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

CRIMINAL APPEAL NO. AAU 002 OF 2025
[Lautoka High Court: HAC 103 of 2021]

BETWEEN : **RONEEL ROHITESH RAJ**

Appellant

AND : **THE STATE**

Respondent

Coram : Qetaki, RJA

Counsel : Mr. J. Reddy for the Appellant
Ms. S. Naibe for the Respondent

Date of Hearing : 30 June, 2025

Date of Ruling: : 28 July, 2025

RULING

Background

[1] This is an application for enlargement of time to seek leave to appeal against the decision of the High Court at Lautoka sitting in Ba delivered on 25th September 2024. The Appellant was charged with 3 counts of rape and 2 counts of sexual assault.

[2] The Appellant was sentenced on 28th November 2025 to an imprisonment term of 14 years and 10 months with a non-parole period of 12 years and 10 months. He relies on his Affidavit filed with the notice of motion.

[3] The Appellant through his counsel in paragraph 6 of his written submissions incorrectly stated the dates on which the Appellant was convicted and sentenced. Counsel need to be careful in citing dates, especially when the application relates to the delayed filing of the notice for leave to appeal.

[4] The facts of this case are fully set out in the sentencing order delivered on Thursday, 28th November 2024. According to the evidence at trial, the accused worked for the complainant's father until 2020 when the alleged sexual abuse was reported to police. The complainant 'SFN' lives with her parents and 2 brothers at Rarawai, Rakiraki. The complainant was born on 17th July 2007 and was 9 years old in 2016 and in class 4 at the Naria Primary School, Rakiraki. When her parents are at work, Ateca (house girl), her Uncle and Roneel the accused (security guard) also stayed with them. Roneel does repair works, acts as security guards etc. for complainant's father after Cyclone Winston. In 2016 Roneel used to sexually abuse her when her parents are at work. He also threatened her not to tell anyone what he is doing to her. There were several incidents occurring in 2016 - 2017. See paragraph 15 and 16 of Judgment.

[5] There are six grounds of appeal against conviction and one ground against conviction as follows:

Ground 1

That the learned trial judge erred in law and in fact in finding the evidence of PW1 to be credible, reliable and truthful in the first, third and fourth counts whilst on the contrary found the offence not proved beyond reasonable doubt in count two which clearly shows that the evidence of PW1 not to be credible, truthful and reliable inspite of the facts that there were so many inconsistencies, discrepancies and contradictions between her statement and her evidence in court.

Ground 2

That the learned trial judge erred in law and in fact when the conviction against the Appellant, taken as a whole, was unsafe and untenable given that the evidence

adduced did not prove beyond reasonable doubts the guilt of the appellant in respect of the second count of rape for which he was found guilty.

Ground 3

That the learned trial judge erred in law and in fact when he did not consider the lateness of the complaint in that the offence was said to be allegedly committed between 2016 and 2017 and the matter being reported in or around the year 2021 which clearly shows ulterior motive on the part of the complainant and further that no proper explanations were given for the said late complaint, inspite of the fact that she was with her parents throughout those years and in whom she had confided, yet chose not to complain.

Ground 4

That the learned trial judge erred in law and in fact in convicting the appellant on the charges of rape when the testimony of the complainant clearly states that certain incidents allegedly happened right in front of her brother, yet neither she nor her brother raised any alarm until around 4 years later which clearly borders on truthfulness and reliability of the evidence adduced in court as a whole.

Ground 5

That the learned trial judge erred in law and in fact when he failed to appropriately observe the demeanor of the complainant in that she was evasive in her testimony.

Ground 6

That the learned trial judge erred in law and in fact when he failed to consider the fact that the allegations of rape only arose after the complainant was caught into some unusual acts in school in the year 2020 and instead of focusing and explaining on that issue chose to make this false complaint against the accused so as to deviate the attention of her parents and relevant authorities.

Ground 7

That the appellant appeal against the sentence as being harsh and excessive in all the circumstances.

The Law

[6] The test for leave to appeal against conviction and sentence is *"reasonable prospect of success"*- see **Caucau v State** [2018] FJCA 171; AAU0029 of 2016 (04 October 2018) and the line of similar authorities, on *arguable grounds:* **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU 10 of 2014 (15 July 2014) and **Naisua v State** [2013] FJSC 14; CAV10 of 2013 (20 November 2013).

[7] When sentence is challenged, the court is guided by the requirements set out in **Kim Na Bae v The State** Unreported Criminal Appeal AAU 15 of 1998 (26 February 1999), as follows:

> *"It is well established that before the Court could disturb the sentence, the appellant must demonstrate that the Court below fell into error in exercising its discretion. If a trial Judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some relevant consideration, then the appellate Court may impose a different sentence. The error may be apparent from the reasons for sentence or it may be inferred from the length of the sentence itself (**House v The King** [1936] HCA 40; (1936) 55 CLR 499)."*

Enlargement of Time Application

[8] The factors to be considered for an enlargement of time are: (a) the length of the delay, (b) the reason for the failure to file within time, (c) whether there is a ground of merit justifying the appellate court's consideration and where there is substantial delay, nonetheless is there a ground of appeal that will probably succeed and (d) if time is enlarged, will the respondent be unfairly prejudiced: **Kumar and Sinu v The State** [2012] FJSC 14;CAV 1 of 2019 (21 August 2012).

[9] The length of delay is not substantial. There are differences in calculation. The time given by the Appellant, 6 days or so appear to be incorrect, and probably based on the mistaken dates of conviction and sentence which I had referred to earlier. The Respondent's figure of a delay of 2 months and 2 weeks is the length of the delay. It is not substantial in the circumstances.

[10] The reason for the delay is explained in the Appellant's Affidavit in support. His counsel at trial was reluctant to release his file with documents to the Appellant's brother until quite late. The file was released on 28th of September 2024 which is the last day to file the appeal. The State submits that the reason given by the Appellant is unreasonable and unjustifiable and leave should be refused. While I note the Respondent's view of the reason for the delay, that on its own should not be the basis of denying the Appellant his application for enlargement of time. The Court will assess the grounds of appeal to decide whether there is a ground of merit.

Is There a Ground of Merit?

State's (Respondent) Submission

[11] The State opposes the request for enlargement of time, and in its written submissions is briefly summarized below.

[12] Grounds 1 and 2, the Appellant was acquitted on count 2 because the complainant did not state any evidence with regard to the count. There was no incriminating evidence against the Appellant on the count. The Court gave the Appellant the benefit of the doubt. That is not the same position as the other counts, namely counts 1, 3 and 4 where the Court was at liberty to examine the behavior of the witness and her truthfulness and the court was satisfied that the complainant was a truthful witness. The State submits that these grounds are without merit.

[13] Ground 3- The State submits that although the report to the police by the complainant was late, the complainant's explanation at trial was logical and persuasive, as such she was believed by the Court. The Court had even considered the relationship between the

complainant and the Appellant and concluded that the complainant could not have fabricated the allegation s against the Appellant. The State submits that this ground is without merit.

[14] Ground 4- The State submits that this ground is misconceived. The complainant did not at trial state that she was sexually abused in front of her brother. The rape occurred in the complainant parents' bedroom. The Court noted that even though other people were in the house, the Appellant had threatened the complainant not to shout and the complainant was fearful of the Appellant. She did not inform her parents, brother nor anyone about what was happening. Paragraphs 18 and 19 of the judgment explain the Court's position on this ground. In sexual assault cases corroboration of the complainant's evidence is not required: section 129 of the Criminal Procedure Act 2009. The Court accepted the prosecution's version and the complainant withstood cross–examination, and maintained that she was raped and sexually assaulted by the Appellant. The State submits that the ground lacks merit.

[15] Grounds 5 and 6- The State submits that the court had observed the demeanor of the complainant and was satisfied that she told the truth. The complainant withstood cross - examination and maintained that the Appellant committed those acts against her. The incident that happened at school was different from the 2016-2017 incident. The complainant's mother testified that her behavior has improved as the complainant had been disciplined, and she has seen changes in her. The complainant was not evasive. The State submits that this ground lacks merit.

[16] Grounds 7- The State submits that the final sentence was not harsh or excessive considering that this was a case involving a child. That this ground is misconceived and lacks merit. In paragraph 13 of judgment, the court highlighted the Appellant's mitigation submission, however those were personal circumstances which the court could not consider in mitigation: **Raj v State** [2014] FJCA 18; AAU0038.2010 (5 March 2014), the family circumstances of the accused has little mitigating value; see also **Rokolaba v State** [2018] FJSC 12; CAV0011.2017 (26 April 2018).

[17] The court also treated the Appellant as a first time offender reducing his sentence by 2 years as a result: **Senilolokula v State** [2018] FJSC 5; CAV0017.2017 (26 April 2018). The State submits that the ground has no merit.

Analysis

[18] The Appellant's submission is brief. The Appellant did not specifically address each of the grounds in detail did not cite any legal authority.

[19] The Appellant's submits that:

(i) There is no valid explanation given on the late reporting of the complaint given the substantial delay.

(ii) There are two versions of the complainant which are inconsistent and contradictory.

(iii) The evidence did not prove beyond reasonable doubt that the offence of rape was committed.

(iv) There was no threat of the complainant by the accused. There were other people in the house at the time of the alleged offence.

(v) There was no medical evidence or sexual activities or penetration shown, and it was unsafe to convict the accused under the circumstances.

[20] The Appellant's contention that there is no valid explanation given by the complainant on the substantial delay in reporting the matter to the police has no basis and is misconceived. The complainant had given her reason at trial - see paragraph 5. The following extracts from paragraph 5 illustrate why the complainant did not report the matter, until after she was disciplined by her mother following the school incident in 2020:

"……. When accused is done, he would remind her to make sure that she does not tell anyone and threaten her……"

"When accused had inserted his penis into her vagina, she tried to move but couldn't as the accused covered her mouth she couldn't scream. Accused also holding her legs and pressing on her arm. She didn't tell anyone what happened because accused had threatened to do something to her if she said a single word to anyone."

"She wouldn't shout because accused told her not to scream or to say anything to anyone."

In cross -examination she said:

"She didn't inform her parents or anyone about what accused had done to her because accused had threatened to punish her if she opened her mouth and therefore, she lived in fear."

[21] The Appellant did not identify, clarify or particularize what the two versions of the complainant were nor raise any incidents of contradiction or inconsistency in the two versions.

[22] The Appellant submits that the evidence did not prove beyond any reasonable doubt that the offence of rape was committed. This view of the outcome of the trial is misconceived as paragraph 5 of the judgment clearly establish that the Appellant had unlawfully inserted his penis on the complainant's vagina on multiple occasions, knowing that she did not consent to the acts of the Appellant on her body.

[23] The Appellant stated that there was no threat on the complainant by the Appellant, however, paragraph 5 clearly dismiss that view as the Appellant had threatened her not to open her mouth and tell anyone about what he has been doing unlawfully to her. See also paragraph [20] above.

[24] The Appellant alleges that there were other people in the house at the time of the alleged offence. This is not denied by the complainant, however, she also stated that the sexual

acts were committed in her parents' bedroom, and no one else was there at the time. At paragraph 19 of the judgment, the learned trial judge stated:

> *"The court recognizes that PW1 failed to inform the others present in the house at the relevant time, notably the house girl and her sibling. Nonetheless, PW1n indicated that she faced threats or warnings against disclosing any information and that the accused would do something to her if she did. Because of the threats made by the accused and her age at the time, PW1was reluctant to tell her parents or those close to her. She was frightened and lived in constant fear of the accused's threats and warnings. PWI even considered her stepfather might doubt her if she reported the incident, as she observed a close relationship between her stepfather and the accused. It was only after the incident at school in 2020 and following the beatings from her mother that she found the strength to share her story about what had been done to her by the accused.*

[25] The Appellant submits that there was no medical evidence and no sexual activities or penetration. This is misconceived as the evidence of the complainant at paragraph 5 of the judgment clearly indicate sexual acts by the Appellant towards the complainant, not once but repeatedly. Despite the clear evidence of the complainant, the Appellant denied any involvement with the complainant as charged.

[26] I hold that the grounds of appeal against conviction are not arguable. They have no merit. There is no miscarriage or substantial miscarriage of justice.

[27] Grounds 7 – The Appellant did not make any specific submission in relation to his sentence *"being harsh and excessive in all the circumstances"*. The Appellant was convicted on 1 count of rape and 2 counts of sexual assault . Rape contrary to section 207(1) and (2) (b) and 3 of the Crimes Act 2009 carries a maximum prison term of life imprisonment. The tariff for rape of children is between 11 to 20 years imprisonment: **Aitcheson v State** [2018] FJSC 29; CAV0012 of 2018 (2 November 2018). For the offence of sexual assault the tariff is 2 to 8 years: **State v Khayum** [2012] FJHC 1274 at paragraph 8 (per Madigan, J).

[28] For rape (count 1), a sentence of 15 years imprisonment was given. For sexual assault (counts 3 and 4), the learned trial judge imposed a sentence of 4 years two years for each count. The sentences is to be concurrent. The total sentence is 15 years. 2 months is deducted for time in custody. The final sentence is 14 years and 10 months imprisonment, with a non-parole period of 12 years and 10 months.

[29] The learned trial judge had fixed the starting point for the offence of rape at 12 years and added 5 years for the aggravating factors to bring the sentence to 17 years imprisonment. It can be deduced from paragraphs 13 and 14 of the sentencing order that 2 years was deducted for mitigation bringing the total sentence for rape to 15 years. The 5 years added for aggravation appears to be on the high side, considering that the factors of breach of trust, prevalence of similar offences against juveniles in community and the age difference could have been considered when the 12 years starting point was fixed. Also there is no specific apportionment of the 5 years to each of the three aggravating factors.

[30] The full court could review the sentence in light of above, and sections 4(1) and 18(1) of the Sentencing and Penalties Act, and the mitigating factors. 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: **Koroicakau v State** [2006] FJSC 5; CAV0006U.2005S. The approach taken by appellate courts in determining whether the sentencing discretion has miscarried, do not rely upon the methodology used by the sentencing judge. The approach taken is whether in all the circumstances of the case the sentence imposed lies within the permissible range. Ground 7 is arguable.

Conclusion

[31] In light of the above discussion, the appeal against conviction has no prospect of success. The appeal against sentence is arguable and has merit.

Order of Court

1. *Appellant's application for enlargement of time for leave to appeal conviction is refused.*
2. *Appellant's application for enlargement of time for leave to appeal sentence is granted.*

Solicitors
Reddy and Nandan Lawyers for the Appellant
Office of the Director of Public Prosecutions for the Respondent