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

CRIMINAL APPEAL NO. AAU 0127 OF 2019
[Lautoka High Court No: HAC 0057 of 2017]

BETWEEN : **LAWRENCE PRASAD**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, AP**
Qetaki, JA
Andrews, JA

Counsel : **Mr. S. Heritage for the Appellant**
Mr A. Singh for the Respondent

Date of Hearing : **5th & 18th November, 2024**

Date of Judgment : **28th November, 2024**

JUDGMENT

Mataitoga, AP

[1] I concur with reasons and conclusion of the draft judgment.

Qetaki, JA

Introduction

[2] This is an appeal made pursuant to section 35(3) of the Court of Appeal Act from the judgment of the High Court, Lautoka on a question of mixed law and facts. The appellant was charged with rape and was convicted before the High Court on the 20th day of July 2019 for rape contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009, which is a representative Count on six offence. The information states that between the 6th day of December 2016 and 15th day of January 2017, at Lautoka, in the Western Division the accused had carnal knowledge of the complainant, without her consent. The second Count is indecent assault contrary to section 212(1) of the Crimes Act 2009. The particulars allege that the accused, between the 1st day of October 2016 and 31st day of October 2016, at Lautoka, in the Western Division unlawfully and indecently assaulted the complainant by touching her private parts and fondled her breast.

The Facts

[3] The facts may be summarised as follows:

The victim/complainant came from Ba in 2016 to live with her biological mother (who was in her early thirties) at Naikabula, Lautoka, where her mother was in a living relationship with the accused who was 24 at the time. They lived in a one bedroom rented house. The complainant was 16 years old at the time, and was in Form 4. Her parents were separated when she was 4 years old and she was raised by her paternal grandmother until she died, and the complainant came to live with her mother after 11 years following a court order.

The abuse began in October 2016 with the accused fondling of the victim's breasts and genitals in the living room at night. The victim felt bad that such a thing was being done

by a person who she called 'papa' meaning father. She complained to her mother the next morning when the accused went to work. Her mother did not believe her and mocked her. The victim went and complained to the police after school. Her mother was called to the station, and she convinced the police and a social welfare officer that the victim's character was questionable. The victim's report was not registered by the police and she was returned to her mother, who at home, beat her and subjected her to verbal abuse. The victim attempted suicide but was unsuccessful.

By December 2016, the sexual abuse turned to rape. The first rape occurred at home on 6 December 2016.Other indecencies were committed on the victim before sexual intercourse. Force was used to push the victim to the ground and remove her undergarment. When she resisted the accused slapped her and pressed her mouth with his hand, and he had sexual intercourse for about 5 minutes. In her evidence the victim described her experience as painful, and her genitals were sore. She bled, and she was crying and told the accused to stop, but he did not listen. After he was done, the accused got up and went away while she remained on the floor for about 5 to 10 minutes before putting on her clothes. She did not complain to anyone, as she did not feel she had a voice. Her mother, police and a social welfare officer did not hear her when she complained on the first occasion.

From December 2016 and January 2017, the accused raped the complainant on five separate occasions in her home. The incidents occurred either on the bed inside the accused's bedroom or on the floor of the living room. She described the subsequent incidents as not so painful as the first one. On occasions he threatened her not to report the abuse. By February 2017 the victim discovered she was in the early stage of pregnancy after her mother took her to a local doctor. The complainant blamed the accused as being responsible. Her mother made her terminate her pregnancy using prescription drug, which was to protect and save the accused from being exposed as the victim was still a child. The victim was rescued from her home by her relatives who went to take her to their home. The victim suffered both physical and psychological trauma at the hands of the

accused, which persisted even when she was not able to control her emotions when she gave evidence.

[4] The appellant had totally denied all allegations against him and blamed the complainant for making them. He had suggested in cross examination that the complainant and her aunt had fabricated the allegations for a motive, which was denied by both of them.

[5] The assessors had unanimously returned a verdict of guilty of all counts at the end of the summing- up on 20 July 2019. The learned trial judge had agreed with the assessors in his judgment delivered on the same day, and convicted the accused and sentenced him on 23 August 2019 to 17 years and 4 months of imprisonment with a non-parole period of 14 years.

