

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

CRIMINAL APPEAL NO. AAU 060 OF 2024
[Suva High Court: HAC 188 of 2023]

BETWEEN : **SEVETI KOROIATAMA RAVAKASAI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : Qetaki, RJA

Counsel : Appellant In-Person
Mr. R. Kumar for the Respondent

Date of Hearing : 12 August, 2025

Date of Ruling : 03 September, 2025

RULING

(A). Background

[1] The Appellant was charged with one Count of Rape, contrary to section 207(1) and (2) (b) and (3) of the Crimes Act 2009, and one Count of Rape contrary to section 207(1)(2)(a) and (3) of the Crimes Act 2009. According to the Information, the accused, on the 12th day of February 2022 at Davetalevu Village, Tailevu, in the Central Division, penetrated the vulva of the victim/Complainant, a child under 13 years, with his tongue.

[2] The Appellant pleaded not guilty at trial. At the hearing, the Prosecution presented the evidence of the complainant and two other witnesses, while the Accused opted to

remain silent and did not give any evidence for the defence. On 19th June 2024 the High Court found the Accused guilty on both the Counts as charged in the Information and convicted the Accused.

[3] On 05th July 2024, the Accused was sentenced to 13 years and 7 months imprisonment with a non-parole period of 11 years and 7 months. The Accused was also subjected to a Permanent Domestic Violence Restraining Order against him, with standard non-molestation conditions under section 24 and 28 of the Domestic Violence Act.

[4] The Appellant filed a timely appeal against conviction only dated 14 July 2024 and filed on 07 August 2024. Subsequently, the Appellant has raised his complaint against sentence through submissions filed on 18 July 2025.

(B). Grounds of Appeal

[5] There are four grounds of appeal as follows:

1. The learned trial Judge erred in law and in fact by failing to direct himself and independently assess the contradictory evidence arising from the witness (complainant) questioning its probative trustworthiness which significantly been adversely affected with regards to its reliability and credibility.
2. The learned trial Judge failed to consider the relevance of the medical anatomy in assessing and or analyzing the witnesses status which has favoured the appellant throughout the trial significantly.
3. That the charge is defective, unsatisfactory and is unsupported by evidence hence warranted an alternative charge of defilement.
4. That the sentencing court failed or erred in principle when applying its sentencing discretion in considering the aggravating factors when logically consolidated, reflects to a single element of aggravation possibly triggering double counting which has prejudiced the appellant substantially causing miscarriage of justice.

(C). High Court Judgment (Delivered on 19th June 2024 per Justice R.D.R.T.Rajasinghe)

[6] The learned trial Judge addressed the charges, burden and standard of proof, elements of the Offence and admitted facts in paragraphs 1 to 8 of the Judgment.

[7] Evidence of the Prosecution in paragraphs 9 to 13 of the Judgment, are reproduced below:

“9. The Complainant and the Accused are related as cousins. The complaint was twelve years old and stayed in the village with her uncle and his family while attending school. The uncle had gone to the farm with his children, leaving the Complainant alone at home on the 12th of February 2022. The Accused, who was on his way to go somewhere, walked past the Complainant’s place. The Complainant asked him where he was going, and then he asked whether she was alone at home. Finding the complainant was alone, he came to her place and sat near the door. The Complainant also sat beside him. Having conversed for a while, the Appellant started to touch her breasts and then kissed her. He then asked her to go to the room, which the Complainant obliged. Once they went to the room, the Accused closed the windows, put the curtain down, and closed the two doors, but one door was left ajar.

10. The Accused asked the Complainant to remove her clothes, and she did as he asked. He then removed his and came on top of her when she was lying on the bed. He started to kiss her lips and breasts and then went down and penetrated her vulva with his tongue. Afterwards, the Accused penetrated her vagina with his penis. The Complainant felt pain and requested the Accused to stop, but he continued disregarding her request.

