IN THE COURT OF APPEAL, FIJI
On Appeal from the High Court of Fiji at Suva

CRIMINAL APPEAL NO. AAU 0019 of 2020
High Court Criminal Case No. HAC 304 of 2018

BETWEEN **CHANDRA SEGRAN**

Appellant

AND **THE STATE**

Respondent

Coram Mataitoga, P
Dobson, JA
Winter, JA

Counsel Mr. A K Singh for the Appellant
Ms. S Shameem for the Respondent

Date of Hearing : **8 July 2025**

Date of Judgment : **25 July 2025**

JUDGMENT

Introduction

[1] The appellant was convicted in the High Court at Suva on 5 February 2020 of two counts of rape and two counts of sexual assault. On 27 February 2020, he was sentenced to 12 years 10 months' imprisonment with a non-parole period of 10 years 10 months.

[2] He sought leave to appeal both his convictions and the sentence. Justice Prematilaka refused leave.[1] The appellant then filed a removal application.

[3] After hearing full submissions from Mr Singh on the appellant's behalf, we accept that there was a potential error in the Judge's summing up to the assessors, and inadequacies in the Judge's reasons. However, we are satisfied there has been no substantial miscarriage of justice and accordingly, whilst the application for leave to appeal is granted, the appeal is dismissed.

The alleged offending

[4] The complainant was a 15-year-old boy at the time of the events in issue. The appellant was a 52-year-old electrician. They met when the appellant carried out electrical works at the complainant's home where he lived with his mother and a brother. The complainant was not attending school at the time and accepted an invitation to accompany the appellant doing work in other locations, on the basis that he could assist in carrying and providing the appellant's tools for him. The complainant's evidence was that the appellant said he would pay him $50 per week. The complainant's mother agreed to the arrangement.

[5] A fortnight later, the complainant spent two days with the appellant when the latter was carrying out electrical works in a Suva apartment building. The complainant alleged that on the first day relevant to the charges, 6 June 2018, the appellant had taken him into the bathroom of the apartment they were working in, sat the complainant on the toilet and forced the complainant to put the appellant's penis in his mouth for one to two minutes.

[6] After that, the complainant said the appellant sat on the toilet seat, removed the complainant's trousers whilst he was standing facing the appellant in front of the toilet and the appellant put the complainant's penis in his mouth. The complainant was scared and did not consent to any of this activity. He did not complain to his mother or anyone else that night because he thought it would not happen again.

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1 *Segran Chandar v The State* Criminal Appeal No AAU0019 of 2020, Ruling 31 December 2021.

[7] These complaints gave rise to the first charge of rape contrary to s 207(1) and (2)(c) of the Crimes Act 2009, and of sexual assault, contrary to s 210(1)(a) of that Act.

[8] The next day the complainant was again picked up from home by the appellant and went with him to the same apartment block. In a different apartment, the complainant described a repetition of being taken to the bathroom by the appellant, who sat him on the toilet pan and pushed the complainant's head onto his penis. This occurred for a short period. The complainant's evidence was that when asked to do this he said "yes", but he only did so because he was scared.

[9] After this, they went back into the main room of the apartment and with the appellant naked and the complainant wearing only a t-shirt, the appellant told him to lie on the floor and once lying next to each other, the appellant told the complainant to kiss the appellant's breast. The appellant was masturbating and the activity did not take long.

[10] In respect of the second day, the complaints gave rise to the second count of rape, and the second of sexual assault, the latter being under s 210(1)(b)(i) of the Crimes Act 2009.

[11] The complainant said that after these events on each day, the appellant warned him not to tell others: on the first occasion he was not to tell his mother, brother or cousin, and on the second occasion not to tell his brother because he would tell their mother.

[12] After the complainant was dropped home on the second evening, he heard his mother on the phone to his stepfather. He told her he wanted to speak to his stepfather and told the stepfather that the appellant had removed his pants. The stepfather could not hear the complainant properly, and wanted the phone passed back to the complainant's mother. The complainant's mother then asked him what had happened, and he described the events complained of on both days. He said he did not want to go to work with the appellant the following day.

[13] This outline omits a number of details that the appellant now claims are material in assessing the credibility and reliability of the complainant's evidence. To the extent necessary we refer to them in dealing with the grounds of appeal.

[14] At trial, the appellant gave evidence and called evidence from his wife and from the maintenance supervisor at the apartment building where the offending was alleged to have occurred. Again, it is only necessary to traverse that evidence to the extent it arises in considering the grounds of appeal.

