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

**CRIMINAL APPEAL NO. AAU 0071 of 2020**
**[In the High Court at Lautoka Case No. HAC 227 of 2017]**

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| **BETWEEN** | **:** | **MUNESH RITNEEL CHAND** |
| | | ***Appellant*** |
| **AND** | **:** | **THE STATE** |
| | | ***Respondent*** |

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| **Coram** | **:** | **Prematilaka, RJA**<br>**Mataitoga, RJA**<br>**Heath, JA** |
| **Counsel** | **:** | **Appellant in person**<br>**Mr. A. Singh for the Respondent** |
| **Date of Hearing** | **:** | **04 and 09 July 2024** |
| **Date of Judgment** | **:** | **26 July 2024** |

# JUDGMENT

**Prematilaka, RJA**

1. I have read the draft judgment of Heath, JA and agree with reasons and proposed orders therein.

**Mataitoga, RJA**

2. I support the reasoning and conclusions in this judgment.

**Heath, JA**

***Introduction***

3. Mr. Munesh Chand was charged with two counts of rape and one of sexual assault arising out of events that occurred at Lautoka on 5 and 7 May 2017. On 5 May 2017, he was alleged to have raped a female complainant by both digital and penile penetration. On 7 May 2017, he was said to have committed sexual assault on the same complainant through non-consensual touching of her genitals. At the time that the two incidents occurred, the complainant was aged 13 years while Mr. Chand was in his mid-20's. Mr. Chand and the complainant knew each other; they were related through his cousin.

4. Mr. Chand pleaded not guilty to each charge. From 29 July to 1 August 2019, he was tried in the High Court at Lautoka, before Goundar J and three Assessors. On 2 August 2019, after listening to the trial Judge's summing up[1] and deliberating, each of the three Assessors expressed an opinion that Mr. Chand was guilty on all three charges. On the same day, Goundar J delivered a judgment, by which he expressed agreement with the Assessors' opinions. As a result, he found Mr. Chand guilty and entered convictions on each charge.[2]

5. On 16 September 2019, the Judge imposed a sentence of 15 years imprisonment with a non-parole period of 11 years. Mr. Chand was also made subject to a permanent domestic violence restraining order in respect of the victim.[3]

***Application for leave to appeal***

6. Nearly 10 months after his sentencing, Mr. Chand applied for an extension of time to appeal against both conviction and sentence. Two grounds were advanced. The first was

[1] ***State v Chand*** [2019] HAC 227.2017 (2 August 2019) - Summing Up.
[2] ***State v Chand*** [2019] HAC 227.2017 (2 August 2019) - Conviction Judgment.
[3] ***State v Chand*** [2019] HAC 227.2017 (16 September 2019) - Sentencing.

that the trial Judge had failed independently to assess all evidence adduced at trial, meaning that the verdicts were unsafe. The second challenged the sentence imposed on the grounds that it was both "harsh and excessive".

7. On 1 September 2022, exercising powers of a single Court of Appeal Judge under s 35(1) of the Court of Appeal Act, Prematilaka RJA declined Mr. Chand's applications on the ground that there was no merit in either of the proposed appeals.[4]

***The renewed application***

8. Mr. Chand seeks to renew his applications, both for an enlargement of time and leave to appeal. Section s 35(3) of the Court of Appeal Act entitles an intended appellant to have his or her application determined by a full Court of three judges when a single Judge has refused it. This judgment deals with both the renewed application and the appeal itself.

9. The appeal was called on 4 July 2024. At that time, the intended appeals were not ready to proceed. Mr. Chand appeared on his own behalf. Not only was there confusion over the grounds on which Mr. Chand was relying, but also members of the Court had not received submissions on behalf of the State until shortly before the hearing was due to commence. Even then, the submissions were inadequate; they did not identify or respond to additional grounds that had been notified by Mr. Chand in the various documents he had filed.

