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

CRIMINAL APPEAL NO. AAU 0028 of 2024
[Labasa High Court: HAC 54/2021]

BETWEEN : **WILLIAM NAKAU RAMATAU**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Sen A, for the Appellant**
: **Tuenuku T, for the Respondent**

Date of Hearing : **5 August, 2025**
Date of Ruling : **10 September, 2025**

RULING

[1] The appellant William Nakau Ramatau was charged with one count of Rape, contrary to section 207(1) and (2)(a) of the Crime Act 2009. The Statement and Particulars of the offence were as follows:

Statement of Offence

Rape: Contrary to section 207(1) and (2)(a) of the Crimes Act 2009.

Particulars of the offence

William Nakau Ramatau between 1st day of October 2020 and 31st day of October 2020, at Nabauto Government Quarters, in Savusavu, in the Northern Division, had carnal knowledge of **Alumeci Manalau Waqanisauvaki.**

[2] The trial was held over 3 days from 22 to 24 April 2024 at the High Court in Labasa. The appellant was found guilty as charged and was convicted in a judgement of the High Court delivered on 6 May 2024.

[3] The appellant was sentenced on the 9 of May 2024 to 11 years 11 months imprisonment with a non-parole period of 10 years.

[4] The appellant being dissatisfied with the conviction and sentence passed by the Court against him, filed a Notice to Appeal dated 4 June 2024, through his counsel, which was within the 30-day appeal period. His appeal was against both conviction and sentence. This is a timely appeal.

Leave to Appeal

[5] The appellant's Notice was filed in the Court Registry on 4 May 2024 and it had 10 grounds of appeal against conviction and 1 against sentence. The appellant had submitted detail submissions in support of his grounds of appeal filed in Court on 25 July 2024.

[6] The respondent filed their submission on 18 July 2024 responding to both the appellant's submission against conviction and sentence.

Relevant Law

[7] In reviewing the grounds of appeal submitted by the Appellant, they involve questions of law and facts. Therefore, in evaluating whether leave to appeal should be granted, the relevant legal provision to consider is section 21 (1) (b) of the Court of Appeal Act 2009. This subsection provides as follows:

"A person convicted on a trial held before the High Court may appeal under this Part of the Court of Appeal –

(b) with leave of the Court of Appeal or upon the certificate of the judge who tried him that it is a fit case for appeal against his [her] conviction on any ground of appeal which involves a question of fact alone or question of mixed law and fact or any other ground which appears to the court to be sufficient ground of appeal."

[8] There are three bases for the Court to grant leave to appeal under this provision of section 21 (1) (b) and they are:

i) Any ground involving question of fact alone,
ii) Any ground involving question of mixed law and fact,
iii) Any other ground which appears to the Court to be sufficient ground of appeal.

[9] In terms of section 21(1)(b) of the Court of Appeal Act 2009, the appellants could appeal against conviction only with leave of the court.

[10] The test for leave to appeal is "reasonable prospect of success.": **Caucau v State [2018] FJCA 171; Sadrugu v State [2019] FJCA 173; Nausua v State [2013] FJSC 14.**

Grounds of Appeal

[11] For the purpose of this leave application, I have decided to consolidate the grounds of appeal submitted by the appellant into 2 broad categories and assess them. When I review the grounds of appeal against conviction there two grounds that standout.

[12] The consolidated grounds are:

i) The failure of the trial judge to provide adequate reasons for deciding the issues that were before the trial court. This is a requirement of section 142(1)(b) of Criminal Procedure Act 2009.

ii) Failure to properly evaluate the credibility of the evidence of the complainant before accepting it.

Assessment of the Grounds of Appeal.

(i) Failure to Meet the requirement of section 142 (1)(b) Criminal Procedure Act 2009 [CPC].

[13] The law requires that decision made by a trial judge must be supported with reasons. In this case the only issue at the trial was whether the complainant had consented to the sexual intercourse with the appellant the subject of the charge in the trial.

[14] This was case in which the complainant said she did not consent to having sex, whilst the appellant said there was consent. Both agreed there was consensual sex at a beach sometime later. In addition, the appellant said even before the act of rape, the subject of the charge in the trial, there was sexual relationship between complainant and him. This is **not contradicted by the complainant**. In addition, there is evidence of familiarity between them as evidence in the complainant calling the appellant to pick her up to go to netball training. Why the previous sexual relationship between the complainant was not explored further not as corroboration but the basis of testing the claim of lack of consent by the complainant.

[15] In paragraph 10 of the Judgement, it is noted that the complainant had forgiven Willie [i.e. the appellant] for the rape in October 2020. The complainant only told her uncle and aunty about Willie having had sex with her, after they found out she was 5 months pregnant. This delayed complaint should have been further explored because failure to do so may suggest bias on the part of the Court and is relevant to the credibility of the evidence relating to consent or not.

[16] Furthermore, the child that was **conceived is not the appellant's child**. It was the trigger for the Complainant to admit to his uncle and aunt about her pregnancy. In tight-knit church community of which the parties are part, pregnancy out of wedlock is major issue of shame and even gossip in some instances. The uncle of the complainant was a member of the Board of Deacon, is relevant in influencing the claim by the complainant of non-consensual sex to protect her uncle.

[17] The nature of the evidence referenced in the judgement of the court would tend toward a predisposition to accepting the evidence of the complainant. The law requires the judge clearly state the issues for determination and resolve the evidence relating to relevant law and facts before the verdict is determined. In doing that the competing arguments of the parties are dealt with.

[18] I have come to the conclusion that the trial judge had not provided sufficient reasons to support the conclusion she did in this trial. It is insufficient for the trial judge to say that she found the PW1 and PW2 were reliable and truthful. This in my view is insufficient to satisfy the requirements of section 142(1)(b) of the CPC 2009: **Ramendra Prasad v State [2020] FJHC , HAC 47/19S**

[19] In **DL v R [2018] HCA 26**, at paragraph 32 the High Court of Australia stated:

> "32 The content and detail of reasons will vary according to the nature of the jurisdiction which the court is exercising and the particular matter the subject of the decision. In the absence of an express statutory provision, "a judge returning a verdict following a trial without a jury is obliged to give reasons sufficient to identify the principles of law applied by the judge and the main factual finding on which the trail judge relied upon. *One reason for this obligation is the need for adequate reasons in order for an appellate court to discharge its statutory duty on an appeal from the decision10 and, correspondingly, for the parties to understand the basis for the decision for purposes including the exercise of any rights to appeal.* This issue should be considered by the full court. It is likely that with full records the Court of Appeal will have a better assessment would be made to determine whether there were adequate reasons that is in the court record but in the judgement that may support the finding of the trial judge.

[Emphasise mine]

[20] In Fiji, the above equally apply and has the authority of section 142(1)(b) of the CPC 2009. I believe that in fairness to the appellant this issue should be reviewed by the full court and leave is granted to allow this to take place.

Credibility Evidence

[21] The evidence called at the trial of the appellant focused mainly on the issue of consent or no consent by the complainant for the rape alleged. The trial judge in assessing the credibility of the complainant did so by rejecting what the appellant said in evidence and accepting PW1 and PW2 as reliable and truthful. How this conclusion was reached is not evident because there is lack of proper analysis of the evidence that logically led, to the finding of guilt. The trial judge cannot simply say that PW1 and PW2 are reliable and truthful without providing reasons based on evidence to support that finding.

[22] The issue of lack of recent complainant was not clearly address either: para 10 and 11 of the judgement are relevant in enlightening the timing when the complainant was disclosed of the alleged rape by the complainant. The role of the complainant's uncle and his attempt to protect his appointment in the church should have been assessed in more detail as it may disclose negative motive on the part of the complainant: paragraphs 15, 16 and 17 of the judgment are relevant."

[23] What then is credibility and what to guard against when considering evidence before a trial court. In **Onassis v Vergottis** [1968] 2 Lloyds Report 403, at 431, Lord Pearce stated:

> "*Credibility involves wider problems than mere demeanour which is concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems: first, is the witness a truthful or untruthful person? Secondly, is he, though truthful is telling less than truthful on this issue? Thirdly, though he is truthful person telling the truth as he sees it, did he register the intensions of the conversations correctly and if so, has his memory correctly retained them?*
>
> *Also, has this recollection been subsequently altered by unconscious bias or wishful thinking or by overmuch discussion of it with others. Witnesses, especially those who are emotional, who think that they are morally right, tend easily and unconsciously conjure up legal right that did not exisit…."*

[24] All of the above problems are to be detailed when a trial judge assesses the credibility of a witnesses; they are part of judicial process.

[25] I am not satisfied that the assessment and evaluation of the evidence called at the trial in this case was fairly and adequately undertaken by the trial judge. The assessment must be such as to avoid any reasonable suspicion of bias in favor of prosecution evidence only.

[26] Recently the Court of Appeal have provided some guidelines the following cases to assist trial judges in how credibility evidence is to be assessed. These are: **Matasavui v State [2016] FJCA 118; Dauvucu v State [2024] FJCA 108 and Saudromo v State [2024] FJCA 45; AAU 019 of 2019.**

(a) In **Mataisavui** (supra) the Court the court said:

"[*23] I will now consider whether the misdirection complained of could have affected the end result. Before acting upon the testimony of a witness the following questions should be posed by court. Both go to the credibility of the witness.*

(i) Is the witness truthful?; (ii) Is the witness's testimony reliable?

[24] A truthful witness could sometimes be unreliable or his or her version could be distorted due to the intervention of extraneous factors. Therefore both tests are important. In determining whether a witness is truthful and reliable the court would be assessing the testimonial trustworthiness of the witness. Such assessment would have to be based on an objective application of several tests of credibility, such as the tests of promptness/spontaneity, probability/improbability, consistency/inconsistency, contradictions/omissions (inter se & per se), interestedness/disinterestedness/bias, the demeanour and deportment in court, and the availability of corroboration where relevant."

[27] This is a case where there is no independent evidence of consent outside the claims of the complainant and the appellant, the trial did not properly summarise the case to the assessor following **Liberato v R** [1985] HCA 66 where the High Court of Australia observed that it is never appropriate to frame the issue for the assessor's determination as one which involves making a choice between conflicting State and defence evidence. The issue is always whether the State has proved its case beyond reasonable doubt [see: Haile v R [2022] NSWCCA 71)]. This may have been problem in this case also.

[28] I am satisfied that this issue may reasonably lead to a successful appeal and should be considered by the full court in the light of the records and trial transcript that would be available to them. I would grant leave.

[29] The sentence appeal was timely notified but there were no specific submissions made in writing or during the hearing of this leave application to support the sentence appeal.

ORDERS:

[30] The Appellant's leave to appeal against conviction is granted on all the ground submitted.

Hon. Justice Isikeli U. Mataitoga
PRESIDENT
FIJI COURT OF APPEAL