11. While his was happening, one of the Complainant’s aunts, who is also related to the Accused, Laisa Biau, had seen the Complainant and the Accused sitting together near the door and then started to touch the Complainant’s body. She observed all these from her house, which is in the Complainant’s neighborhood. Laisa Biau then saw the Complainant and the Accused go inside and close the doors and windows. Laisa Biau then called one of her cousins, Asinate, to go and check the Complainant’s house. Asinate then went to the Complainant’s house and knocked on the door, calling the Complainant.

12. *The Complainant dressed and went to the door to answer Asinate. She asked the Complainant who was inside the house, to which the Complainant said no one. In the meantime, Asinate had already seen the Accused trying to put on his clothes while the Complainant was next to him through the small opening of the closed door; she knew the Complainant was not telling the truth.*

13. *Once Asinate left, the Accused left the house. Once the Complainant's uncle came, Asinate related this incident to him. He then inquired from the Complainant, which she initially denied but admitted that the Accused had penetrated her vulva with his tongue first and then penetrated her vagina with his penis. The matter was then reported to the Police."*

Evaluation of Evidence

- [8] The evidence presented by the Prosecution was evaluated in order to determine the evidential trustworthiness of the evidence. There are two factors to assist in that or the veracity of the evidence determination. (1) Credibility of the witness evidence. This is linked to correctness; (2) Reliability of the evidence, which is related to the accuracy of the evidence. In doing that the Court should consider the promptness/spontaneity, probability/ improbability, consistency/inconsistency, contradictions/omissions, interestedness/disinterestedness/bias, the demeanour and deportment in Court and the evidence of corroboration where it is relevant. (vide **Matasavui v State** [2016] FJCA 118; AAU0036.2013 (30 September 2016), **State v Solomone Qurai** HC Criminal- HAC 14 of 2022).
- [9] The learned trial Judge carefully considered the evidence presented by the Prosecution. He did not find such evidence to be tainted with significant and material inconsistencies and contradictions, to affect their credibility and reliability.
- [10] He found that Laisa Biau immediately alerted Asinate to check the Complainant's house. She did not act on her own. She had actually requested her husband to do that but he refused. Her husband is related to both the Complainant and the Accused. There is no reason to disregard Laisa Biau's evidence, which apparently corroborated the version of the event testified by the Complainant to a certain extent.

[11] Asinate explained that she hesitated to confront the Accused as he might retaliate; her main concern was on the Complainant. Asinate had promptly taken necessary steps, insofar as in her control by removing the Complainant from her house and keeping the Complainant with her until the uncle returned home. She then promptly informed the uncle when he returned.

[12] The Complainant initially refused to admit that she was scared of her uncle. She admitted that the Accused penetrated her vulva with his tongue and then her vagina with his penis.

“18..... I do not find the initial denial of the Complainant adversely affected her credibility and reliability. Hence, I accepted the evidence of the three Prosecution witnesses as credible, reliable, and trustworthy.

19. In consequence of the preceding reasons discussed, I find that the Prosecution has proven these two offences against the Accused beyond a reasonable doubt. Wherefore, I hold the Accused guilty of the two counts of Rape as charged in the Information and convict of the same accordingly.”

(D). The Law

[13] In **Qalibau v State** [2024] FJCA 163; AAU004.2023 (19 August 2024), this Court, at leave stage observed, with regard to the guideline relating to timely application for leave to appeal conviction and sentence, as follows:

“6. The grounds of appeal below alleges errors of law and fact by the trial judge, therefore in terms of relevant provision of the Court of Appeal Act 2009, section 21(1) (b) is relevant. Under this provision leave of the court is required to appeal.

7. For a timely appeal the test for leave to appeal against conviction and sentence is “reasonable prospect of success”: See **Caucau v State** [2018] FJCA 171; AAU0029.2016 (4 October 2018), **Navuki v State** [2018] FJCA 172; AAU0038.2016 (4 October 2018); and **Sadrugu v State** [2019] FJCA 87; AAU0057.2015 (6 June 2019).

