal from properly reviewing the correctness of the unknown, unexpressed pathway taken by the trial judge in reaching his conclusion and from properly assessing whether he had properly addressed the principal issues in the case. The trial judge's failure to deliver meaningful reasons for his decision was an error of law within the meaning of s. 686(1)(a)(ii) of the Criminal Code.'

[21] Binnie, J also said:

'1. In this case, the Newfoundland Court of Appeal overturned the conviction of the respondent because the trial judge failed to deliver reasons in circumstances which "crie[d] out for some explanatory analysis". Put another way, the trial judge can be said to have erred in law in failing to provide an explanation of his decision that was sufficiently intelligible to permit appellate review. I agree with this conclusion……

5. *At the broadest level of accountability, the giving of reasoned judgments is central to the legitimacy of judicial institutions in the eyes of the public. Decisions on individual cases are neither submitted to nor blessed at the ballot box. The courts attract public support or criticism at least in part by the quality of their reasons. If unexpressed, the judged are prevented from judging*

the judges. The question before us is how this broad principle of governance translates into specific rules of appellate review.'

[22] Section 686 of Criminal Code referred to in ***Sheppard*** on 'Powers of the Court of Appeal' is similar to section 23 of the Court of Appeal Act including the proviso in Fiji.

'Criminal Code, R.S.C. 1985, c. C-46

Powers of the Court of Appeal

686. *(1) [Powers] On the hearing of an appeal against a conviction or against a verdict that the appellant is unfit to stand trial or not criminally responsible on account of mental disorder, the court of appeal*

(a) may allow the appeal where it is of the opinion that

(i) the verdict should be set aside on the ground that it is unreasonable or cannot be supported by the evidence,
(ii) the judgment of the trial court should be set aside on the ground of a wrong decision on a question of law, or
(iii) on any ground there was a miscarriage of justice;

(b) may dismiss the appeal where

. . .

(iii) notwithstanding that the court is of the opinion that on any ground mentioned in subparagraph (a)(ii) the appeal might be decided in favour of the appellant, it is of the opinion that no substantial wrong or miscarriage of justice has occurred; or

. . .

(2) [Order to be made] Where a court of appeal allows an appeal under paragraph (1)(a), it shall quash the conviction and

(a) direct a judgment or verdict of acquittal to be entered; or
(b) order a new trial.

[23] Binnie, J continued as to the test applicable:

'25. ……..If deficiencies in the reasons do not, in a particular case, foreclose meaningful appellate review, but allow for its full exercise, the deficiency will not justify intervention under s. 686 of the Criminal Code. That provision limits the power of the appellate court to intervene to situations where it is of the opinion that (i) the verdict is unreasonable, (ii) the judgment is vitiated by

an error of law and it cannot be said that no substantial wrong or miscarriage of justice has occurred, or (iii) on any ground where there has been a miscarriage of justice.'

26. The appellate court is not given the power to intervene simply because it thinks the trial court did a poor job of expressing itself.

28. It is neither necessary nor appropriate to limit circumstances in which an appellate court may consider itself unable to exercise appellate review in a meaningful way. The mandate of the appellate court is to determine the correctness of the trial decision, and a functional test requires that the trial judge's reasons be sufficient for that purpose. The appeal court itself is in the best position to make that determination. The threshold is clearly reached, as here, where the appeal court considers itself unable to determine whether the decision is vitiated by error. Relevant factors in this case are that (i) there are significant inconsistencies or conflicts in the evidence which are not addressed in the reasons for judgment, (ii) the confused and contradictory evidence relates to a key issue on the appeal, and (iii) the record does not otherwise explain the trial judge's decision in a satisfactory manner. Other cases, of course, will present different factors. <u>The simple underlying rule is that if, in the opinion of the appeal court, the deficiencies in the reasons prevent meaningful appellate review of the correctness of the decision, then an error of law has been committed</u>. (emphasis added)

[24] Similar observations have been made by Hon Stock VP in **<u>Hksar v Okafor Peter Eric Nwabunwanne</u>** [2012] 1 HKLRD 1041 (27 January 2012) speaking for the Court of Appeal (Hong Kong) where it was held that *'....where reasons are required, how much needs to be said is as long as a piece of string; ....., sufficient for particular purpose, ... that it depends on all the circumstances..'.*

[25] In **<u>Flannery v Halifax Estate Agencies Ltd</u>** [1999] EWCA Civ J0218-13; [1999] EWCA Civ 811 the Court of Appeal (Civil Division) (England & Wales) (18 February 1999) applied **<u>Eckersley v Binnie</u>** [1998] 18 Con LR 44, CA [1998] and held:

''That today's professional judge owes a general duty to give reasons is clear ... although there are some exceptions ... It is not a useful task to attempt to make absolute rules as to the requirement for the judge to give reasons ... <u>For instance, when the court, in a case without documents, depending on eye-witness accounts, is faced with two irreconcilable accounts, there may be little to say other than that the witnesses for one side were more credible</u> ... But with expert evidence, it should usually be possible to be more explicit in giving reasons ...' (emphasis added)

Brief summary

[26] Therefore, while it goes without saying that the giving of adequate reasons lies at the heart of the judicial process and therefore a duty to give reasons exists, the scope of that duty is not to be determined by any hard and fast rules. Broadly speaking, reasons should be sufficiently intelligible to permit appellate review of the correctness of the decision and the requirement of reasons is tied to their purpose and the purpose varies with the context. Trial judge's reasons should not be so 'generic' as to be no reasons at all but they need not be the equivalent of a jury instruction or summing-up to the assessors. Not every failure or deficiency in the reasons provides a ground of appeal, for the appellate court is not given the power to intervene simply because it thinks the trial court did a poor job of expressing itself. Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court's explanation in its own reasons is sufficient. There is no need in that case for a new trial.

[27] If in the opinion of the appeal court, the deficiencies in the reasons prevent or foreclose meaningful appellate review of the correctness of the decision or if the trial judge's reasons are not sufficient to carry out the mandate of the appellate court *i.e.* to determine the correctness of the trial decision (functional test), the trial judge's failure to deliver meaningful reasons for his decision constitutes an error of law within the meaning of section 23 of the Court of Appeal Act. Where the functional needs are not satisfied, the appellate court may conclude that it is a case of unreasonable verdict, an error of law, or a miscarriage of justice within the scope of section 23 of the Court of Appeal Act. However, if no substantial miscarriage of justice has occurred as a result, the deficiency will not justify intervention under section 23 and will not vitiate the conviction or acquittal, for such an error of law at the trial level, if it is so found, would be cured under the proviso to section 23 of the Court of Appeal Act.

[28] Having perused the judgment in this case, I do not think that there is such inadequacy of reasons for the decision by the trial judge as to amount to an error of law resulting in a substantial miscarriage of justice.

Ground 4

[29] Having examined the sentencing order, I do not think that there is any merits in the appellant's complaints. The trial judge was fully entitled to impose the impugned sentences and they do not offend the totality or proportionality principles for what the trial judge had referred to as a campaign of rape. It is within the permitted range of 11-20 years of imprisonment - **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018)].

[30] 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)]. The approach taken by the appellate court in an appeal against sentence 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)]; if outside the range, whether sufficient reasons have been adduced by the trial judge.

Orders of the Court:

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
RESIDENT JUSTICE OF APPEAL

Solicitors:

A.K. Singh Lawyers for the Appellant
Office for the Director of Public Prosecutions for the Respondent