

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

CRIMINAL APPEAL NO. AAU 077 OF 2023
[Lautoka Criminal Case No. HAC 094 of 2021]

BETWEEN : **BRIAN RAVATUDEI** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Qetaki, RJA**
Andrews, JA
Andrée Wiltens, JA

Counsel : **Ms. U. Baleilevuka for the Appellant**
: **Ms. L. Latu for the Respondent**

Date of Hearing : **14 November 2025**

Date of Judgment : **28 November 2025**

JUDGMENT

Qetaki, RJA

(A). Introduction

[1] The appellant was tried in the High Court at Lautoka, after he was charged with 1 count of Rape, contrary to section 207(1) and (2) (a) of the Court of Appeal Act. After the trial he was found guilty as charged and was convicted in a judgment dated 31 July 2013 (“the judgment”).

[2] On 22 August 2023 the appellant was sentenced to 7 years 10 months and 20 days imprisonment with a non-parole period of 7 years and 2 months.

[3] The appellant filed a Notice of Appeal which was out of time by only 1 month. The learned single Judge treated the appeal as timely as the delay was not substantial, and on 2nd December 2024 granted leave to appeal on grounds (i), (ii) and (iii).

(B). Grounds of Appeal

[4] The appeal is against conviction only and the grounds are as follows:

Ground 1: *The learned trial Judge erred in law and in fact when convicting the appellant by relying on inconsistent, unreliable and untruthful statement of the complainant which created a reasonable doubt to the prosecution case.*

Ground 2: *The learned trial Judge erred in law and in fact when convicting the appellant based on the inconsistencies of the prosecution case.*

Ground 3: *The learned trial Judge erred in law and in fact when convicting the appellant based on hearsay and non-admissible evidence of Penina the prosecution witness.*

[5] A person convicted on a trial held before the High Court may appeal under section 21 (1) to the Court of Appeal. Appeals to this Court are to be determined pursuant to section 23 of the Act.

(C). Facts

[6] The following is adopted from paragraphs 77 – 78 of the judgment:

“77. *The complainant and the accused are known to each other and they were police officers occupying the police barracks. The prosecution alleges that during the evening of 19th September, 2021 the accused followed the complainant to her room after she finished her shower. When outside the complainant’s door the accused told the complainant that he wanted to apologise and leave.*

78. *The complainant opened the door allowing the accused to enter her room at this time the complainant was still wrapped in her towel. Although there were no lights switched on in the complainant’s room at the time, she was able to recognise the accused due to the lights outside since the curtains in the window was not drawn.*

79. *As soon as the accused entered the room, he grabbed the complainant from behind removed her towel and threw her on the bed whereby her head hit the wall. The complainant was scared and was alert to the impending anger so she told the accused not to do*

anything to her. The accused did not listen and he forcefully laid on the complainant's chest removed his clothes (trousers and shirt). He then threatened the complainant not to do anything or say anything otherwise he will do something to her.

80. *After this the accused forcefully spread the complainant's legs and inserted his erected penis inside her vagina and had forceful sexual intercourse with the complainant for a long time. The complainant did not consent for the accused to have sexual intercourse with her. When the accused did not stop the complainant started crying, she again told the accused to stop the accused kept forcing his penis inside her vagina and also kept kissing her neck. According to the prosecution the accused knew or believed the complainant was not consenting at the time.*

81. *Next day the complainant told her friend and colleague Penina about what the accused had done to her. The matter was reported to the police."*

(D). High Court Judgment dated 31 July 2023 per Sunil Sharma J)

Defence

[7] The defence submitted that:

- (i) The allegations were baseless and a made-up story by the complainant. The accused did not do anything to the complainant as alleged-how could he have done so when he did not at any time enter the complainant's room? The complainant narrated a story that was not possible and/ or probable. The complainant (a trained police officer) would have most certainly acted in defence and shown resistance by screaming, shouting and scratching the accused.
- (ii) If what the complainant told the Court was the truth then the complainant had the opportunity to lodge a police complaint the same night shift at the police station. The defence is asking this Court to scrutinize the many inconsistencies and omissions between what the complainant told the Court in her evidence and her police statement which are noteworthy. The difference between the two versions shows that the complainant did not tell the truth.

- (iii) Before lodging her police complaint the complainant as early as 5:30 am (following day) sent many Viber messages to the accused and in none of the messages expressed in any form or manner that the accused raped her. The tone of the Viber messages does not suggest anything untoward happened between the accused and the complainant. The complainant would have no doubt confronted the accused on this, but she did not because nothing happened.
- (iv) Finally, the accused submits that what the complainant told the court does not make sense and is riddled with doubt. The accused has been wrongly blamed. The defence is asking this court not to believe the complainant.

Paragraphs 88 - 96 - Turnbull Directions:

[8] The trial Judge stated that this was a case of recognition rather than identification, and the defence had taken the position that the complainant made a mistake in thinking that it was the accused who had sexually assaulted her for someone else, so she had identified the wrong person in court.

[9] The defence contended that the case against the accused depended on the correctness of the identification of the accused which the defence alleged to be mistaken. The trial Judge has taken special care on the evidence of identification because it is possible that an honest witness can make a mistaken identification. An apparently convincing witness can be mistaken and so can a number of such witnesses. Mistakes in recognition, even of close friends and relatives, are sometimes made.

[10] The trial judge has carefully looked at the following circumstances in which the complainant had identified the accused in her room:

- (i) *How long did she have the person the complainant says was the accused under observation?*

According to the complainant she had seen this person when he broke the bathroom door while she was having her shower, while walking towards her room she saw this person standing in the passage and inside her room.

There is no time duration given by the complainant of her observations but she did say this person was having sexual intercourse with her for a long time.

(ii) *At what distance?*

This person was close to the complainant at the bathroom, in the passage when she was walking to her room and into her room and during the act of forceful sexual intercourse.

(iii) *In what light?*

According to the complainant the alleged incident happened in her room where all the lights were switched off, however, the windows were open and the curtains were tied. The complainant also said the outside lights were sufficient for her to see the face of this person clearly.

(iv) *Did anything interfere with that observation?*

The complainant did not say there was any obstruction or interference she was able to see the face of this person clearly which prompted her to recognize this person to be the accused.

(v) *Had the witness ever seen the accused before?*

The complainant said this person was also a police officer and both were staying in the police barracks.

[11] The trial Judge reminded himself of a number of weaknesses in the identification evidence of the complainant. The complainant did not say why she switched off the lights in the bedroom after she returned from the bathroom and what she meant when she said it was dark inside the room. The directions was given as a matter of caution after the defence counsel raised the issue of identification of the accused in the darkness of the complainant's room as narrated by the complainant.

[12] The trial Judge stated that the complainant did not make any mistake in recognising the accused since she has seen the accused on previous occasions and both were living

in the same barrack and from the bathroom to the complainant's room, in the passage and on her bed the complainant had seen the accused very close by.

[13] The court accepts that it was the accused and no one else and there was no mistake made by the complainant in the recognition of the accused.

Evidence of Accused v Evidence of Complainant (paragraphs 95-98 of judgment).

[14] Trial Judge accepted the evidence of the prosecution not the line of defence of the accused. The evidence of the accused is found to be truthful and reliable. She gave a reliable account of what the accused had done to her that evening inside her room.

[15] The complainant withstood vigorous cross-examination and was not discredited as to the main version of her evidence that it was the accused and no one else who had forceful intercourse with her on her bed without her consent. The complainant was steadfast in what the accused had done to her and she maintained this complaint in her evidence.

[16] The trial Judge accepts that the complainant did not feel comfortable in telling her male colleagues about what the accused had done to her that evening. The complainant trusted PW2 since they were close friends so the complainant told PW2 about what the accused had done to her and a police complaint was properly lodged. He agreed that the complainant as a police officer she could have been more reactive to the situation, however, every individual reacts differently to what he or she may be going through.

[17] The police complaint was made by the complainant on the following day of the incident. It is accepted by the trial Judge that the complainant was scared of the accused both during and after the incident. The totality of the circumstances test favours the complainant: **State v Serelevu** [2018] FJCA 163; AAU 141 of 2014 (4 October, 2018) and in any event the delay of a few hours is not substantial.

Credibility (Paragraphs 99 - 101):

[18] The learned Judge held that, failure by the complainant to scratch, shout or scream or to tell anyone what the accused had done immediately after the incident does not affect her credibility. The lack of resistance by the complainant in shouting, screaming and

scratching the accused cannot be taken in isolation but in the totality of the circumstances of the complaint.

[19] The Judge noted that the legal meaning of consent is wide which includes submission without physical resistance by the complainant to an act of another shall not alone constitute consent. The trial Judge accepts that the accused had forcefully penetrated his penis into the vagina of the complainant without her consent. Furthermore, the accused knew or believed the complainant was not consenting and he did not care if she was not consenting at the time.

(E). Appellant's Case

Grounds 1 and 2

[20] The appellant dealt with grounds 1 and 2 together as they are related. He submitted that while the alleged rape occurred in the evening of 19th September 2021 after the complainant had her shower, there was no indication when the alleged rape occurred. The victim had opened the door to her room allowing the appellant to enter her room while she was still wrapped in her bath towel.

[21] The appellant submits that there were a lot of inconsistencies in what the complainant had stated in her cautioned statement to the police on 20th September 2021 and what she told the court at the trial. The inconsistencies relate to what the complainant told the appellant while she was in the shower and he was calling her, what she told him after the shower and when she was in her room while still being wrapped in her towel, how he came into the room and what transpired in her room as she was allegedly being raped. It was submitted by the appellant that at the trial, the complainant had claimed to have shouted at the top of her voice but this was not in her statement to the police. There were inconsistencies in her evidence in chief, and her answers during cross examination.

[22] The appellant submits that the complainant was inconsistent, unreliable, and untruthful in her statements related to the Viber messaging. The appellant further submits that the complainant went to work on the same day but did not make any report to the Police sexual offence unit. The learned trial Judge did not properly assess

the impact of the inconsistencies in evidence of the complainant. The prosecution was only focussing on the complainant's evidence.

