

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

**CRIMINAL APPEAL NO. AAU 055 OF 2024**  
**[Suva High Court: HAC 259 of 2022]**

**BETWEEN** : **SULIASI ULUILAKEBA** *Appellant*

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

**Coram** : Qetaki, RJA

**Counsel** : Mr. J. Cakau for the Appellant  
Mr. Kumar for the Respondent

**Date of Hearing** : 8 August, 2025

**Date of Ruling** : 26 August, 2025

## **RULING**

### **(A). Background**

[1] The Appellant is challenging his conviction in the High Court at Suva where he was charged for three counts of Sexual Assault two counts contrary to section 210(1) (a), and one count contrary to section 210(1) (b) (i) of the Crimes Act 2009; One count of Indecent Assault contrary to section 212(1) of the Crimes Act 2009 and one count of Rape contrary to section 207(1) and (2) (a) of the Crimes Act.

[2] The Appellant was convicted following trial on 19th July 2024 for two counts of Sexual Assault and one count of Indecent Assault.

[3] The Appellant was sentenced on 29 July 2024 to an aggregate of 6 years imprisonment for the Sexual Assaults with a concurrent 12 months imprisonment for Indecent Assault. After discounting for time spent in remand, the final sentence was an overall head sentence of 5 years and 6 and half months imprisonment with a non-parole period of 5 years imprisonment.

[4] The Appellant filed a timely appeal against conviction on 22 August 2024 with six proposed grounds of appeal.

**(B). Facts**

[5] The facts and the evidence before the Court are set out in paragraphs 14 to 24 (Prosecution Case), and paragraphs 25 to 28 (Defence case) of the judgment.

[6] In paragraphs 1 and 2 of Sentencing, the learned Sentencing Judge stated:

*“1. Suliasi Uluilakeba, following a trial, you were convicted of two counts of sexual assault and one count of indecent assault on your stepdaughter who was about 14 years old at the time of the offence in 2020. On the representative count of sexual assault in Count 2, you unlawfully and indecently assaulted the victim by touching her breast and kissing her lips while she lay asleep in the sitting room. On another occasion while she was in her towel after a shower and looking for clothes to wear in the room you shared with her mother, you unlawfully and indecently assaulted her by rubbing your toe on the back of her thigh while lying on your bed. You were also convicted of a representative count of sexual assault in that during the same period in 2020, you procured her to, without her consent, commit an act of gross indecency by making her stroke your penis.*

*2. She was scared and did not tell anyone until after she left home, unable to live with what you were doing to her. She did not think her mother, your wife, would believe her. The relatives she went to witnessed her distress and difficulty in disclosing what you did to her and the reason why she left home.”*

[7] Additionally, the following facts (paragraph 13 of judgment) were agreed between the parties:

1. Complainant's name (suppressed by order of the Court) and date of birth, 23 January 2006.
2. The Accused's name.
3. The Accused is the Complainant's step father, so they share a domestic relationship. At the time of the alleged offending, the Complainant was 14 years old and lived with the Accused in a settlement in a town outside of Suva,
4. On 28<sup>th</sup> January 2021, the Complainant went to her biological father's house after school.
5. On 29<sup>th</sup> January 2021, the Complainant lodged a complaint against the Accused alleging that he sexually assaulted and raped her.
6. On 29<sup>th</sup> January 2021, the Complainant was medically examined at the MSP clinic in Suva by Dr. Losana Burua.
7. On the 4<sup>th</sup> February 2021, WDC 3226 Sabina took photographs of the house in which the Accused and Complainant resided at the time of the offence.
8. The admissibility of the following document is not in dispute and the same will be tendered by consent:
  - i) The Complainant's birth certificate.
  - ii) Photographic booklet dated 4<sup>th</sup> February 2021.