[6] The appellant filed a timely appeal against conviction and sentence on 20 September 2019. He filed a written submission on 9 September 2020 to which the respondent replied on 6 November 2020. At the leave stage, both parties relied on their written submissions The learned single judge had refused the appellant leave to appeal against both conviction and sentence in his ruling delivered on 25 January 2020.

<u>Discussion</u>

In the High Court

[7] In Summing – Up the learned trial judge had analysed the evidence before the assessors, including the prosecution's case/evidence (paragraphs [26] to [47]), and the accused's evidence (paragraphs [49] to [51]). The judgment delivered by the learned trial judge was brief (3 paragraphs), and is reproduced below :

> *"[1] All three assessors have expressed unanimous opinions of guilty in respect of all six charges against the Accused. They have believed and accepted the complainant's evidence of indecent assault on one occasion and of*

rape on five occasions as true. They have rejected the motive to fabricate the allegations as untrue.

[2] The complainant struck me as a truthful witness. I believe her account that the Accused unlawfully and indecently touched her breasts and private parts in October 2016 and raped her, that is, penetrated her vagina with his penis without her consent and knowing she did not consent on five occasions between December 2016 and January 2017.The prosecution has satisfied the guilt of the Accused beyond reasonable doubt.

[3] The Court's verdict is as follows: (sets out the verdict of each assessor on each of the count)"

[8] In Sentencing, after giving an outline of the facts of the case, the learned judge stated that there is no logical explanation for the accused's conduct, and his defence that the victim fabricated the sexual allegations to justify leaving his home for her lover was based on thin grounds. The victim's evidence was that she was not in a relationship with anyone as suggested by the accused. After she was displaced from her own home she reported the incidents to police, this time with the assistance of the family that took her to their home and gave her shelter, put her life together and went back to school to complete her studies. The Judge reminded himself that he must have regard to both the objective seriousness of the offence and the seriousness of the actual conduct of the accused. For the tariff for the offences of indecent assault and rape, the learned judge is guided by the following cases: **Raj v State** [2014] FJSC 12; CAV0003.2014 (20 August 2014); **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018), and **Rokota v The State** [2002] FJHC 168; HAA0068J.2002S (23 August 2002).

Grounds of Appeal

[9] ***Against Conviction***

The appellant asserted that:

1. The learned judge erred in law and fact in not adequately/sufficiently referring/ directing/ putting/considering himself or the assessors the Medical report of the

Complainant. That such failure by the learned trial judge caused a substantial miscarriage of justice.

2. That the learned trial judge erred in law and in fact in not analyzing all the facts before him before he made a decision that the appellant was guilty as charged on the charge of rape. There was a substantial miscarriage of justice by the learned trial judge when he came to a decision in upholding the guilty verdict of the assessors when he failed to adequately analyze all the facts before him himself.

3. The learned trial judge erred in law and in fact in not analyzing all the facts before him before he made a decision that the appellant was guilty as charged on the charge of rape. Such error of the learned trial judge in law by failing to make an independent assessment of the evidence, before affirming a verdict which was unsafe and unsatisfactory giving rise to a grave miscarriage of justice.

4. The learned trial judge erred in law and in fact in not directing himself and/or the assessors to refer to any summing up the possible defence on evidence and or such by his failure there was a substantial miscarriage of justice.

5. The learned trial judge erred in law and in fact in not directing himself and/or the assessors that no reasonable explanation were given as to the reason for the delay in making a complaint against the appellant and as such by his failure there was a substantial miscarriage of justice.

[10] ***Against sentence***

1. That the learned trial judge erred in law and in fact in not taking relevant matters into consideration but taking irrelevant matters into consideration when sentencing the appellant.

2. The learned trial judge erred in law and in fact in not taking into relevant consideration Sentencing and Penalties Decree 2009, namely:

1. Section 3 of the Sentencing and Penalties Decree
2. Section 4 of the Sentencing and Penalties Decree.
3. Section 5 of the Sentencing and Penalties Decree.

In the Court of Appeal (Single Judge)

[11] In his consideration of the submissions in support of the grounds of appeal, the learned single judge was critical and expressed concerns as to the quality of the submissions filed on behalf of the appellant, which the respondent had also commented upon, as in his view, the submissions had failed to illuminate the grounds of appeal in any meaningful way or manner, and with little regard to case-specific particulars of the summing- up, the judgment and the sentence order. However, he still considered the grounds of appeal in the interests of justice.

