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

CRIMINAL APPEAL NO. AAU 45 of 2022
[In the High Court at Lautoka Case No. HAC 18 of 2018]

BETWEEN : **NITESH NAVIN PRASAD**

Appellant

AND : **THE STATE**

Respondent

Coram : **Prematilaka, RJA**

Counsel : **Ms. A. Singh for the Appellant**
Mr. L. Burney for the Respondent

Date of Hearing : **14 December 2023**

Date of Ruling : **18 December 2023**

RULING

[1] The appellant had been charged in the High Court at Lautoka with two counts of rape. The 22-year-old complainant is the appellant's stepdaughter. The charges are as follows:

'COUNT ONE
Statement of Offence

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

Particulars of Offence

***NITESH NAVIN PRASAD** on the 14th day of October, 2012 at Ellington, Rakiraki, Ra in the Western Division, penetrated the vagina of "SD" with his penis without the consent of the said "SD".*

COUNT TWO
Statement of Offence

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

Particulars of Offence

NITESH NAVIN PRASAD *on the 17th day of October, 2012 at Ellington, Rakiraki, Ra in the Western Division, penetrated the vagina of "SD" with his penis without the consent of the said "SD".'*

[2] After trial before a judge alone, the trial judge had convicted the appellant and sentenced him on 24 March 2022 to an aggregate sentence of 09 years and 06 months imprisonment for two counts of rape with a non-parole period of 08 years.

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

[4] The factors to be considered in the matter of enlargement of time are (i) the reason for the failure to file within time (ii) the length of the delay (iii) whether there is a ground of merit justifying the appellate court's consideration (iv) where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed? (v) if time is enlarged, will the respondent be unfairly prejudiced? (vide **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4 and **Kumar v State; Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17).

[5] The delay in the conviction appeal is 01 month and 03 weeks which is not substantial. It appears from his and his brother's affidavits that the appellant' brother had handed over the relevant papers to one solicitor to lodge the appeal but she had said that she did not have a practising certificate but later joined a law firm and returned the documents and the brother picked them after one month and a week. Later the current law firm had lodged the appeal. Since the delay is not substantial, whether the explanation for the delay is plausible or not, I would see whether there is a **real prospect of success** for the belated grounds of appeal against conviction in terms of merits [vide **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019)]**.** The respondent has not averred any prejudice that would be caused by an enlargement of time.

[6] 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].

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

2. *The brief facts were as follows:*

   a. *The victim (22 years of age) in the year 2012 was residing at Ellington, Rakiraki with her mother, her step father (the accused) and her younger sister in the one room house of the accused.*
   b. *In the night of 14th October, 2012, the victim was sleeping sideways on a mattress, the accused came pulled her to face up, quickly removed her jeans and panty together and placed his legs on top of her legs and then pulled her top up. The victim folded her legs to stop the accused, but he continued and pressed her hands with his.*
   c. *Thereafter, the accused forcefully penetrated the victim's vagina with his erected penis and had sexual intercourse without her consent for 5 minutes. Next day she reported the matter to the police and then went to her sister's house and told her what the accused had done.*
   d. *On 17th October, 2012 at about 10.00 am the victim was alone with the accused after her mother had left for the hospital and her younger sister had gone to school. The victim was washing dishes outside the house when the accused came from behind, dragged her to the house and pushed her inside. The victim fell on her back facing up she was wearing a top and skirt.*
   e. *The accused removed her panty first and then her top, the skirt was pulled up when the accused was doing this, he was on top of the victim. The victim was pushing the accused, he pressed her legs with his knees, and then had forceful sexual intercourse by penetrating his penis into her vagina for about 2 minutes. After the accused left, the victim went to her neighbour's house and told them what had happened.*
   f. *Thereafter, the victim went and reported the matter to the police. The accused was arrested and charged.*

[8] The prosecution had called the complainant (PW1) and her sister Anjini Vikashni Devi (PW2). The appellant gave evidence on his behalf and called the complainant's mother as his other witness.

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

Conviction

(i) ***THAT*** *during the trial of the appellant, his trial counsel:*

> *(a) Failed to subpoena or call the doctor to give evidence on behalf of the appellant as the medical report of the complainant was not consistent with the evidence of the complainant.*
> *(b) Failed to give notice to prosecution under section 133(1)(b) of the Criminal Procedure Code Act 2009 to cross-examine the doctor in respect of his medical report.*
> *(c) Failed to call Shoyal young sister of the complainant who was present in Court to give evidence on behalf of the appellant.*
> *(d) Failed to call Boxer who would have supported the evidence of the appellant or would have contradicted the evidence of the complainant as far as count 2 was concern.*
> *(e) Failed to request the two Police Officers who allegedly recorded the report in the Police Report book against the appellant.*
> *(f) Failed to request for the copy of the Station dairy and Report book of Rakiraki Police Station of 14th October 2012 and 17th October 2012.*
> *(g) Failed to put the birth certificate of appellant's son Junior to the complainant.*
>
> *That by reason of the circumstances, a reasonable apprehension of incompetence or other impropriety exists concerning the conduct of the trial counsel in the execution of her duties and functions during the trial of the appellant such that a substantial miscarriage of justice occurred.*

(ii) ***THAT*** *the Learned Trial Judge erred in law and facts regarding the law of early complaint.*

(iii) ***THAT*** *the Learned Trial Judge failed to consider that the evidence of the complainant was not tested when the independent witness such as Boxer, the Doctor, and two Police Officers who initially interviewed and recorded the statement of the complainant on 14th October 2012 and 17th October 2022 were not called to give evidence and thereby causing miscarriage of justice and or a fair trial to the appellant.*

(iv) ***THAT*** *the Learned Trial Judge erred in law and fact when he failed to properly analysis or direct himself regarding the law of inconsistent or omission, and contradiction of Prosecution witnesses' evidence that went to the root of the offence.*

(v) ***THAT*** *the Learned Trial Judge erred in law and facts when he failed to properly consider the entire or totality of the evidence to decide whether the appellant was guilty of the offence or not?*

(vi) ***THAT*** *the Learned Trial Judge erred in law and facts when he failed to properly analyse the prosecution and defence evidence through the same yardstick.*

(vii) ***THAT*** *the Learned Trial Judge erred in law and facts when he without any proper evidence or facts stated that the prosecution witnesses were credible and did not give cogent reason why the Appellant's and his witness's evidence were not credible before convicting the Appellant.*

Sentence

(viii) ***THAT*** *the Learned Trial Judge erred in law when he acted upon a wrong principle; Allowed extraneous or irrelevant matters to guide or affect him; Mistook the facts; and failed to consider some relevant consideration, failed to consider the principle of rehabilitation and the delay of the offence.*

Ground 1

[10] The gist of the 01st ground of appeal is flagrant incompetence of the appellant's trial counsel highlighting several omissions on her part leading to a substantial miscarriage of justice. This court set out as far back in 2019 in **Chand v State** [2019] FJCA 254; AAU0078.2013 (28 November 2019) the essential steps that an appellant should follow in order to pursue a ground of appeal involving criticism of his trial counsel. The appellant here does not seem to have complied with those requirements and therefore, at this stage, I am unable to consider this ground of appeal.

Grounds 2 and 3

[11] It appears from the judgment and the sentencing order that the complainant had promptly complained to the police on both occasions and at least on the first occasion to her sister Anjini (PW2) of the acts of rape committed by the appellant. On the second occasion she had promptly complained to her neighbour, Boxer who, however, was not called as a witness. The trial judge at paragraphs 41-50, 95, 97 and 100 of the judgment had dealt with recent complaints and I do not see an error of law therein. Even in the absence of neighbour Boxer as a recent complaint witness for the second incident, there was still sufficient evidence of a recent complaint of the first incident to Anjini (PW2) and in any event, it is undisputed that the complaints to the police on both occasions were prompt by any standards. Had the defence so desired, it could have summoned all the witnesses whom the prosecution had not summoned. Therefore, I do not think that there is a need to even look at the 'totality of

circumstances' test adopted by the Court of Appeal in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018) in this case.

Ground 4

[12] The trial judge had indeed given his mind to some inconsistencies highlighted by the defence counsel in cross-examination of the complainant and Anjini at paragraphs 51-54, 96, 98 and 99 of the judgment and applied the correct principles of law and determine that they were not material as to discredit the testimony of the complainant. 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 5 and 6

[13] Having examined the judgment in its totality, I cannot see any traces of inadequacy of consideration given to both the prosecution and defence evidence. The trial judge 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.

[14] The trial judge had discussed the issue of credibility of the complainant and Anjini and why he thought of them to be credible witnesses while rejecting the appellant's and his wife's testimony as unreliable and untruthful. The trial judge had made specific remarks of the positive and negative demeanour of those witnesses.

[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).

Ground 7

[16] The appellant argues that the trial judge had without any proper evidence or facts stated that the prosecution witnesses were credible and did not give cogent reason why the appellant's and his witness's evidence were not credible.

[17] As I have already pointed out, the trial judge had given reasons under the heading DETERMINATION in the judgment why he considered the prosecution evidence as truthful and reliable and why he rejected the defence evidence as unreliable and untruthful. Thus, the appellant's contention appears to be that those reasons were inadequate.

[18] 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]).'

[19] 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."*

[20] 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.'

[21] 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.'

[22] 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.'*

[23] 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.

[24] 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. 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. (emphasis added)*

[25] Similar observations have been made by Hon Stock VP in **Hksar v Okafor Peter Eric Nwabunwanne** [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..'.*

[26] In **Flannery v Halifax Estate Agencies Ltd** [1999] EWCA Civ J0218-13; [1999] EWCA Civ 811 the Court of Appeal (Civil Division) (England & Wales) (18 February 1999) applied **Eckersley v Binnie** [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 ... 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 ... But with expert evidence, it should usually be possible to be more explicit in giving reasons ...' (emphasis added)

Brief summary

[27] 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.

[28] 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.

[29] 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.

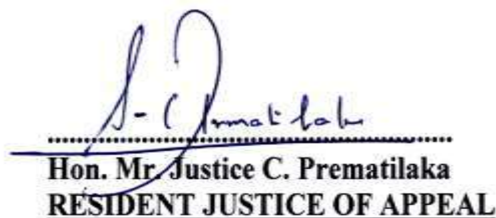
Ground 8

[30] 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 an aggregate sentence and it does not offend the totality or proportionality principles. It is within the permitted range of 07-15 years of imprisonment - **Rokolaba v State** [2018] FJSC 12; CAV0011.2017 (26 April 2018).

[31] 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. Enlargement of time to appeal against conviction is refused.
2. Enlargement of time to appeal against sentence is refused.



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