**(C). Grounds of Appeal**

[8] The grounds of appeal are:

1. *That the learned trial Judge erred in fact and law when he failed to properly address the evidence of sexual and indecent assault such the failure to consider and give weight to the evidence of the Appellant on it, the failure of which resulted in a judgment which was perverse and amounts to a miscarriage of justice.*
2. *That the learned trial Judge erred in fact and law in not properly addressing the inconsistent evidence led at trial by the complainant,*

*which is absent in the judgment and such absence resulted in an unsafe judgment.*

3. *That the learned trial Judge erred in law and in fact when he failed to consider that the complainant failed to report the matter to her biological mother and she did not give any cogent reasons for not reporting the alleged incidents to her mother either on the same night of the incident or the next morning, thus creating a doubt on her credibility and truthfulness of the evidence.*
4. *That the learned trial Judge erred in law and in fact in not taking into full consideration that the complainant failed to make a complain at the first reasonable opportunity but several years later caused a substantial miscarriage of justice.*
5. *That the learned trial Judge erred in law and in fact in not directing herself adequately any possible defence on evidence and as such by her failure there was a substantial miscarriage of justice.*
6. *That the learned trial Judge erred in law and in fact in finding the Appellant guilty on three counts and not finding him guilty on two counts being the same complainant was an inconsistent verdict and as such there was a substantial miscarriage of justice.*

**(D). High Court Judgment delivered on 19<sup>th</sup> July 2024 (per Siainiu Fa’alogo-Bull J )**

[9] Discussed Prosecution case (Evidence) in paragraphs 14 -24, and Defence case (Evidence) in paragraphs 25 to 28.

[10] The learned trial Judge carried out an Analysis of the evidence in paragraphs 29 to 44 and made findings and observations which are reflected below :

- (a) *There are two diametrically opposed accounts: the Complainant alleges that she was sexually assaulted and raped by the Accused. The Accused denies all allegations against him.*
- (b) *The Accused had chosen to give evidence. He is presumed innocent and is under no obligation to give evidence or prove his innocence.*

- (c) *The evidence of the witnesses called by the Accused in his defence will be subjected to the same scrutiny as all other evidence in determining the issues before the Court.*
- (d) *In assessing evidence, consideration is given to the credibility and reliability of each witness' evidence.*
- (e) *All essential elements must be proved beyond reasonable doubt, but not all the facts of the story need be proved to such standard.*
- (f) *Raduavala (Complainant's aunt) was called by the prosecution to show consistency in the Complainant's evidence. The report made to Raduavala is not independent evidence on the allegation of sexual impropriety, and is not recent complaint.*
- (g) *Victims of sexual offences do not all react the same way. Some may react and raise alarm immediately, while some keep the abuse secret out of fear, shame, shock guilt and/or sense of helplessness.*
- (h) *A delayed complaint does not necessarily mean falsity in the report, any more than a prompt report would of necessity point to its truth.*
- (i) *The identity of the Accused is not an issue. He is the Complainant's stepfather and she lived with him until she left in January 2021.*
- (j) *The Complainant was 14 years old at the time of the incident. She lived with her mother and the Accused, and was dependent on them for support. She did not tell her mother about what the Accused did to her because she was a bit scared and embarrassed to do so. She did not think her mother would believe her.*
- (k) *The Complainant mother's evidence was that she was strict on the Complainant. She agreed that the Complainant would not come to her if she was going through something because the complainant was afraid of her.*
- (l) *The absence of a prompt report by the Complainant is not unreasonable under the circumstances.*
- (m) *In consideration of the defence version of events that the Accused's niece, husband and family were not living with the family in 2020 as they left in 2019 and returned in 2022, there were inconsistencies exposed in cross-examination of Complainant's sister (Accused's niece), the inconsistency*

*was not explained, and she was not a reliable witness. There relationships and loyalties involved were considered. From their conduct and demeanour in Court, a view is formed that the evidence of the defence seemed forced and rehearsed. The Complainant's consistent evidence on this issue is believed.*

*(n) The Complainant gave consistent evidence calmly in a straight forward and spontaneous manner which did not seem rehearsed. The Complainant was honest and truthful. Complainant was not evasive or in her demeanour or evidence. It cannot be believed that the Complainant made up the allegations just because she wanted to go to her biological father.*

[11] The learned trial Judge then addressed the specific counts (paragraphs 45 to 49) as set out below:

**Count 1:** The Accused was acquitted of this count (Sexual Assault) as the prosecution did not lead any evidence on it.