[14] On sentence, appellate courts will interfere with a sentence if it is demonstrated that the trial Judge made one of the following errors:

- (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:

See **Kim Nam Bae v State** AAU0015 of 2011 [1999] FJCA 21;(26 February 1999).

(E). Appellant's Case

[15] **Ground 1:** The Appellant submits that the findings of guilt on the charge of rape is perverse because the evidence led at trial is unreliable in comparison to her caution statement, as well as considering the appellant's caution interview or statement. The appellant had willingly confessed that he had sexual intercourse with the victim (Complainant) without any threat, coercion or manipulation on his part.

[16] The Appellant submits that considering the trial Court's judgment over the evidence of the prosecution, the complainant did not object to the appellant's advances at its earliest. She did not object or oppose the appellant's proposal.

[17] The Appellant submits that being the only witness to the incident their accounts were more-less similar, evidently no enforcement were ever established before the act or during its commissioning. That when questioned if she had felt pain during the encounter to which she said "Just a little bit"(see Question 37 caution Statement). In contrast, she felt pain and requested the Accused to stop, but he continued disregarding her request (paragraph 10 of judgment). This statement is contradictory as the possibility of fabrication is unavoidable.

[18] The Appellant submits that manipulation and or coaching by outside sources (prosecution) is too glaring, simply, it had made the act look more less a rape rather than consensual encounter. At Q.48: "Did he warn you not to tell anyone? A: No, he did not say anything at all after sex." This proves that no form of threat or intimidation was evident to be enforced on the victim over the incident to incriminate the appellant on the allegation of rape and or established if rape really transpired.TQ.49, as far as

the appellant is concerned, was a leading question just to discredit the appellant. The victim was influenced to say what she said - "I want Seveti to be prosecuted".

[19] The Appellant submits that the non-corroboration law has overridden him against a fair trial as stipulated in section 15(1) of the Constitution. Section 26(1) has not been accorded the appellant, that is, the appellant is entitled to equal treatment and benefit of the law- which was not the case.

[20] **Ground 2:** The Appellant submits that the expert evidence establishes that the Complainant had been subject to a history of sexual encounters or assaults. The official evidence indicates and is consistent to the complainant status, sexuality. The Complainant was sexually active. In that she was "experienced" for her age. That the medical anatomy exhibited as evidence was consistent with the appellant's claim. No evidence of visible injuries or bruises were observed from the victim. No evidence of force of any kind were observed.

[21] **Ground 3:** The Appellant submits his charge is unsatisfactory, unsafe and unsupported by evidence and refutes that rape was never the order of the day. He had confessed on his caution statement that sexual intercourse did occur and was consensual with the assumption that the victim was over the consent age. Age was never a factor discussed prior to the event or act and he was not aware of it in this matter.

[22] The Appellant submits that an alternative charge was warranted for his action under section 162 (1) (f) of the Civil Procedure Act 2009.

[23] The Appellant submits that a charge under section 214(1) of the Crimes Act 2009 (Defilement of children under 13 years of age), should have been the most appropriate charge under the circumstances.

[24] The Appellant submits that he was instructed by his counsel to remain silent during the trial. There was no consultation with his counsel on matters that might have a vital bearing on the conduct of the trial.

[25] **Ground 4:** The Appellant submits that the principle engaged in the computing of sentencing discretion has affected him where he feels that he had been penalized twice

for one element of aggravation. For him to be factored in on aspects of breach of trust, exposing the young complainant to sexual activities and preventing her from natural growth of maturity, when amalgamated reflects to only one aggravating element or factor-vulnerability. The vulnerability of the Complainant will result in the occasioning of the above-mentioned elements. That the unfavorable approach or principle considered by the sentencing Court is prejudicial towards him and has caused gross miscarriage of justice.