10. Following dialogue between members of the Court and Mr. Singh, for the State, the application was adjourned until 9 July 2024. In the meantime, Mr. Singh was to liaise with Mr. Chand to identify precisely the grounds on which the renewed application was pursued and to file further submissions providing the State's response to each. Additional submissions were filed by Mr. Singh on 8 July 2024.

[4] ***Chand v The State*** [2022] AAU 071.2020 (1 September 2022) - Leave judgment.

11. Mr. Singh's additional submissions identified six points; one being a renewal of the point taken on the intended conviction appeal and the other five being new grounds.[5] Mr. Chand confirmed to the Court that his grounds of appeal had been accurately set out in Mr. Singh's additional submissions. Further, he confirmed that they were the only points he wished the Court to consider.

12. Mr. Chand was also asked whether he wished to proceed on a sentence appeal. He indicated that he wished to withdraw that appeal. The Court inquired as to the voluntariness of that step. Mr. Chand confirmed that his decision had been made voluntarily. At the conclusion of the hearing on 9 July 2024, Mr. Chand signed a withdrawal of that appeal, which was endorsed by all three members of the Court.

13. Having obtained that information from Mr. Chand, the Court allowed his application to abandon his appeal against sentence.

***Grounds of appeal***

14. Although Mr Singh referred to five new grounds, in my view, the fourth and fifth (in substance) raise the same issue. In summary, the grounds of appeal on which Mr. Chand relies assert that the trial Judge:

    a. Erred in fact and in law when he did not independently assess all the evidence adduced during the trial and, in not doing so, rendered the convictions unsafe; (the unsafe conviction ground)
    b. Erred in law and in fact when he failed to direct the Assessors and himself adequately on how to treat evidence of previous inconsistent statements made by the complainant and the law on recent complaint; (the wrongful directions ground)
    c. Erred in law and in fact by finding, contrary to the evidence, that the State had proved beyond reasonable doubt that Mr. Chand committed both rapes at the times and places alleged; (the unreasonable verdict ground)

[5] The grounds are set out at para 14 below.

d. Erred in law and in fact when he continuously intervened and interfered with the trial process in a manner that rendered the trial unfair, contrary to s 15 of the Constitution and the guarantee of equality under the law set out s 26(1) of the Constitution; (the unfair trial ground)

e. Erred in law in failing to direct himself that s 129 of the Criminal Procedure Act "totally infringes" the right to equality before the law, under s 26 of the Constitution. Section 129 provides that no corroboration of the complainant's evidence is required in a sexual offence case. (the equality under the law ground)

***Analysis***

***(a) The unsafe conviction ground***

15. The unsafe conviction ground represents a renewal of the argument advanced on the leave application with which Prematilaka RJA dealt on 1 September 2022.[6] Mr. Chand submits that the trial Judge did not, in deciding to find Mr. Chand guilty on all charges, bring an independent mind to the assessment of the evidence. Mr. Chand's argument suggests that it was necessary for the Judge to set out all of his reasons for convicting in his judgment.

16. This was a case in which Mr. Chand was tried before a Judge, sitting with three Assessors. The Assessors had each returned, after considering the Judge's summing up, opinions that Mr. Chand was guilty of all three charges. The Judge was then obliged to state whether he agreed or disagreed with the Assessors' views. By contrast with the situation in which a Judge is differing from the Assessors' opinions, no more than brief reasons are required.

17. It is settled law that a trial Judge's summing up and his or her written reasons for entering verdicts should be read together as comprising "the judgment of the Court". The relevant

[6] ***Chand v The State*** [2022] AAU 071.2020 (1 September 2022) - Leave judgment.

principles are set out in this Court's decision in ***Fraser v State***,[7] in which Prematilaka JA giving the principal judgment (with whom other members of the Court agreed) said:

> *[23] What could be identified as common ground arising from several past judicial pronouncements is that when the trial judge agrees with the majority of assessors, the law does not require the judge to spell out his reasons for agreeing with the assessors in his judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and reasons for his agreement with the assessors in a concise judgment as it would be of great assistance to the appellate courts to understand that the trial judge had given his mind to the fact that the verdict of court was supported by the evidence and was not perverse so that the trial judge's agreement with the assessors' opinion is not viewed as a mere rubber stamp of the latter [vide **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014), **Kaiyum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018)]*
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> ...
>
> *[25] In my view, in either situation the judgment of a trial judge cannot be considered in isolation without necessarily looking at the summing-up, for in terms of section 237(5) of the Criminal Procedure Act, 2009 the summing-up and the decision of the court made in writing under section 237(3), should collectively be referred to as the judgment of court. A trial judge therefore, is not expected to repeat everything he had stated in the summing-up in his written decision (which alone is rather unhelpfully referred to as the judgment in common use) even when he disagrees with the majority of assessors as long as he had directed himself on the lines of his summing-up to the assessors, for it could reasonable be assumed that in the summing-up there is almost always some degree of assessment and evaluation of evidence by the trial judge or some assistance in that regard to the assessors by the trial judge.*

18. I have read carefully both the trial Judge's summing up and his judgment. I am satisfied that, read together, the comprehensive summing up to the Assessors and the judgment

[7] ***Fraser v State*** [2021] FJCA 185 at paras [23] and [25]. I have omitted para [24] from the quotation as that relates solely to cases where the trial Judge disagrees with the majority of Assessors. In such a case, "cogent reasons" must be given for any conviction entered contrary to their opinions. The observations set out in para [25] reflect cases dealing with both agreement and disagreement with Assessors' opinions.

(both given on the same day) demonstrate that all relevant evidence was taken into account before verdicts of guilty were returned. For those reasons, the unsafe conviction ground cannot succeed.

***(b) The wrongful directions ground***

19. Mr. Chand challenges the Judge's directions on both inconsistent statements made by the complainant during her evidence and the use that the Assessors could put to recent complaint evidence.

20. The State's case rested on acceptance of the complainant's evidence.[8] There were acknowledged inconsistencies in the complainant's evidence. However, whether any were material was for the Assessors (in the first instance) and the Judge to determine.

21. In summing up to the Assessors, Goundar J recounted the complainant's evidence about what had occurred, identifying omissions and inconsistencies between her Police statement and evidence in Court that had been exposed in cross-examination. In a fulsome summary, the Judge said:[9]

> *"[37] The complainant was cross-examined at length on the omissions and inconsistencies between her police statement and her evidence in court .. Counsel for the Accused has highlighted the omissions and inconsistencies in detail in her closing address. The omissions or inconsistencies concern the details surrounding the complainant's visit to Saru Road and the allegations made by the complainant against the Accused. For example, the complainant in her evidence said she arrived at the Accused's home on 3 May 2017 at 6 pm while her police statement states the time of 4 pm; In her evidence the complainant said the Accused was wearing a grey shorts on 5 May 2017 and a navy blue shorts on 7 May 2017 while in her police statement she said the Accused wore a navy blue shorts on 5 May 2017. In her evidence the complainant said that on 5 May 2017 the Accused touched her feet only before penetrating her vagina but when cross examined on what*

[8] See para 24 below.

[9] Summing Up at paras 37–38. For a helpful summary of empirical evidence in relation to counter-intuitive evidence and delayed complaints by young persons, see *DH v R* [2015] 1 NZLR 625 (SCNZ).

*she had said in her police statement she agreed that the Accused had touched her stomach and breasts as well before penetrating her vagina with his finger and then with his penis. She also agreed that there was no mention of her bleeding or the Accused switching on the light before going outside on that night in her police statement. She agreed that her police statement states she had complained to her cousin sister (the Accused's wife) and her 'Dadi' (the Accused's mother-in-law) but her evidence was that she did not complain to anyone.*

*[38] The complainant gave two statements to the police. The first statement was recorded on 9 May 2017. The second statement was recorded on 11 May 2017. The complainant gave her statement to police in Hindi language but the statements were recorded in English. She said the police called her to give her second statement. The complainant has explained the omissions and inconsistencies saying she was scared of police at the time when she gave her statement and that she relied upon her memory for her evidence in court."*