[15] The appellant's defence was that none of the offending occurred and that the allegations were all false. There were admitted facts that accepted the identity and domestic details of the complainant, that on both days the appellant and his wife had picked up the complainant, and that they went to the address of the apartments after dropping the appellant's wife off at her place of work. Also admitted by consent were certain photographs of the apartments as the location of the alleged offending.

[16] After a thorough summing up from the trial Judge, the assessors returned opinions that the appellant was guilty of all four charges. The Judge agreed with that and gave reasons in his judgment for doing so.

Grounds of appeal

[17] A number of the grounds of appeal depended on an expectation that had the alleged offences occurred, the complainant would inevitably have taken the opportunities both to cry out and to escape, and also to complain immediately. While some 15-year-olds might react in that way, on the evidence in this case we do not accept that those propositions apply when testing the credibility of a 15-year-old who was not at school and described by his mother in unchallenged evidence as slow and shy.

Ground 1

[18] This was that the Judge had wrongly failed to allow the defence to tender a medical report of an examination of the complainant on 10 June 2018, two days after the second set of alleged offending. For the State, Ms Shameem objected to this characterisation, pointing out that the record of exchanges between counsel and the Judge did not involve any refusal by the Judge to have the report admitted. Rather, that whether it was admitted, and if so how, was a matter left with defence counsel to come back to the Court about.

[19] As transcribed in the Judge's notes, the immediately relevant portions of the exchanges included the following:

> Judge: … I don't think it is necessary but if you insisted you may have to leave it. But how, you going to produce a doctor to him?

[20] We consider it most likely that there is a typographical error in that, more sensibly, the Judge would have said "…you may have leave to produce it".

[21] The passage from the transcript continues:

> Ms Sharmeem (State counsel) : … If need be then we can call the doctor and make him available as defence wants.
>
> Judge: Okay, if you want.
>
> …

[22] We accept the State's objection that there has not in fact been a ruling by the trial Judge precluding admission of the medical report.

[23] In the decision declining leave, Justice Prematilaka made the point that this was not a case of sexual offending where any injuries comprised part of the narrative, so no material prejudice would arise for the appellant if the report was not before the Court. For the appellant, Mr Singh suggested an expectation that the evidence that the complainant was pulled by the wrist led to an expectation that, if true, this would have left discernible marks. However, that does not reflect the narrative. We agree with Justice Prematilaka that there was no scope for an expectation that injuries would be observed.

[24] There is nothing in this ground.

Ground 2

[25] This was that the Judge failed properly to direct the assessors and himself on inconsistencies, omissions and contradictions in the prosecution evidence. However, the Judge did itemise numerous inconsistencies and directed the assessors that it was for them to consider whether they arose on aspects that were significant to proving the elements of the offences. Also, if there was an acceptable explanation for the inconsistencies or omissions the assessors might conclude that

the underlying reliability of the account was not affected. The Judge included the observation that the contrary applied in the absence of an acceptable explanation. In reviewing the complainant's evidence, the Judge identified the omissions and inconsistencies as between evidence given at trial and an earlier statement he gave to the Police.

[26] The summing up adequately put these matters to the assessors for their consideration and we agree with the assessment of Justice Prematilaka that none of the contradictions, inconsistencies or omissions appeared to be of sufficient magnitude as to shake the foundation of the prosecution case. Inconsistencies on details such as the sequence of matters (whether events occurred before or after lunch) and the room number are matters on which a slow 15-year-old can quite reasonably be expected not to be completely consistent. Mr Singh's expectations of complete consistency are, with respect, unrealistic given the predicament the complainant was in.

Ground 3

[27] This was that the Judge erred in fact and in law when he misdirected himself and failed to direct the assessors to take into account the totality of the evidence. The essence of this complaint was that "… in its totality [the evidence] is unsatisfactory, saddled with irreconcilable inconsistencies, improbabilities and omissions".

[28] This was in many respects a re-run of ground 2 in that inconsistencies and omissions were not recognised as raising a reasonable doubt about the prosecution case. Further points raised on this included that:

(a) there was no direct evidence that the appellant threatened the complainant;

(b) on 6 June 2018 (the day of the first alleged offending) the complainant went home and was found normal by his mother and cousin;

(c) there was evidence that the appellant and the complainant went and purchased the complainant's safety boots and long trousers after the alleged offending; and

(d) the independent defence witness (the maintenance supervisor of the apartment building) on various occasions was present in the room on both days.

[29] The State dismissed a number of the points raised on this ground as matters that were not put to the complainant when he gave his evidence, so that the proposition in question could not be held against his evidence as an inconsistency. These included that he had not taken earlier opportunities to complain, including the prospect of complaining to the appellant's wife.