(F). Respondent's Case

[26] **Ground 1:** The Respondent submits that the Complainant is under 13 years of age, she is “not capable, under law, from providing informed consent”. That based on the brief but precise judgment, at paragraphs 15-18, it is evident that the learned trial Judge had considered and evaluated the complainant's credibility and reliability and had uncontroversial found no reasonable doubts in the prosecution case. This ground is without reasonable prospect of success to assail conviction.

[27] **Ground 2:** The Respondent submits that under this ground the Appellant attempts to raise in his defence the “*prior sexual history*” of the child Complainant, which is impermissible. For legal reasons this ground and the submissions in support of it are unarguable. The ground is without reasonable prospect of success to assail the conviction.

[28] **Ground 3:** The Respondent submits that neither of the rape counts were effective or bad in law. Although there appear to be a typographical error in the reproduction of count 2 in the judgment. The Appellant cannot be convicted of defilement as argued by the Appellant. Rape was the appropriate offence in terms of law. There was no evidence in terms of law that underage Complainant was consenting vis a vis the Appellant having exercised his right to remain silent. While this ground is a question of law not requiring leave, the complaint has no actual prospect of success to assail conviction considering the evidence which before the trial Court.

[29] **Ground 4:** The Respondent submits that the final sentence was an aggregate sentence for 2 counts of rape. Considering the applicable tariff of 11-20 years imprisonment, a final aggregate term of 14 years imprisonment with a rehabilitative 12 year non-parole

term is on the lower side of the sentencing scale and is in no way harsh or excessive. The Appellant seeks to belatedly challenge his sentence, however, the complaint is unarguable considering the measured nature of the sentence.

(G). Analysis

[30] **Ground 1:** The Appellant argues that the learned trial Judge was mistaken in fact and in law by failing to direct himself and independently assess the contradictory evidence of the Complainant. See paragraphs [14] to [18] above which contain the Appellant's submissions on this ground. The Appellant questions the probative trustworthiness of the evidence, on the basis that the credibility and reliability of the evidence has been adversely affected. The Appellant is submitting that the finding of guilt is perverse because the evidence lead at the trial is unreliable.

[31] The Appellant had admitted having sexual intercourse with the Complainant without any threat, coercion or manipulation on his part. The Complainant did not object to the Appellant's proposal to have sex with him. She did not did not object to the Appellant's proposals. There was no evidence of any force used before the act. There appear to be fabrication of evidence see paragraph [16] and [17] above. He was not allowed fair trial. The law of corroboration is against him and overrides his constitutional rights under section 15(1) of the Constitution. He was not treated equally before the law – see section 26 (1) of the Constitution.

[32] The Complainant is under 13years of age. She. is not capable of consenting. "Consent" means consent freely and voluntarily given by a person with necessary mental capacity to give the consent, and the submission without physical resistance by a person to an act of another person shall not alone constitute consent: section 206(1) Crimes Act 2009. She is not covered by subsection 206(2) (limiting provisions). This ground has no reasonable prospect of success.

[33] **Ground 2:** It is argued that the learned trial Judge failed to consider the medical anatomy in assessing and or analyzing the witness's status which has favoured the appellant throughout the trial. See Paragraph [19] above on the Appellant's submissions in support of this ground. I have carefully gone through the judgment in this matter and I do not see any reference to a medical report being tendered or that an

expert medical opinion was available to the Court. The Accused/Appellant had “opted to exercise his right to remain silent, hence adduced no evidence for the Defence”. If the prosecution did not call a Doctor to testify, how was the medical evidence introduced at the trial? The admission of evidence of the complainant’s sexual experiences, if it occurred, is improper and inadmissible.

[34] Not only is the evidence inadmissible, it has not been formally admitted nor subject to examination and cross-examination at the trial. The Defence/Accused/Appellant had opted to remain silent. In this ground, the Appellant attempts to raise in his defence the complainants “*prior sexual history*”, which is impermissible. This ground is without reasonable prospect of success. It has no merit.