[12] On Ground 1, the learned single judge noted that no submission was made on the first ground of appeal on behalf of the appellant, there being no refence to any medical evidence led by the prosecution in the summing – up or the judgment or the sentencing order.

[13] On Grounds 2 and 3, he found these to be repetitive in pith and substance. There was no elaboration of the grounds in the written submissions. The main thrust of the complaint appears to be the perceived lack of assessment and evaluation of the evidence in the judgment. The learned single judge commented on the duty of a trial judge when they agree or disagree with the assessors, based on his analysis of past several decisions of the Supreme Court and the Court of Appeal, holding that the trial judge's short judgment when considered with the summing – up, clearly show that he had given his mind to the evidence of the complainant and treated her as a truthful witness and believed in her in respect of all counts. The end result being that the learned trial judge had been satisfied that the prosecution had proven its case beyond reasonable doubt. In analyzing the complainant's evidence and as set out in the summing – up and the appellants defence,

he found overwhelming evidence in support of the assessor's opinion and the verdict of the trial judge.

[14] Ground 4: The learned single judge observed that the appellant had cited a number of authorities/cases, but there was no mention or submission on how the decisions in those cases impact the facts and circumstances of this case.

[15] Ground 5: The learned single judge noted that this ground was not backed up by any submission(s) and at paragraphs [26], [27] and [28] of the Ruling, he stated:

> *"It appears from the summing - up that after the first incident in the night involving sexual abuse in October 2016 the complainant had complained to her mother in the following morning but the latter had not only disbelieved her but had also blamed her for creating a rift between the couple. Not stopping at that the complainant and gone to the police station to lodge a complaint. The police had called the mother to the police station and the complainant had to come back home with the mother. Upon their return home the mother had beaten her up for complaining to the police which led to her suicide attempt. The complainant had again complained to her mother on the day following the incident of first act of rape on 06 December 2016 but the mother had simply disregarded her complaint. Thereafter she had not complained regarding the four subsequent acts of rape as she had felt there was of no use to make complaints to the mother. After the last incident she had been tested positive for pregnancy and undergone an abortion at the instance of the mother. She managed to make the second complaint to police in February 2017 after leaving her mother and the appellant after she was rescued by her aunt and uncle."*
>
> *[29] Applying "the totality of circumstances test "as expressed in <u>State v Serelevu</u> [2018] FJCA 163; AAU141.2014 (4th October 2018), I do not think there is any basis whatsoever in the above circumstances to impeach the complainant's credibility on the basis of delayed reporting or complaint and therefore there was*

no factual basis for the trial judge to have directed the assessors of a belated complaint."

[16] The learned single judge concluded that none of the grounds of appeal against conviction has any reasonable prospects of success. On the sentence appeal, it was the learned single judge's opinion that the sentence was fitting for the offences committed and the abhorrent manner of committal. The appellant had not specified how, as suggested in the second ground against sentence, sections 3, 4, and 5 of the Sentencing and Penalties Act was not taken into account by the learned trial judge as alleged. The sentence imposed lies within the permissible range: **Koroicakau v State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006), **Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015). Leave to appeal against sentence was refused.

Case for the Appellant

[17] It was submitted, with respect to grounds 1 and 2, that the accused did not give evidence at the trial as he elected to be silent. The learned trial judge erred in law when he did not give direction with regard to the accused remaining silent, and this amounted to a miscarriage of justice. Secondly, that the learned judge did not clarify whether he believed or considered the defence evidence and whether the complainant's evidence may have been fabricated to some extent. That the learned trial judge did not give directions to the assessors that the defence had called only one witness and to show that there was a motive by the complainant to fabricate the allegations against the appellant. That the only defence witness, (the complainant's younger sister), gave evidence that she saw the complainant and one Divnesh kissing in the room. It is also her evidence that she saw Shanti giving tea, which is dark tea, to the complainant to drink. That the learned judge did not give directions in summing – up that the strong tea brew was used for miscarriage, for pregnant women. There is no mention that on whether the learned trial judge had believed the defence witness or even touch on her credibility.