[30] In addition, the appellant submitted that regard had not been had to evidence that the appellant took the complainant to buy work trousers and safety boots after the alleged offending, the implication being that such conduct would not have occurred if there had just been a rape. The State's response to this was that the appellant's position until he gave evidence was that these purchases indeed did occur before the alleged offending and the complainant's evidence was consistent with that. It was only in the appellant's own evidence that he claimed that the purchases occurred after the alleged offending. Obviously, that was another matter that could not have been put to the complainant.

[31] We are not persuaded that making such purchases for the complainant after non-consensual sex was sufficiently unlikely to rank as a matter that ought to have weighed against the proof of the prosecution case. This is especially as the post-offending scenario was not one put to the complainant.

[32] As Justice Prematilaka pointed out in rejecting this ground, the complaint ignored an explicit direction the Judge gave the assessors:

> *" In assessing the evidence, the totality of the evidence should be taken into account as a whole to determine where the truth lies."*

[33] We respectfully agree.

Ground 4

[34] This criticised the absence from the Judge's reasoning of any explanation as to why he found the prosecution witnesses were reliable and credible when, on the

appellant's case, there was a competing narrative provided in the defence evidence as well as the existence of inconsistencies in the prosecution case.

[35] The Judge has stated in his reasons:

> *"35. The Assessors have found the evidence of the prosecution as truthful and reliable as they have by their unanimous decision found the accused guilty of all the charges. Therefore, it is clear that they have rejected the position taken up by the defence.*
>
> *36. In my view, the Assessor's opinion was justified. It was open for them to reach such a conclusion on the available evidence. I concur with the unanimous opinion of the Assessors in respect of all four counts.*
>
> *37. Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the offences of Rape (Counts 1and 3) and Sexual Assault (Counts 2 and 4) with which the accused is charged."*

[36] Justice Prematilaka dealt with this ground as follows:

> *" [19] 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; CAV 02.2013 (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) and **Fraser v State** [2021] FJCA 185; AAU128.2014 (5 May 2021)].*
>
> *[20] A trial judge is not expected to repeat everything he had stated in the summing -up in the judgment (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. Then the summing-up becomes part and parcel of the judgment [vide **Fraser v State** [2021] FJCA 185; AAU128.2014 (5 May 2021). In Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only to offer their opinion, based on their views of the facts and it is the judge who ultimately decides whether the accused is guilty or not [vide **Rokonabete v State** [2006] FJCA 85; AAU0048.2005S (22 March 2006), **Noa Maya v. The State** [2015] FJSC 30; CAV 009 of 2015 (23 October 2015] and **Rokopeta v State** [2016] FJSC 33; CAV0009, 0016, 0018,0019.2016 (26 August 2016)].*

[21] Having examined the judgment, I am of the view that the trial judge had complied with his statutory function in agreeing with the assessors. When the judge agreed with the assessors that prosecution evidence was truthful and reliable he had by necessary implication rejected the defence evidence……….

…….

*[24] In any event, the appellant's trial counsel had not sought redirections in respect of some of the complaints now being made on the summing-up as strongly commented upon in **Tuwai v State** [2016] FJSC35 (26 August 2016) and **Alfaaz v State** [2018] FJCA19; AAU0030 of 2015 (08 March 2018) and **Alfaaz v State** FJSC 17; CAV 0009 OF 2018 (30 August 2018). Thus, any deliberate failure to do so would disentitle the appellant even to raise them in appeal with any credibility."*

[37] This ground of appeal has caused us concern. We do not wish to revisit the existing position that the provision of reasons where the Judge agrees with the assessors' opinion is not mandatory, but advisable. [2] However, this appeal demonstrates the difficulties for all concerned when a trial judge records his or her satisfaction that the prosecution case has been made out by evidence from credible and reliable witnesses, without explaining the grounds for that conclusion. The difficulty applies most directly for the convicted person in reducing the opportunity for either him or her to understand why they have been convicted and to meaningfully assess the prospects for an appeal. Difficulties also arise for all others involved in any appeal that is pursued.

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[2] In addition to the judgments cited by Justice Prematilaka in [19] of his Ruling, quoted at [36] above, see, *Aziz v State* [2015] FJCA 91, at [58]

[38] On the leave application in this case, Justice Prematilaka reconstructed sufficient grounds for confirming that the prosecution evidence could be accepted as credible and reliable, so that the conclusion that the prosecution case was proven beyond reasonable doubt was indeed justified.