**Count 2:** The learned trial Judge believed in the Complainant's evidence, and accepts her account of the incident. It was established that while sleeping in the sitting room, the Accused who was sleeping with her mother on a mattress close by touched her breast and kissed her on the lips. She was asleep and did not consent to such acts. The evidence of the Defence witnesses were not convincing to create any reasonable doubt on the charges laid.

**Count 3:** The Complainant's evidence that the Accused had used his big toe to "scratch" the back of her thigh over her towel while she was looking for her clothes in his room was accepted by the Court. The Complainant was vigorously cross-examined but she maintained her position. Learned trial Judge was satisfied beyond reasonable doubt that the offence was committed by the Accused as charged.

**Count 4:** The Complainant's evidence was not believed, there was doubt on what happened. That is, Complainant said that when she woke up, she was completely naked and the Accused was on top of her, inserting his male private parts into her female private part. It was not explained how her clothes were removed without her being aware.

**Count 5:** The Complainant’s evidence the Accused made the Complainant stroke his penis and that she did not consent to do such an act was accepted and believed by the Court.

[12] The Court arrived at the following verdicts:

- (i) On Count 1- Accused not guilty and acquitted of sexual assault.
- (ii) On Count 2- Accused guilty and convicted of sexual assault.
- (iii) On Count 3- Accused guilty and convicted of indecent assault.
- (iv) On Count 4-Accused not guilty and acquitted of rape.
- (v) On Count 5- Accused guilty and convicted of sexual assault.

**(E). The Law**

[13] In terms of section 21(1) (b) of the Court of Appeal Act, the Appellant could appeal against his conviction only with the leave of the Court. For a timely appeal, the test for leave to appeal against conviction and sentence is *reasonable prospect of success*”: **Caucu v State** [2018] FJCA 171; AAU0029 of 2006(4 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;AAU010 of 2014 (15 July 2014) and **Naisua v State** [2013] FJSC 14 ;CAV10 of 2013 (20 November 2013).

**(F). Appellant’s Case**

[14] **Ground 1:** The Appellant submits that the verdicts arrived at by the learned trial Judge was perverse and inconsistent. That the learned Judge erred in law by giving irreconcilable verdicts, based on identical evidence from the same witness. Appellant was acquitted on count 4 (Rape), but convicted on grounds 2 (Sexual Assault), 3(Indecent Assault) and 5 (Sexual Assault).

[15] The Appellant submits that the contradiction is apparent when the Appellant was convicted of rape due to ‘reasonable doubt’ about removal of clothing, yet accepted

the same witness' testimony\_for counts 2,3 and 5. That section 237(2) (b) of the Criminal Procedure Act 2009 has been breached, as a judgment must demonstrate reasons for accepting or rejecting evidence. Cites the case **Kumar v Kumar** [2014] FJCA 112, on inconsistent verdicts grounded in identical witness credibility are 'unsafe and unlawful'.

- [16] **Ground 2:** The learned trial Judge failed to address critical inconsistencies undermining the Complainant's reliability. On lighting conditions, the Complainant claimed darkness during the sitting-room assault. Yet later identified the Accused using a phone light during the bedroom incident. This discrepancy was not reconciled. On clothing removal, count 4, the Complainant could not explain how she was stripped naked while asleep, creating doubt about the entire account. Section 135 of Evidence Act 2009 requires that inconsistencies affecting the credibility of witnesses must be scrutinized. **Barker v The Queen** [1989] HCA 18.
- [17] **Grounds 3 and 4:** Recent complaints is addressed under section 129 of the Criminal Procedure Act 2009. While it permits excusing delays in reporting, appellate courts may scrutinize whether the Judge adequately considered the reasonableness of the 1 year delay and lack of disclosure to the mother. See **State v Raqauqau** [2008] FJHC 241.
- [18] **Ground 5:** The Appellant submits that section 237 of the Criminal Procedure Act 2009 was not complied with. The provision requires that judgments must contain 'reasons for the decision'. The Appellant submits that defences, for example, alibi, sleeping arrangement, were not adequately analyzed by the court as there was no reasons given for such judgment.
- [19] **Ground 6:** The Appellant submits that section 23 of Criminal Procedure Act 2009 requires that an accused's guilt be proven 'beyond reasonable doubt'. Inconsistent verdicts (on conviction on touching/ kissing but acquittal on penetration.) potentially affect the burden of proof, based on the same witness credibility. See **Kumar v State** (supra).