[35] **Ground 3:** The Appellant argues that the charges against him is defective, unsatisfactory and is unsupported by evidence and that he should have been charged with defilement. His submissions are in paragraphs [20] to [23] above, and the Respondent’s submissions is in paragraph [27] above. He asserts that the charge of rape is inappropriate under the circumstances of this case. Sexual intercourse had occurred; however, it was consensual according to the Appellant, who was under the assumption that the complainant was over the consent age. However, both counts were good in law. The Appellant cannot be convicted of defilement under section 162, (1) (f) of the Criminal Procedure Act 2009, and 214(1) of the Crimes Act 2009. The complainant submits that he was instructed by his counsel to remain silent. He has not taken steps to formally complaint against his counsel, as required, if he had any complaints against his counsel: **Chand v State** [2019]FJCA 254;AAU0078.2013 (28 November 2019). This ground has no prospect of success.

[36] **Ground 4:** The Appellant contends that the Court was mistaken when applying its sentencing discretion. The learned sentencing Judge emphasized that rape is one of the most humiliating and distressing crimes, and it becomes more serious when it is involved with a child victim. He referred to legal **Subramani v State** [2018] FJCA 82; AAU0112.2014 (1st June, 2018), which discussed the appropriate objective of the sentencing of offenders who have committed offences of gross sexual exploitation of young children, and **Aitcheson v State** [2018] 29; CAV0012.2018 (2 November 2018), where the Supreme Court held that the increasing prevalence of sexual offences

against women and children demands that the courts consider widening the tariff for the rape against children.

[37] In Aitcheson (supra) Gates CJ held that the tariff for rape of a child is between 11-20 years' imprisonment period. In this case, the two offences are founded on the same series of offences, as such, the Court found it appropriate to impose an aggregate sentence in line with section 17 of the Sentencing and Penalties Act. In considering the level of harm, the Court, having considered the Victim Impact Assessment, noted that the offending has caused the Complainant significant hardship. The Appellant had breached the trust that the Complainant had in the Appellant as an elderly cousin. There was a significant age gap and the crime exposed the young Complainant to sexual activities at a very young age, preventing her from natural growth of maturity in her life. The above were considered as aggravating factors.

[38] At paragraphs 14 and 15 of Sentence, the learned sentencing Judge stated:

"14. Having considered the seriousness of the crime, the purpose of this sentence, the level of harm, and the aggravating factors, I sentence you to fourteen (14) years of imprisonment as an aggregate sentence for the two offences.

15. Considering the seriousness of this crime, the purpose of this sentence, your age, and opportunities of rehabilitation, I find that twelve (12) years of non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for twelve (12) years pursuant to section 18(1) of the Sentencing and Penalties Act..."

[39] After taking account of the period of imprisonment already served, the actual sentencing period is thirteen (13) years and seven (07) months imprisonment with a non-parole period of eleven (11) years and seven (7) months. A Permanent Domestic Violence Restraining Order with a standard non-molestation condition under sections 24 and 28 of the Domestic Violence Act was also ordered against the Appellant.

[40] The Appellant's complaint against the sentencing approach (computing of sentencing discretion) adopted in this case, is to be considered - see paragraph [24] above. It is observed that the learned sentencing Judge did not fix a starting point nor specify the proportion or number of years allocated for aggravating factors, and for breach of

trust, in arriving at the total sentence after deduction for time already served. The sentence is to be reviewed by the Full Court in light of the Appellant's complaint and the principles outlined in **Kim Nam Bae** (supra). The ground is arguable.

Order of Court

1. *Application for leave to appeal against conviction is not allowed.*
2. *Application for leave to appeal against sentence is allowed.*




Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors

Appellant In-Person

Office of the Director of Public Prosecutions for the Respondent