22. Having identified the inconsistencies, Goundar J continued:

*"[39] As a matter of law, I must direct you that what a witness says on oath are evidence. What a witness says in her police statement out of court is not evidence. However, previous statement is often used to challenge a witness's credibility and reliability because a previous inconsistent statement or an omission may indicate that a witness has told a different story previously and is therefore not reliable. It is for you to judge the extent and importance of any omission or inconsistency. You may consider the age of the complainant, her education background, her personal circumstances and the circumstances under which her police statement was recorded when assessing whether there is a material omission or inconsistency. If you conclude the complainant has been inconsistent on an important matter, you should treat both accounts with considerable care. If, however, you are sure that the evidence of the complainant is true in whole or in part, then it is evidence you are entitled to consider when deciding your opinions."*

23. Towards the end of his summing up, while summarizing the case for Mr. Chand, the Judge added the following comments to reinforce the existence of omissions from or inconsistencies with the complainant's Police statement and evidence:

*"[46] The defence case is that the allegations of rape and sexual against the Accused are fabrications. The defence says to you that the omissions*

*and inconsistencies in the complainant's police statement and her evidence in court make her an unreliable witness. The defence says to you that if the allegations of rape and sexual assault were true then the complainant would have raised alarm or reported the incidents immediately after to her close family members. The defence says that the complainant's failure to raise alarm during the incidents or to report immediately after the incidents to a person whom she might reasonably have expected to complain or report is inconsistent with the conduct of a person who had been raped or sexually assaulted.*

*[47] The defence says that you should, therefore, regard the complainant's evidence as false. This is a matter which you should consider, but I must warn you that failing to raise an alarm or the delay in reporting does not necessarily indicate that the evidence of the complainant is false. It may indicate fabrication on the part of the complainant, but does not necessarily do so. There may be good reasons why a person who has been raped or sexually assaulted hesitates in raising an alarm or making a complaint. In this case, the complainant was a child and the allegations arose when she was visiting her close family, that is, her father's older brother and his wife. At that time she was being raised by her father. Her mother had left leaving behind another younger sibling. She had left school because she could not cope with house chores. She went to visit her family with her younger sibling. The Accused was her brother-in-law, cousin sister's husband. She had met him for the first time. Do you accept the complainant's reasons that she was scared to raise alarm or was afraid of the repercussions of complaining to the family be reasonable in the circumstances of this case? That is a matter for you to consider."*

24. The Judge also alerted the Assessors to evidence given by the complainant's sister-in-law of the circumstances in which the complainant told her that Mr. Chand had done something to her. The Judge gave the following direction on the use of that evidence:

*"[42] There is a further direction that I wish to give you regarding the complaint evidence. In a case of sexual offence, recent complaint evidence is led to show consistency on the part of the complainant, which may help you to decide whether or not the complainant has told you the truth. It is important that you should understand that the complaint is not an independent evidence of what happened between the complainant and the Accused, and it therefore cannot itself prove that the complaint is true. In this case while the complaint was made, the complaint was not voluntary but prodded out of the complainant by [the sister-in-law]. While the complaint evidence is before you, very little assistance however can be derived from this particular*

*evidence for the reasons I have given. You must consider these matters if you decide to rely upon the complaint evidence to assess whether the complainant's evidence is consistent and therefore believable."*

25. In concluding his summing up, Goundar J emphasised that the "prosecution's case wholly rests on the complainant's evidence". He said:[10]

> *"[48] The prosecution's case wholly rests on the complainant's evidence. If you believe the complainant is telling you the truth that on 5 May 2017 the Accused inserted his finger and penis into her vagina without her consent and knowing she did not consent, then you may express an opinion that the Accused is guilty of rape on counts one and two. Similarly, if you believe the complainant is telling you the truth that on 7 May 2017 the Accused without lawful excuse touched her genitals and if you accept that right minded people would consider the act to be indecent then you may express an opinion that the Accused is guilty of sexual assault on count three. But if you do not believe the complainant's account of rape and sexual assault as alleged on counts one, two and three or if you have reasonable doubt about the guilt of the Accused, then you must find the Accused not guilty. You must consider each count separately."*