[18] It was also submitted that the complainant's evidence of pregnancy (page 190 of record), should have been quashed as it is prejudicial to the appellant, given that the State has no

proof or evidence to support the fact that the baby the appellant was pregnant with was fathered by the accused. There was no DNA testing done to prove the appellant's paternity. The appellant submits that the complainant's evidence that "*in my life this was the first time, until now this had happened and it was my Papa, my Lord….*" was by law inadmissible as the complainant was touching on past sexual history.

[19] In support of the submissions, the appellant quoted at length or extensively from cases , under the headings *"Law On Previous Inconsistent Statements"* and *"Previous Inconsistent Statements By State Witnesses"*, without any or adequate explanation as to their applicability and relevance to Grounds 1 and 2 of the conviction appeal, and how they might reinforce and enlighten the Court in assessing and evaluating the submissions and the evidence, or demonstrate how the cases serve to further advance the case for the appellant.

[20] On Grounds 3 and 5 it was submitted that the learned trial judge did not direct himself to the sufficiency of evidence that the defence adduced at the trial. He did not independently evaluate in the judgment the defence case, and did not give reasons as to why he agreed with, at page 252, the unanimous verdict of the assessors, who according to paragraph 1 of the judgment, believed and accepted the complainant's evidence; or in believing that the complainant was a truthful witness. It was submitted that, if the evidence is evaluated, the incident can be broken down into five occasions when rape is alleged to have occurred, as follows:

<u>1st Count-Sexual Assault (from pages 173 to 175);</u>

[21] The appellant submitted that the learned trial judge did not independently assess the evidence given by the complainant in relation to this count. Firstly, the State did not call the mother as a recent complaint evidence as the complainant had told her in the first instance (page 174). It was submitted that recent complaint evidence would solidify the complainant's credibility whether she is a truthful witness or not. It was submitted that if the mother was called as a recent complaint witness, she would definitely confirm the following: (a) Whether the complainant had tried to commit suicide? (b) Whether the

complainant had lodged the report with Ba Police Station? (c)Whether the mother had told the police that the complainant was lying and was having an affair with other boys? and (d) Whether she was indeed beaten up by the mother? It was also noted that no evidence was adduced by the State as to whether there was a police complaint at Ba Police Station in regards to the complaint made that the appellant had actually indecently assaulted her.

2nd Count- 6th December 2016 (pages 174 to 180 of record);

[22] It was submitted that the mother is the recent complaint evidence for this count also. It was the complainant's evidence (page 178) that after the appellant had raped her for about 4 to 5 minutes, then she told her mum the next day. It is the mother whom again is the recent complaint evidence. It was submitted that the fact that the State did not call her as a witness affected the complainant's credibility.

3rd Count (pages 180 to 182,4th Count (pages 182 to 184) 5th Count (pages 184 to 186) and 6th Count (pages 186 to 188).

[23] These counts allegedly happened on 9th December 2016. There was no recent complaint evidence in relation to the incidents, and it was submitted that the trial judge did not give any direction in the summing – up in regards to the delay in reporting the incident. The complainant only stated that just 2 to 3 days later after the alleged incident, the appellant had raped her again. She said she did not tell anyone about the incident as her mother did not believe her at first so no one would believe her. (page 182 record). On 4th count she said, she had stated in her evidence that she had been complaining and nothing had happened so it was no use. As for count 5, the complainant (page 186) gave the same evidence that as her mother never did anything, which was also the same evidence as in count 6. It was submitted that there were no directions given to the assessors as to delay in reporting. The learned judge did not refer in the judgment or give a direction as to delay in making the report.

[24] On ground 4, it was submitted that the defence case theory was that the allegations were fabricated by the complainant as she was in a relationship with one Divnesh, the

complainant's cousin. In evidence, the defence witness said at page 252 of record that she saw the complainant and Divnesh kissing, and she then told Divnesh's mum, Shanti Devi, who was the recent complaint witness/evidence. Although the learned trial judge gave directions in the summing – up on the defence of fabrication, it was submitted that he did not consider the fact that the second State witness gave evidence to the effect that she had brought the complainant from her home and then the Ba Police Station CID came saying she had eloped with her son.