[39] On reflection, we agree with that. A concise statement of reasons by the trial Judge who had been thoroughly immersed in all trial issues might well have diminished, or at least confined, the scope of the issues sought to be pursued on appeal.

Ground 5

[40] This contended that the Judge had wrongly dealt with the complainant's evidence (and that of his mother) as to his complaint about the offending. Mr Singh submitted that it did not occur on the first reasonable opportunity and therefore did not qualify as recent complaint evidence. He also submitted that it was not "volunteered" which arguably took it outside the scope of admissible evidence as to the reliability of a complainant's evidence about the alleged offending.

[41] We have described at [12] above the circumstances in which the complainant first attempted to make a complaint on the phone to his stepfather on the night of the second alleged offending, and as a result of that not going smoothly, the explanation of his complaint to his mother that followed.

[42] The Judge directed the assessors on this evidence in the following terms:

> *"17. You heard in this case the evidence of Meresini Vuniwaqa, the mother of the complainant. She testified that on the night of 7 June 2018, the Complainant had related to her the alleged acts which the accused had committed on him, on 6 June and 7 June 2018. You should consider whether this could be regarded as a complaint made by the complainant of the alleged incidents. If so you should also consider whether he made that complaint without delay and whether he sufficiently complained of the offences the accused is charged with.*
>
> *18. The complainant need not specifically disclose all of the ingredients of the offences and describe every detail of the incident, but the complaint should contain sufficient information with regard to the alleged conduct of the*

accused. Accordingly, if you are satisfied that the complainant made a prompt and a proper complaint, then you may consider that his credibility is strengthened in view of that recent complaint.

19. It must be borne in mind that the complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with his evidence given at the trial. It goes to support and enhance the credibility of the complainant."

[43] In his own judgment, the Judge dealt with it as follows:

"21. I am satisfied that the complainant made a prompt and a proper complaint of the incidents to his mother, which was on the second day the incidents occurred. He testified that he did not tell anyone about what happened on the first day as he thought the accused would not do anything to him on the next day (second day). It is my opinion that the complainant's credibility is enhanced and strengthened in view of this recent complaint."

[44] Justice Prematilaka dealt with this ground succinctly:

"27. I have examined the summing-up and the judgment and find that the trial judge's directions in paragraph 17-19 of the summing-up and his own conclusion in paragraph 21 of the judgment on recent complaint evidence of the complainant's mother cannot be reasonably criticized."

[45] We agree. Mr Singh's expectation that the complainant ought to have complained immediately to his mother after the first set of offending, and potentially also to the appellant's wife, is unrealistic. It can readily be accepted that he was very embarrassed at his own part in what had occurred, and he was a quiet and slow 15-year-old. His initial attempt to raise his complaint with his stepfather, who was at a distance and on an apparently inadequate phone line, also suggests that he was shy of relaying what had happened to a female, even his mother. Once the topic had been broached with the stepfather, he unburdened himself to his mother.

[46] As to its not being "volunteered", we similarly reject Mr Singh's argument as based on an unrealistically narrow concept. He initiated dialogue about the offending, and in the course of that made a complaint to his mother. We agree that it was appropriately taken into account in assessing his overall credibility.

Use of agreed facts

[47] A matter raised in Mr Singh's written submissions, but not pressed at the hearing, was the use made of the agreed statement of facts by the Judge in summing up the case to the assessors. In reviewing the prosecution evidence, the Judge interposed references in chronological sequence, to the items that had been set out in the agreed statement of facts. In reviewing the narrative in this way, there was a potential risk that the parts of the prosecution narrative consistent with those agreed facts might be seen by the assessors as corroborated by the agreed statement of facts. When the Court raised this prospect with Ms Shameem, she resisted it and submitted that the agreed statement of facts was available to all participants in the trial as just that, and no prejudice to the appellant arose because of the way in which the Judge used them in reviewing the prosecution case.

[48] We agree that it was not an error by the Judge to do so, and does not raise a prospect of the assessors returning unsafe opinions. Nor does it suggest by implication in the Judge's own reasoning that he placed inappropriate weight on the agreed statement of facts. Nevertheless, in cases like this where sensibly agreed facts provide milestones to anchor the prosecution narrative surrounding the alleged offending, it may be preferable for the Judge to address the appropriate use that the assessors could make of an agreed statement of facts identifying them separately and leave it to them to make whatever use they consider appropriate in taking the agreed statement of facts into account in assessing the prosecution case.