**(G). Respondent's case**

- [20] **Ground 1:** The Respondent submits that, it appears the Appellant's complaint is directed at the learned Judge's decision to convict the Appellant when the identity of the offender is unclear. However, it is clear from the judgment that there was no issue on the element of the identification, and it was clear to the complainant that it was her stepfather (the Appellant) who had sexually and indecently assaulted her.
- [21] The Respondent submits that the learned trial Judge had meticulously considered all the trial evidence (see judgment), and had thoroughly dealt with each count in a precise and surgical manner, which resulted in 2 acquittals, despite the conviction of the Appellant for sexual assaults and indecent assault. There was no legal or factual mistake as alleged. This ground has no prospect of success.
- [22] **Ground 2:** The Respondent submits that this ground also does not have prospect for success. The well written judgment is clear evidence that the learned trial Judge had meticulously addressed material inconsistencies in the complainant's evidence. The Respondent submits that, had the learned trial judge lapsed in her bounden duties, the Appellant would not have been acquitted of rape.
- [23] **Ground 3:** That this ground has no reasonable prospect of success to assail conviction (see paragraphs 37-39 where it was considered as reasonable the complainant's lack of complaining to her strict mother. It was also observed at the trial that no two alleged victims of sexual crimes respond or react in the same way and this simply shows that her Ladyship was alive to relevant aspects of determining witness credibility.
- [24] **Ground 4:** The Respondent submits that this ground is unarguable as the delay in complaining was properly analysed and the reasons were uncontroversial (see paragraph 22 of judgment). The learned trial judge was also mindful that the matter was reported to the police on 29 January 2021 as admitted by the parties. It is misconceived to argue that the complaint was made "several years later" "from 2020, when in fact as agreed by the prosecution and defence that the complaint was reported at the start of 2021.

[25] **Ground 5:** The Respondent submits that in the face of a complete denial by the Appellant, there were no other directions to consider or to be mindful of apart from the directions contained in the judgement. In any event, the defence counsel ought to have sought relevant re-directions had they be relevant to the defence. That this ground is unarguable.

[26] **Ground 6:** The Respondent submits that this ground has no reasonable prospect of success. The ground completely ignores the trite principle of divisibility of a witness's testimony. The learned trial Judge had addressed each count separately and fairly and gave the Appellant the benefit of the doubt for counts (Rape). There was no error of law or of fact, and it is open to the Court to accept parts of a witness's evidence and reject certain parts.

[27] The Respondent submits that in light of the above submissions, leave to appeal conviction ought to be refused on all grounds.

#### **(H). Analysis**

[28] The Appellant in this challenge against the judgment of the learned trial Judge contends that the latter was mistaken in fact and in law in:

*(a) Failing to properly address the evidence of sexual and indecent assault and failed to give weight to the evidence of the Appellant on it, which resulted in a judgment that is perverse and amounts to a miscarriage of justice;*

*(b) Not properly addressing the inconsistent evidence led at the trial by the complainant, which is absent in the judgment and such absence resulted in an unsafe judgment;*

*(c) Failed to consider that the complainant failed to report the matter to her biological mother and she did not give any reasons for not reporting the alleged incidents to her mother either on the same night of the incident or the next morning, thus creating a doubt on her credibility and truthfulness of the evidence;*

*(d) Not taking into serious consideration that the complainant failed to make a complain at the first reasonable opportunity but several years later caused a substantial miscarriage of justice;*

*(e) Not directing herself adequately any possible defence on evidence and as such by her failure there was a substantial miscarriage of justice, and*

*(f) Finding the Appellant guilty on three counts and not finding him guilty on two counts being the same complainant was an inconsistent verdict and as such was a substantial miscarriage of justice.*

[29] There are issues raised by the Appellant that, I believe is relevant to all the grounds raised in this appeal such as that there has been a conflict of verdicts resulting in the acquittal of the Appellant on Count 4 (Rape) and conviction on the other Counts (Sexual Assault) in Counts 2,3 and 5. The concern appear to be based on the presumption that the charges were all based on the same facts, and based on the evidence of the same witnesses, giving rise to the challenge that the learned trial Judge had erred in not fully or adequately analyzing and evaluating and weighing the evidence before the Court, before convicting the Appellant. If there is such a presumption, it is not sustainable and is easily dispelled due to the fact that the learned trial Judge had in my view carefully assessed, evaluated and analysed and weighed all the evidence before convicting the Appellant- See Part (D), especially paragraph [10] and [11] above.

[30] In my assessment, the judgment is well structured with the learned trial Judge first setting out the charges and discussing the elements of the offences, and the standard of proof required of the prosecution which has the sole burden of proving each of the charges have been proven beyond a reasonable doubt- see paragraphs 4 to 12 of the judgment. Secondly, the learned trial Judge proceeded to discuss the evidence adduced by the prosecution (paragraphs 14 to 24 of judgment), and the evidence of the defence (paragraphs 25 to 28 of judgment) .Third, the learned trial judge conducted an analysis of the evidence (paragraphs 29 to 44 judgment) before focusing on the specific counts in considering whether the evidence is sufficient to prove a particular charge beyond reasonable doubt-see paragraphs [45] to [49] of judgment.

[31] Overall, in the Analysis, the learned trial Judge had referred to individual Counts and based on evidence, and had made an assessment on whether the evidence has met the required standards, in other words whether the prosecution has proven the charge beyond reasonable doubt- See Part D above and paragraphs 29 to 50 of the judgment.

### **Ground 1**

[32] It is important to emphasize that the Appellant is in total denial of the incidents/offences complained of which are the subject of the charges, Secondly, there is no issue or dispute on identification of the Appellant who has been singled out as the person who committed the acts complained of against the Complainant. It is also noted that in Count 1 on Sexual Assault the Appellant was acquitted on that Count, as the prosecution did not lead any evidence on it. The Appellant was acquitted on Count 1(Sexual Assault) and Count 4 (Rape). He was convicted on Counts 2 (Sexual Assault), 3 (Indecent Assault) and 5 (Sexual Assault). Was there irreconcilable verdicts?

[33] On Count 1, the acquittal was due to the fact that the prosecution did not lead any evidence to support the charge. However, the facts and circumstances of the Rape incident (Count 4) is described in paragraph 19 of the judgment, as told by the complainant and the prosecution. The Appellant had denied all the charges including Rape in Count 4. The reason for the acquittal is stated in paragraph 48 of the judgment. The learned trial judge stated she had some doubts about how the Rape is alleged to have happened. She doubted as the Complainant's did not explain how her clothes (a shirt, a pair of shorts and a panty) had been removed without the complainant waking up. The learned trial Judge was left with reasonable doubt as to how the alleged Rape could have happened. The evidence adduced to support the charge of Rape is not the same evidence that is adduced to support Counts 2, 3 and 5.

[34] On Count 2, the facts and circumstances are set out in paragraphs 15, 16 and 17, The Complainant said that the first thing she felt was someone lying on top of her. It was dark in the living room but she knew it was the Accused because when she tried to reach for the torch, he told her to keep quiet as the others were sleeping. She felt disgusted and did not like what he did. The Complainant did not tell her mother about

this incident because she was a bit scared and embarrassed to do so, She had thought her mother would not believe her. In her analysis paragraphs 45 and 46 of judgment, the learned trial Judge not only believed the Complainant's account of the event, she further stated she is satisfied beyond reasonable doubt that the assault complained of had a sexual connotation to it and is offensive to the recognized and accepted standards of good behavior.

[35] On Count 3, the facts and circumstances are set out in paragraph 21 of the judgment, which the learned trial Judge (paragraph 47 of the judgment) accepted, and acknowledging that the Complainant was "cross-examined vigorously" on the Accused's conduct. The learned trial Judge was satisfied beyond reasonable doubt that the act of the Appellant (in using his big toe to "scratch" the back of her thigh over her towel while she was looking for her clothes in his room) offends the recognized and accepted standards of good behavior in this community.

[36] On Count 5, the facts and circumstances are set out in paragraph 20 of the judgment. The learned trial Judge in paragraph 45 of the judgment stated she believed the Complainant's evidence that the Appellant made the Complainant stroke his penis and that the Complainant did not consent to such an act. The learned trial Judge added that, she felt sure such an act was grossly indecent.

[37] Having considered **Ground 1** in the context of the evidence and the circumstances of counts 1, 2, 3, 4 and 5, and the learned trial Judge's verdicts, I am of the view that the learned trial Judge had adequately addressed the evidence of sexual and indecent assault and noted the Appellant's denial of all the allegations in the charges against him. The judgment was not perverse. There is no miscarriage of justice. This ground has no merit. It is unarguable.

## **Ground 2**

[38] The Appellant points to inconsistencies which allegedly were not addressed by the learned trial Judge. For example the lighting conditions in the sitting room during the incident alleged in Count 2, and is set out in paragraph 16 of the judgment. Here, it is clear that the identity of the Appellant is not in dispute. The Complainant knew it was

him (the Appellant) because when she tried to reach out for the torch, he told her to keep quiet as the others were sleeping. The removal of clothing of the Appellant in relation to Count 4 was raised as an example also, where the learned trial Judge had acquitted the Appellant as she was not reasonably satisfied with the Complainant's evidence, as it did not explain how the Complainant's clothing was removed without her being awakened. The credibility of the Complainant was not undermined at all. The Appellant has not demonstrated that the inconsistencies complained of are such that they shake the very foundation by which the verdict was determined by the Court. The fact that the Appellant was acquitted on Count 4 is the strongest argument against this ground. This ground has no prospect of success.

### **Ground 3**

[39] It is alleged that the learned trial Judge was mistaken in fact and in law in failing to consider the fact that the Complainant failed to report the matter to her biological mother and had failed to give cogent reasons for not so reporting which has created a doubt on the credibility and truthfulness of her evidence. As stated in paragraph 34 of the judgment, victims of sexual offences do not all react in the same way. Some may react and complain immediately, and others may take time to consider or are prevented to report immediately due to other differing factors. The learned trial Judge had adequately addressed this aspect in her judgment. The learned trial Judge accepted the Complainant's reasons for not reporting the alleged incident to her biological mother. The credibility and truthfulness of the Complainant's evidence remain untainted and unaffected. The ground is unarguable.

### **Ground 4**

[40] The learned trial Judge had accepted as reasonable the reasons for the delayed reporting. The complaint was made when the first opportunity arose on 29<sup>th</sup> January 2021 a day after the Complainant went to her biological father's house. No substantial miscarriage of justice is caused. The report was not made after "several years later" as asserted by the Appellant. The ground is unarguable.

### **Ground 5**


[41] This ground has in my view been adequately covered by the learned trial Judge. The Appellant was in complete denial, and the Appellant's witnesses were not believed, See Part (D) above. There was no substantial miscarriage of justice. The ground is unarguable.

### **Ground 6**

[42] This ground was adequately addressed in the judgment (see Part (D)) above and the Analysis relevant to **Ground 1** above. The ground is unarguable.

### **Order of Court**

1. *The Appellant's application for leave to appeal conviction is not allowed.*



**Hon. Justice Alipate Qetaki**  
RESIDENT JUSTICE OF APPEAL

### **Solicitors**

Vosarogo Lawyers for the Appellant

Office of the Director of Public Prosecutions for the Respondent