[25] The same witness also said that after 5 days the complainant's mother had asked her for $470.00 and she has to bring it to Dr Michael's surgery, where the complainant's mother said that she is her mother in law. This evidence was not fully considered by the learned trial judge as it justifies fabrication. Fabrication is being alleged as she did not tell Dr Michael that she is not the complainant's mother in law. Furthermore, why was she shocked and suddenly have to leave the room at the surgery. It is suspicious as to the fact that when the complainant's mother called that the complainant is not doing any housework, she never told her off or confront her why she lied to Dr Michael or why even involve her son.

[26] In conclusion, the appellant submitted that there had been no evidence that the appellant had committed the alleged offence, except for the complainant's version. It was also submitted that the appellant had raised several mis-directions and non-directions and errors of law by the learned trial judge, and leave should be granted as the grounds are arguable.

Analysis

[27] I am in agreement with the comments, observations and criticisms made by the learned single judge in his ruling, on the quality and lack of care and attention in the preparation of the written submissions, which is supposed to assist the court in assessing, evaluating and making a determination on the judgment of the trial judge. Counsel for the appellant is urged to revisit the ruling and take note.

[28] An appeal against conviction may be made with leave of Court, pursuant to section 21(1) of the Court of Appeal Act 1949. The test for leave to appeal is*" reasonable prospect of success"*: **Caucau v State** [2018] FJCA 171; AAU 0029.2016 (4 October 2018); **Navuki v State** [2018] 2018] 172 AAU 0038.2016 (4 October2018); **State v Vakarau** [2018] FJCA 173; AAU0052.2017 (4 October 2018) and **Sadrugu v State** [2019] FJCA 87; AAU0057.2015 (6 June 2019).

[29] **Grounds 1 and 2:** Counsel for the appellant had withdrawn/ abandoned Ground 1 at the hearing, for the reason that no medical report was produced at the trial. Ground 2 appears to be a general challenge contending that the learned trial judge erred in law and in fact in failing to analyse the facts before he made the decision to convict the appellant. It was submitted that as a consequence there was a substantial miscarriage of justice when the Judge agreed with the verdict of the assessors. Counsel submitted that the accused/appellant remained silent at the trial and the learned trial judge did not give a direction in summing-up to the assessors on the accused exercising his right to remain silent, and the legal effect of the exercise of the right to remain silent. It was also submitted that the learned judge did not mention in the judgment whether he considered or believed the defence evidence and whether there was a degree of fabrication by the complainant. Further, it was submitted that no direction was given to the assessors that the defence called only one witness, the younger sister of the complainant and consideration of her evidence and that the evidence of the complainant on having sex only once, which made her pregnant to the accused's baby, should be quashed.

[30] Counsel for the respondent in his submission confirmed that the medical report was never adduced as evidence and was never a part of the State's case. Counsel submitted, and I agree, that the trial judge had, contrary to the appellant's submission, given adequate direction on the accused not giving evidence at paragraph 6 of summing –up, as follows:

> *"[6] The Accused elected not to give evidence. That is perfectly his right. You must not assume he is guilty because he has not given evidence. The fact that he has not given evidence proves nothing, one way or the other.*

You will have to decide whether, on the prosecution's evidence, you are sure of his guilt."

[31] The learned trial judge did agree with the assessors' guilty verdict and convicted the appellant as he found the complainant to be honest, credible and trustworthy. He had no obligation to consider the defence evidence in his judgment. Contrary to the appellant's submissions, the defence case was well summarised in paragraphs 49, 50 and 51 of the summing-up, and the assessors were informed in detail about the defence case and the motive of the complainant :

> *"[49] The defence called one witness, Christina Prasad. She is a younger sister of the complainant. She is 13 years old. Christina told the court that when she accompanied the complainant to her aunty and uncle's place in Vaivai in December 2016, she witnessed the complainant and Divnesh kissing. She also witnessed her aunty making strong tea and making the complainant drink it.*
>
> *[50] The defence led this evidence to show the complainant's motive to fabricate the allegations of sexual abuse against the Accused. The defence says that all the allegations against the Accused are not true. The defence says the allegations are fabricated by the complainant so that she can leave her house in Naikabula and return to her lover Divnesh.*
>
> *[51] Whether you believe Christina and accept her evidence to decide whether the complainant had a motive to fabricate or make up a false story of indecent assault and rape against the Accused is a matter for you. You may consider Christina's age and her current relationship or ties with the Accused to determine whether she is a credible and reliable witness. If you reach a conclusion the allegations against the Accused were fabricated by the complainant, then you must express an opinion of not guilty."*