Overall assessment

[49] We were persuaded to grant leave because of two concerns. First the possible consequences of the Judge not providing reasons for his positive finding as to reliability and credibility of the Prosecution evidence. Secondly on the prospect that the manner of the Judge's references to the agreed statement of facts in his summing up may inadvertently have given additional weight to the contested aspects of the narrative described chronologically together with those references.

[50] Ms Shameem submitted that if, contrary to her submissions, the Court found there to have been any error during the trial, then the Court ought to invoke the provisio

in s23(1) of the Court of Appeal Act 1949 to nonetheless dismiss the appeal. That provisio is in the following terms:

> *"Provided that the Court may, notwithstanding that they are of opinion the point raised in the appeal against conviction or against acquittal might be decided in favour of the appellant, dismiss the appeal if they consider that no substantial miscarriage of justice has occurred."*

[51] In Aziz v State [3] this Court adopted earlier United Kingdom authority that the approach to the proviso was that if the Court of Appeal is satisfied on the whole of the facts that with a correct direction the only reasonable and proper verdict would be one of guilty, then there is no substantial miscarriage of justice. The Court recognised in that judgment that the same test had applied in New Zealand.[4]

[52] We are satisfied that in this case, the only proper verdicts were ones of guilty. There can not have been any substantial miscarriage of justice, and accordingly the provisio applys. The appeal against conviction is dismissed.

The sentence appeal

[53] The sentence was challenged first on the ground that the Judge wrongly accepted the complainant's victim impact statement produced for sentencing that claimed emotional and psychological trauma which was ongoing. Arguably, that was inconsistent with his evidence at trial which was that he "felt nothing" immediately after the offending.

[54] The State's response on this was that in the absence of a challenge to the victim impact statement at sentencing, the appellant could not displace the Judge's entitlement to have regard to it. In any event, we are not persuaded that the two states of mind given in evidence and the later victim impact statement are necessarily inconsistent. An honest recollection as to his immediate reaction does not necessarily carry forward into the impact of the offending on the complainant once the nature of it and the inevitable embarrassment and possible shame of it becoming public took shape for him.

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[3] Aziz v State [2015] FJCA 91 at [53] to [57]
[4] R v Nair [1955] NZLR 711, at p.713

[55] The second ground in the sentence appeal was that the Judge failed to appreciate the distinction between anal and oral rape on a male victim, contending that lower sentences should apply in the second category, as here. Arguably, this distinction should be made because of the lower risk of physical harm. Mr Singh did not cite any comparable sentencing which might demonstrate that this rendered the length of sentence manifestly excessive.

[56] For the State, Ms Shameem countered that the law in Fiji does not make a distinction between the two forms of rape. We were not provided with any adequate analysis to undertake a review of whether such a distinction is warranted. In any event, as Ms Shameem submitted, the sentence imposed here came well within comparable sentencings for oral rape and there was no basis for contending that it was manifestly excessive.

[57] The comparators cited included <u>State v Bose- Sentence</u> [2022] FJHC 232 where a sentence of 13 years was imposed after trial with a non-parole period of 11 years for one count each of anal and oral rape upon a 14 year old. Also, <u>State v. Kuruidanini</u> – Sentence [2022] FJHC 557 where a sentence of twelve years ten months imprisonment, with a non-parole period of nine years ten months was imposed following a guilty plea to a single count of oral rape of a nine-year-old.

[58] Precise comparisons are not possible given the range of circumstances relevant to individual sentences. However, making allowances for the age of the victims and pleas entered, these examples support the conclusion that the level of sentence imposed here was clearly not manifestly excessive.

[59] A further point raised orally by Mr Singh was that the non-parole periods imposed in Fiji are set at a far higher proportion of the total sentence than is appropriate to address the prospects of rehabilitation and to encourage that. He contrasted the usual modest portion of the non-parole periods as a fraction of total sentences, with the larger extent of reductions in setting non-parole periods in other jurisdictions such as New Zealand.

[60] Again, this raises a policy matter on all custodial sentencing. It is not a matter to be entertained in a single case, especially one without detailed analysis and supporting data that might be likely to justify a revision of the ratio between total

sentences and non-parole periods. Indeed that challenge may be better addressed in a sample of appeals rather than any single one.

[61] We see no reason to interfere with the Judge's sentence.

Orders of the Court :

1. *We grant leave to appeal against convictions and sentence.*
2. *We dismiss the appeal against convictions and sentence.*

Hon. Mr Justice Isikeli Mataitoga
PRESIDENT OF THE COURT OF APPEAL

Hon. Mr. Justice Robert Dobson
JUSTICE OF APPEAL

Hon. Mr. Justice Gerard Winter
JUSTICE OF APPEAL

COURT OF APPEAL
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