

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

**CRIMINAL APPEAL NO. AAU 111 OF 2022**  
**High Court HAC 75 of 2020**

**BETWEEN** : **DANIEL SINGH**

***Appellant***

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

***Respondent***

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

**Counsel** : **Mr Kumar J for Appellant**  
**Mr Burney L J for Respondent**

**Date of Hearing** : **23 January, 2024**

**Date of Ruling** : **31 January, 2024**

# RULING

- [1] The Appellant in this this matter, **Daniel Singh**, was charged with one count of **Rape** and one count of **Sexual Assault** against **Fiona Faira Hafiz**. The charges were as follows:

## **COUNT ONE**

### *Statement of Offence*

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

### *Particulars of Offence*

**DANIEL SINGH:** between the 14<sup>th</sup> of January 2019 to 31<sup>st</sup> of January 2019 at Nasinu, in the Central Division, had carnal knowledge of **FIONA FAIRA HAFIZ** without her consent.

## **COUNT TWO**

### *Statement of Offence*

**SEXUAL ASSAULT:** Contrary to Section 210(1) (a) of the Crimes Act 2009.

### *Particulars of Offence*

**DANIEL SINGH** between the 14<sup>th</sup> of January 2019 to 31<sup>st</sup> of January 2019 at Nasinu, in the Central Division unlawfully and indecently assaulted **FIONA FAIRA HAFIZ** by squeezing her breasts and touching her clothed genitalia.

- [2] After a trial in the High Court at Suva, the appellant was found guilty of the offences charged and convicted on 22 September 2022. He was sentenced on 20 October 2022 to 14 years imprisonment with a non-parole period of 12 years.
- [3] The appellant has filed a timely appeal against conviction sentence.

## Relevant Case law and Principles

- [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 Caucou 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].

## Summary of the Case

- [6] The prosecution case at trial relied solely on the sworn testimony of the complainant, who was 21 years old at the time of trial. The complainant’s sister-in-law was called and confirmed that the complainant had made a recent complaint to her. It was the prosecution case that the complainant had resided at the home of the appellant and his wife for about four years at the time of the alleged offending in January 2019, when she was 17 years old. The nature of her relationship with the appellant was that he was, in effect, her brother-in-law. The offending alleged in the information reflected two related incidents said to have occurred on the same day in the second half of January 2019 in the bedroom that the complainant shared with the appellant’s sister. The complainant said that she had been removed from the appellant’s house after he and his wife had beaten her for allegedly mistreating their daughter.

[7] The defence case is total denial. The appellant gave evidence that the complainant fabricated the allegations because she had been chastised by the appellant's wife for failing to properly look after their daughter and (preposterously) showing her breasts to a neighbour's husband. It is noteworthy that neither the appellant's wife nor the aggrieved neighbour were called to give evidence in the defence case.

[8] The evidence in this case is mainly between that of the complainant, which the prosecution relies on, and the appellant's evidence which denies the evidence of the complainant. The key issue at the trial was whether the judge accepted that the complainant was a truthful and reliable witness whose evidence made him sure that the appellant was guilty as charged, and whether he was also sure that the appellant's denials were untrue.

### **Hearing**

[9] The hearing of the appellant's leave application was held on 23 January 2024. Counsel for Appellant confirms that the appeal was against conviction. When counsel for the appellant was invited by the court to make any further submission, he had no further submissions and relied on written submission already filed in court.

[10] Counsel for the Respondent likewise made no further submission relying on the written submission already filed in court.

[11] Court thanked both counsels for their written submission and adjourned the case for ruling on 31 January 2024 at 9.30 am

### **Appellants Grounds of Appeal**

[12] The appellant submitted three (3) grounds of appeal to support his application for leave to appeal. In the court's view the three grounds submitted by the appellant in his written submission can be reduce to one ground of appeal with the other submissions being examples of the alleged substantive ground. The appellant claims that the conviction against the appellant taken as a whole was unsafe and untenable given the evidence adduced, did not prove the case beyond reasonable doubt. In support of this main submission, the appellant also claimed that there were many contradictions and discrepancies in the testimony of the complainant. Further the trial judge did not

appropriately observe the demeanour of the complainant, who was evasive and inconsistent when giving her testimony in court.

- [13] A major defect in the appellant's submission is the lack of specific reference to the evidence that the trial judge relied on to make his determination in this case. The appellant has referred a few cases which cover general principles of law, but there is no link made to the claimed error that the trial judge may have committed evident in the judgment. Generic grounds of appeal are not useful when not supported by specific reference to the judgement where error of law and fact claimed is made.

### **Assessment of the submission**

- [14] This was a case where the trial judge was required to decide who to believe, the complainant or the appellant, in terms of the evidence given in court. It is the evidence on these two, on which the case was determined. Whoever the trial judge believe must be stated clearly and reasons given in support of the choice.
- [15] The trial Judge's analysis of the evidence and the finding of the court is set out in paragraphs 13 to 17 of the Judgement. From these passages of the judgement, the trial judge provided the reasons he preferred the evidence of the complainant over that of the appellant and the other circumstantial evidence considered.
- [16] On the grounds alleging **unreasonable verdicts by the appellant**, the approach the court in Fiji was discussed in **Sahib v State** [1992] FJCA 24, which followed that of the High Court of Australia in the cases referenced below, which is to consider the totality of the evidence and determine if it was open to the judge to find the appellant guilty beyond reasonable doubt: **M v The Queen** (1994) 181 CLR 487 state:

*'43. At the commencement of their reasons the Court of Appeal majority correctly noted that the approach that an appellate court must take when addressing "the unreasonableness ground" was authoritatively stated in the joint reasons of Mason CJ, Deane, Dawson and Toohey JJ in M. The court must ask itself: "whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty".*

In Pell v The Queen (2020) 268 CLR 123, stated the

*“[39] The function of the court of criminal appeal in determining a ground that contends that the verdict of the jury is unreasonable or cannot be supported having regard to the evidence, in a case such as the present, proceeds upon the assumption that the evidence of the complainant was assessed by the jury to be credible and reliable. The court examines the record to see whether, notwithstanding that assessment – either by reason of inconsistencies, discrepancies, or other inadequacy; or in light of other evidence – the court is satisfied that the jury, acting rationally, ought nonetheless to have entertained a reasonable doubt as to proof of guilt.”*

[17] The trial judge clearly set out the basis of making the finding of guilt he did when he stated as follows:

*“18. Considering the elements that needs to be established in this matter in relation to rape, firstly there is no doubt in relation to the identity of the Accused. As per the second and third elements, Prosecutrix has informed this Court that the Accused inserted his penis to her vagina for which she was angry meaning not happy. The anger expressed by the Prosecutrix for the actions of the Accused depicts the Accused knew or believed or was reckless that the Prosecutrix was not consenting. In this sense, all the required elements for rape has been established by the Prosecution in this matter through the evidence of the Prosecutrix. In relation to the second count of Sexual Assault also the required three elements, as highlighted above, have been established through the evidence of the Prosecutrix, where she has stated that the Accused squeezed her breasts against her protest.”*

[18] I am satisfied that there were evidence during the trial which was sufficient for the trial judge to find the appellant guilty as charged. This ground of appeal has no merit and is dismissed.

[19] On the issue of evasiveness and inconsistent testimony given in court by the complainant, the trial judge stated the following, to provide reasons for believing the complainant evidence against that given by the appellant

*‘15. In considering the evidence given by the accused under cross-examination, the accused claimed his family reprimanding the questionable conduct of the Prosecutrix to be the reason for her to make this false complaint against him. However, when the version of the Accused was put the Prosecutrix by the Defense during cross-examination, this Court observed the Prosecutrix holding her ground denying the allegations raised by the Defense, though she admitted that there were attempts and pressure on her to withdraw her complaint*

even with the involvement of her mother who was residing in New Zealand.

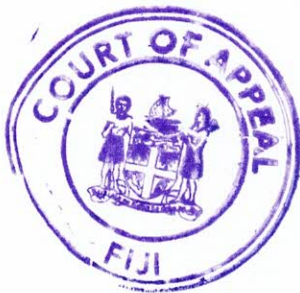
16. Through the evidence led in this matter, it was demonstrated that the Prosecutrix was housed for 4 years at the residence of the Accused after the demise of the father of the Prosecutrix. Further, as claimed by the Prosecutrix, she has had a very good relationship with Daniel and his wife during this period, a position that was not challenged by the Defense. According to the Accused, this cordial relationship has become sour resulting in the wife of the Accused taking the Prosecutrix to the house of her brother in Nabouwalu only when they realized the paucity of care given to their daughter in late January 2019. Ironically, as claimed by the Prosecutrix, lack of care to the daughter has been realized by the Accused and his family immediately after the alleged incident of Rape and Sexual Abuse of her by the Accused.

17. In this background, this Court finds it difficult to give credence to the version of the Accused in accepting and formulating the trajectory of events that has taken place in this matter, as claimed by the Prosecution and the Defense. Therefore, on careful consideration, this Court rejects the evidence given by the Accused in this matter. [Empasis underlined]

[20] In light of the above finding and the reasons of the trial judge, it is unlikely that the grounds of appeal so far advance by the appellant, has reasonable prospect of success. This leave application is dismissed.

#### ORDERS:

1. Leave application dismissed.



  
**Isikeli U Mataitoga**  
**Resident Justice of Appeal**