[32] On the dark tea evidence, which was adduced at page 252 of the proceedings, there was no need for a direction to the assessors. There was no evidence in elaboration on what the tea could do when and if consumed in large quantity. The point was not exploited and there is no reason why it should attract a direction to the assessors. The appellant submitted at page 190 of record that the complainant stated that she had sex for the first time and the baby belonged to the accused. Counsel for the State submitted that, that was

the State's case. At no time did the complainant ever deny that it was the appellant who impregnated her and she maintained that throughout despite facing robust cross-examination. This ground fails. It has no reasonable prospect of success.

[33] **Grounds 3 and 5:** In ground 3 the appellant had contended that the learned trial judge had misdirected and/ or not properly and/or made an independent evaluation of the evidence and Ground 5. The State submitted and I agree, that the defence evidence was well summarised and presented to the assessors in the summing-up. The assessors had the opportunity of going through the evidence during their deliberation. The court is not bound to give cogent reasons for agreeing with the assessors, as would be the case when disagreeing with the assessor's opinion. I also agree with the counsel for the State in his submission that the directions in paragraph 43 were sufficient.

> *"[43] Shanti Devi gave evidence confirming the complaint of rape made to her by the complainant .She gave evidence of the circumstances under which the complaint was made to her by the complainant. 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 for you to decide whether the evidence of this complainant given to an aunty helps you to reach a decision, but it is important that you should understand that the complaint is not independent evidence of what happened between the complainant and the Accused, and it therefore cannot itself prove that the complaint is true. You must consider these matters if you decide to rely on the complaint evidence to assess whether the complainant's evidence is consistent and therefore believable."*

[34] On Ground 5, it was conceded that the learned trial judge did not give warning on delayed reporting, however, no prejudice is caused despite the omission by the learned judge. There was no substantial miscarriage of justice. This aspect was adequately dealt with at the leave stage by the learned single judge as raised in paragraph [15] above which I entirely agree with. The "*totality of evidence"* test enunciated in **State v Serelevu** (supra) is applicable here. Grounds 3 and 5 are dismissed as they have no reasonable prospect of success.

[35] **Ground 4:** The appellant contended that the learned trial judge did not direct himself as to possible defences adequately such that there was a substantial miscarriage of justice. I am in agreement with the respondent who submits that the defence evidence was well analysed during summing-up, including the issue of fabrication. This ground has no reasonable prospect of success. It is dismissed.

Sentence Appeal

[36] **Grounds 1 and 2 –** Sentence Appeal: The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles in **Kim Nam Bae v The State** Criminal Appeal No.AAU0015.The four guidelines are, that the judge :

(i) Acted upon a wrong principle;
(ii) Allowed extraneous or irrelevant matters to guide or affect him;
(iii) Mistook the facts;
(iv) Failed to take into account some relevant consideration.

[37] There were no specific examples given by the appellant to support the contention that the learned judge did not take relevant matters into consideration, but took irrelevant matters into consideration when sentencing the appellant. The submission that sections 3, 4, and 5 of the Sentencing and Penalties Act 2009, were not taken into consideration cannot be sustained. I believe that the learned High Court judge's approach in paragraph [8] above, and the learned single judge's explanation at paragraph [16] above, cannot be faulted. The appellant has not demonstrated that the two grounds of appeal against sentence come within any of the four guidelines, and not satisfying the above test. Grounds 1 and 2 of the sentence appeal are dismissed.

Conclusion

[38] In consideration of the above discussion, the appellant's appeal is dismissed and there is no miscarriage of justice. The appellant's conviction and sentence are affirmed.

Andrews, JA

[39] I agree with the judgment of Qetaki, JA.

Orders of Court:

1. *Appeal is dismissed.*
2. *Conviction is affirmed*
3. *Sentence is affirmed*

The Hon. Mr Justice Isikeli Mataitoga
ACTING PRESIDENT, COURT OF APPEAL

COURT OF APPEAL FIJI

The Hon. Mr Justice Alipate Qetaki
JUSTICE OF APPEAL

The Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL