

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

CRIMINAL APPEAL NO. AAU 087 of 2023

BETWEEN : **AKUILA IOSEFO NAULUMATUA** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Mataitoga, RJA**

Counsel : **Manulevu, L for the Appellant**
: **Mishra, P for the Respondent [DPP]**

Date of Hearing : **27 August 2024**

Date of Ruling : **30 September 2024**

RULING

1. The Appellant (**AKUILA IOSEFO NAULUMATUA**) was charged by the Director of Public Prosecutions with one count of **Rape** and one count of **Abduction of a young person under 18 years of age**, as below:

COUNT 1

Statement of Offence

ABDUCTION OF YOUNG PERSON UNDER 18 YEARS OF AGE WITH INTENT TO HAVE CARNAL KNOWLEDGE: *Contrary to Section 211 (1) of the Crimes Act 2009.*

Particulars of Offence

AKUILA IOSEFO NAULUMATUA on the 10th day of June 2022 at Nasaibitu Village in Wainibuka in the Eastern Division with intention to have unlawful carnal knowledge of ILISAPECI RAGA NIUTABU an unmarried person under the age of 18 years caused the said ILISAPECI TURAGA NIUTABU to be taken out of the possession and against the will of her lawful guardian namely WAISALE DRUGU.

COUNT 2

Statement of Offence

RAPE: *Contrary to section 207(1) and (2) (a) of the Crimes Act 2008.*

Particulars of Offence

AKUILA IOSEFO NAULUMATUA on the 10th day of June 2022 at Nasaibitu Village in Wainibuka in the Eastern Division had carnal knowledge of ILISAPECI TURAGA NIUTABU without her knowledge.

2. Upon reading of the charges in Court on 01st September 2022, the appellant understood and pleaded not guilty to the charges filed against him. From 25/07/2022 for 5 occasions when this matter was called in Court the appellant was absent and the Legal Aid has stopped representing the appellant due to want of instructions. On Prosecution filing required affidavits from the investigating officers who have search for the appellant, this trial was fixed to proceed in absentia on 04/09/2022. The trial commenced on 4th April, 2023. At the trial, the Prosecution led the evidence of 5 witnesses, including the evidence of the victim. At the end of the Prosecution case, since the appellant was tried in absentia, the Prosecuting counsel made final submissions on 06/09/2023.

3. The judgement of the Court was delivered on 22 September 2023. After reviewing the evidence at the trial, the Court found the appellant not guilty of Abduction of a Young Person under the Age of 18 with Intent to have carnal knowledge, contrary to section 211(1) of the Crimes Act. The court acquitted the appellant on this charge. As regards count 2 of Rape contrary to section 207(1) and 2 (a) of the Crimes Act 2009, the appellant was found guilty and he was convicted as charged.
4. Sentence was passed on 13 October 2023 for the Rape and it was 7 years 9 months imprisonment with a non-parole period of 7 years 3 months.

Appeal by the State Against Sentence

5. This leave to appeal application is by the State against sentence. The single ground of appeal by the State is: the trial judge erred in law and in fact when he applied the adult rape tariff when the complainant was a child, therefore resulting in a manifestly lenient sentence. The Notice of appeal was timely.
6. The 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, was set out by the Court of Appeal **Kim Nam Bae v State**¹
7. For this appeal the respondent conceded that the wrong tariff rate was applied by the trial Judge and therefore the sentence appeal would succeed on appeal. The Supreme Court in **Gordon Aitcheson v State**² set the sentence tariff for child rape as between 11 to 20 years imprisonment.
8. The trial judge in this case after referring to **Aitcheson v State** (supra) decided to follow sentence tariff for adult Rape, where the sentence tariff is 7 to 15 years. This was an

¹ [1999] FJCA 21 (AAU 015 of 1998)

² [2018] FJSC 29 (CAV 0012 of 2018)

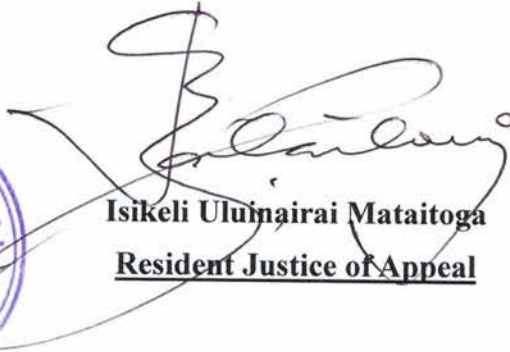
error of law by the trial judge because he acted on the wrong principle in commuting the sentence against the appellant.

9. In that light the leave to appeal against sentence by the appellant [State] has a reasonable prospect of success. Leave to appeal is granted.
10. At the hearing of the appellant's leave hearing, counsel for the respondent advised the court that he [Akuila Naulumatua] has filed an application for enlargement of time to appeal against conviction. She explored the possibility that the two cases would be consolidated. This would be considered by the Court once the issue of enlargement of time to appeal against conviction is before the court.

ORDERS:

1. Leave to appeal against sentence is granted.




Isikeli Uluinairai Mataitoga
Resident Justice of Appeal