26. On analysis, I see no error in the directions made by the Judge on the topics of inconsistent statements and recent complaint evidence. The purpose of each type of evidence was highlighted in simple and straightforward language. The Assessors were aware that their consideration of that evidence was to be undertaken in the context of a case that was wholly reliant on the complainant's evidence. They knew that they had to be satisfied beyond reasonable doubt that her account of what took place established each element of the offences. The directions were even-handed. The Judge's comments about the limited assistance of the sister-in-law's evidence demonstrates that. In my view, this ground of appeal should be rejected.

***(c) The unreasonable verdict ground***

27. There is no merit in the unreasonable verdict ground. It is based on an allegation that the Judge was not entitled to find that the State had proved beyond reasonable doubt that both

[10] Ibid, at para 48.

digital and penile penetration had taken place at the times alleged. As Mr. Chand elected not to give evidence, the pool of evidence from which the Judge was entitled to draw comprised that of the complainant and the remaining prosecution witnesses.

28. On the rape charges, Goundar J made it clear to the Assessors that they had to be satisfied beyond reasonable doubt that both types of penetration had occurred.[11] Further, they had to be satisfied that the elements of the sexual assault charge had been proved to the same standard. The Assessors must have accepted the complainant's evidence. In his judgment, Goundar J expressly agreed with them. He explained the basis on which he found the complainant to be a truthful and reliable witness as follows:[12]

> *"[5] The resolution of the charges depends upon whether the complainant's account that the Accused penetrated her vagina with his finger and penis and also touched her vagina on a separate occasion is true. She gave an account that the Accused had covered her mouth with his hand and pressed her legs down using his legs. If her account is true then she did not consent and the Accused knew she did not consent. She was cross-examined at length regarding her failure to raise alarm or to complain to her family members and also on omissions and inconsistencies between her police statement and her evidence. She explained she was afraid of the repercussions for complaining and that she gave evidence from her memory while her police statement was recorded at a time when she was afraid of police.*
>
> *[6] When the complainant gave evidence she was slow but composed. She struck me as an honest and reliable witness. She is a child and when the incidents occurred she was only 13 years old. She had dropped out of school in Form 3 when she could not cope with studies and house chores following her parents separation 4 year or two ago. She was being raised by her father. She was vulnerable and it took time for her to digest when the incidents occurred. The Accused was an older male and a family. Her reluctance to report the incidents are reasonable in the circumstances. The inconsistencies or omissions between her evidence and her police statement are not material. They did not affect the veracity of her evidence when she said that the Accused inserted his finger and then his penis into her vagina and also touched her vagina on a separate occasion. The complainant did not consent and the Accused knew that she did not consent."*

[11] Ibid, at paras 23 and 24. Appropriate legal directions were given on the element of "penetration".
[12] ***State v Chand*** [2019] HAC 227.2017 (2 August 2019), Goundar J at paras 5 and 6.

29. The Judge's reasons for accepting the credibility and reliability of the complainant's evidence are unimpeachable. Once her evidence was accepted, it was inevitable that the Judge would find the two rape charges proved. This ground of appeal should be dismissed.

***(d) The unfair trial ground***

30. Section 15(1) of the Constitution states:

> *"15.—(1) Every person charged with an offence has the right to a fair trial before a court of law."*

31. The right to a fair trial is one to which both innocent and guilty are entitled. The Judge is obliged to ensure that an accused receives a fair trial. A trial can be rendered unfair in a myriad of circumstances, one of which involves illegitimate judicial intervention during a trial. Mr. Chand's complaint is that the Judge "continuously intervened and interfered" with the trial process, thus "disabling [Mr. Chand] from having a fair trial".

32. There is no doubt that frequent judicial intervention in a jury trial (or one before Assessors) can render a trial unfair. An extreme example is ***R v Fotu***,[13] a decision of the Court of Appeal of New Zealand, in which it was submitted that excessive judicial interference in the giving of evidence and an unbalanced summing up had resulted in an unfair trial. In that case, over a period of three sitting days in a jury trial, the trial judge was recorded as having made 159 interventions in the transcript, some of which demonstrated that the judge was favouring the prosecution case. In analysing the nature of the interventions, the Court of Appeal concluded that they could not be explained as a manifestation of a robust personality. Rather, they suggested that the judge was tending to take over the conduct of the Crown case. One example was an intervention in which the judge suggested to a Crown witness that his evidence was a recent fabrication, when something inconsistent with the Crown case was elicited in cross-examination.

[13] ***R v Fotu*** [1995] 3 NZLR 129 (CA).

33. Delivering the judgment of the Court of Appeal in *Fotu*, Cooke P said that the "combined result of the one-sided summing up and unfortunate interventions during the evidence is that the trial was unfair and the verdict cannot be allowed to stand".[14] In reaching that view, the Court of Appeal noted that, in the past, *"while deprecating judicial intervention, [it had] been able to find that there was no real danger that the trial was unfair"*,[15] that view was not open on the facts of *Fotu.* A retrial was ordered.

34. The point at which the line is crossed between a fair and an unfair trial was discussed by Lord Bingham, delivering the advice of the Privy Council in ***Randall v R***:[16]

> *"28. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial."*

35. To support his contention, Mr. Chand referred the Court to four parts of the transcript of evidence from which he submitted that conclusion could be drawn.

36. First, Mr. Chand referred to an exchange that occurred between the Judge and counsel for the State during the complainant's evidence in chief.[17] Mr. Chand's complaint is that the Judge, at a time when the witness was struggling to provide evidence of what transpired when describing the rape, assisted the State's counsel to formulate questions to put to the complainant.

37. The transcript does not, in my view, support the contention advanced by Mr. Chand. As I read the various exchanges, I picture a Judge who is endeavouring to ensure that evidence

[14] Ibid, at p 142.
[15] Ibid.
[16] ***Randall v R*** [2002] 1 WLR 2237 (PC) at para 28.
[17] Transcript at page 22 [page 233 of the Record].

from the complainant was led in a fair and orderly manner. At one stage, (favourably to Mr. Chand) the Judge stopped counsel for the State from continuing on the basis that she had incorrectly summarised previous evidence about the apparel that the complainant was wearing. The Judge's interventions went no further than compliance with the trial judge's obligation to ensure that unfair propositions are not put to a witness for response, whether in the form of an incorrect summary of previous evidence or otherwise.

38. Second, Mr. Chand referred to a series of exchanges when the complainant was being cross-examined by his counsel, Ms. Sharma. Mr. Chand contended that the Judge had realised that the complainant was fabricating evidence and was helping counsel to reconstruct her case. The evidence was directed at the time that the offences allegedly took place.[18] On examination, Goundar J was going no further than to ensure the complainant did not speculate on any material issue.

39. Ultimately, it was for the complainant to give her own evidence and for that to be evaluated by the Assessors and the trial Judge. To the extent that Mr Chand might have thought that the complainant's answers ending with the words "My Lord" suggested that the Judge had asked the questions, the transcript (read as a whole) clearly indicates that counsel for the State was asking the questions.

40. Third, complaint is made about an intervention by the Judge in relation to a question put by Mr. Chand's counsel to the complainant. The Judge was making clear to counsel that a premise on which a question was being put had not been accepted by the witness. Therefore, it was properly described as "not a fair question".[19]

41. This was not a case in which the Judge hampered counsel for an accused by making inappropriate or illegitimate interventions when witnesses were giving evidence. A review of the transcript confirms my impression of a careful and conscientious judge, determined to conduct a fair trial.

[18] Ibid, at pages 260 and 262.
[19] Ibid, at page 263.

42. Goundar J's conduct was the opposite of that considered by the Court of Appeal of New Zealand in *Fotu.*[20] By contrast with *Fotu*, the trial Judge's interventions were moderately expressed and designed to ensure adherence to the rules of evidence. The way in which the Judge conducted the trial does not require appellate intervention for fair trial reasons. In ***Rainima v State***,[21] the circumstances in which an appellate court might intervene was discussed, Prematilaka RJA, with whom Mataitoga and Qetaki JA agreed, said:[22]

> *"[49] A linchpin of the criminal justice system is the ability of defense counsel to represent a client effectively. The trial judge's conduct can hamper defense counsel's performance either by remarks that denigrate or threaten counsel, rulings that undermine effective representation, or other conduct that communicates to the jury the judge's disposition either to favor the prosecution or to disfavor the defense. The judge's behavior, in the various contexts described earlier, has the potential to seriously impair defense counsel's ability to represent the client effectively, and thereby prejudice the defendant's right to a fair trial. Trial judges have extremely broad discretion to administer the trial, but must do so impartially and with deference to a defendant's right to the competent assistance of his attorney. When a judge makes rulings that undermine counsel's effectiveness and his ability to be the guiding hand to his client that the Sixth Amendment contemplates, where there is no clear justification for the judge's intervention, and when the defendant suffers prejudice from the judge's interference, then a reviewing court usually will reverse the conviction, concluding that the judge abused his discretion and infringed on the defendant's right to a fair trial and the effective assistance of his counsel."*
>
> (Footnotes omitted)

43. I have no doubt that Mr. Chand was afforded a fair trial. I consider that the unfair trial ground fails.

***(e) The equality under the law ground***

44. Mr. Chand contends that the change made by s 129 of the Criminal Procedure Act to abolish the need for corroboration of a complainant in a sexual case is unlawful because

[20] ***R v Fotu*** [1995] 3 NZLR 129 (CA).
[21] *Rainima v State* [2023] FJCA 190.
[22] Ibid, at para [49].

it is contrary to the "equality under the law" provision in the Constitution. Section 26(1) and (2) of the Constitution, which, by s 2 of the Constitution is the supreme law of Fiji states:

> *"26.—(1) Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.*
> *(2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or any other written law.*
> *..."*

45. Mr. Chand places reliance on s 2(2) of the Constitution which provides that "any law inconsistent with [the] Constitution is invalid to the extent of the inconsistency". The proposition that s 129 is invalid because of the equality under the law provision is a hopeless argument. Mr. Chand seems to be suggesting that he has been denied equal treatment under the law because he has been prejudiced through Parliament's decision to enable a sexual crime to be proved on the evidence of the complainant alone.

46. If anything, s 129 restores equality before the law. Previously, the evidence of a sexual assault complainant could not be used to provide a basis for a conviction without independent corroboration. Removing that requirement has left sexual assault complainants in the same position as any person alleging a serious form of assault. The Court, provided it is sure that the complainant is telling the truth, may convict on his or her evidence alone.

47. Safeguards for those accused of sexual crimes lie in the directions that a judge must give about the need for a careful evaluation of evidence in cases where a complainant has said inconsistent things and the prosecution relies on his or her evidence alone. I have already explained why the Judge's summing up in this case met those requirements and provided the necessary protections.

48. I reject this ground of appeal.

***Conclusion***

49. For those reasons, I propose that Mr. Chand's renewed application for enlargement of time to appeal against his convictions should be dismissed. The appeal is also dismissed.

***Orders of the Court:***

1. The renewed application for enlargement of time to appeal against conviction is dismissed, and the appeal is also dismissed.
2. The application to abandon the appeal against sentence is allowed. The appeal against sentence is dismissed.

.....
**Hon. Mr. Justice C. Prematilaka**
**RESIDENT JUSTICE OF APPEAL**

COURT OF APPEAL FIJI

.....
**Hon. Mr. Justice I. Mataitoga**
**RESIDENT JUSTICE OF APPEAL**

.....
**Hon. Mr. Justice P. Heath**
**JUSTICE OF APPEAL**

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