Ground 3

[23] This ground refers to the evidence of prosecution witness PW2. The appellant submits that there were inconsistencies in PW2's evidence on details of what transpired while complainant was bathing and what the appellant did. The appellant submits that PW2's evidence is both hearsay and inconsistent.

[24] The appellant submits that the trial Judge accepted that PW'2 evidence merely relayed what the complainant had told her but used the account to support the complainant's credibility. He submits that this constitutes "classic hearsay", which is admissible only for limited purposes such as showing consistencies, not a substantive proof of the offence and requires caution that reliance on hearsay as corroborative proof of guilt constitutes a miscarriage of justice. The misapplication of the recent complaint doctrine prejudiced the appellant's right to fair trial.

(F). Respondent's Case

[25] **Grounds 1 and 2**: The respondent submits that the trial Judge had addressed the inconsistencies of the complainant's evidence as set out in paragraphs 26 to 46 of the judgment.

[26] The respondent submits that the trial Judge, before analysing the evidence/ case, gave directions on the previous inconsistent statements at paragraphs 63-66 of judgment. He then analysed the entirety of the evidence (both for prosecution and defence) and considered the inconsistencies and omissions between the complainant's evidence, her Police Statements and noted the inconsistencies and omissions were not significant to adversely affect the credibility and reliability of the complainant.

[27] The respondent quoted the Supreme Court of India's decision (per Thakkar J) in **Bharwada Bhoginbhai Hiribhai v State of Gujrat** (1983) 3 SCC 217 at 22,223 in explaining the limitation of human capacity to observe an event.

[28] The respondent submits that the trial Judge is the ultimate person to assess the credibility of the complainant's demeanour, the way she responded to the question

and the weight to be attached to her evidence. The complainant was not shaken as to the basic version of the allegation, she maintained that she was forcefully raped by the appellant on the 19th of September 2021. The trial Judge accepted the version of the complainant/prosecution and ruled that the appellant has not created any reasonable doubt to the prosecution case and rejected the appellant's denial.

[29] The respondent says that given the above, the appellant's contentions hold no water and the trial Judge's directions and determinations on the above issues were flawless. As such, grounds 1 and 2 are misconceived and baseless.

[30] **Ground 3:** The respondent submits that PW2 gave recent complaint evidence and her evidence was summarized by the trial Judge in paragraph 47 – 49 of the judgment.

[31] The respondent submits that the trial Judge gave his direction on the principle of Recent Complaint at paragraphs 50- 56 of the judgment and analysed PW2's evidence at paragraphs 109- 113 of the judgment.

[32] In response to the appellant's submissions, that PW2's statement that the complainant looked "shocked and lost" should not have been considered, the respondent submits that the question put to her was fair and permissible, and in any event, the trial Judge relied only on PW2's oral evidence that was tested in Court; thus the Appellant's argument is misconceived. Furthermore, in reply to paragraph 4.5, the complainant nor PW2 gave evidence that the complainant was molested by the appellant in the bathroom. This argument must be denied as it misleads the Court. In reply to paragraph 4.6 (page 7) of appellant's written submissions, -the inconsistencies of PW2's version and complainants was addressed by the trial Judge as earlier submitted. The argument must be denied. In reply to paragraph 4.7, the appellant was represented by Counsel during trial. The counsel should have cross-examined PW2 further on her relationship with the complainant, otherwise, this argument is baseless and must be denied.

[33] In response to the appellant's submission that the trial Judge ought to have inquired as to why WPC Kalara was called to give evidence, and his submission that as the complainant, PW2, and WPC Kalara were all of the same recruitment batch, it could be inferred they had planned the incident with malice, the respondent submitted that the prosecution has the prerogative to call any witness it chooses to prove its case ,

and the contention of a maliciously planned incident was never put to either the complainant or PW2.

[34] On the issue of hearsay on PW2's evidence, this objection was only raised by the appellant's counsel when PW2 was on the stand at the end of her Examination in Chief. PW2's evidence does not touch on the truth of the complainant's claim but the consistency of her conduct bolstering the credibility of the evidence. All the arguments advanced under this ground are frivolous and vexatious, therefore must be denied. There is no reasonable prospect of success. Appeal must be dismissed and the conviction is affirmed.

(G). Analysis

[35] On an appeal against conviction the Court will allow the appeal if the Court thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence or that the judgment of the High Court which convicted the appellant should be set aside on the ground of a wrong decision of any question of law or that on any grounds there was a miscarriage of justice, and in any other case shall dismiss the appeal – section 23(1) (a) of the Court of Appeal Act. The proviso to the section directs that even if the Court is of opinion that the point raised in the appeal against conviction might be decided in favour of the appellant, the court may still dismiss the appeal if the court consider that no substantial miscarriage of justice has occurred.

Ground 1- *Trial Judge erred in law and in fact in convicting the appellant by relying on inconsistent, unreliable and untruthful statement of the complainant which created a reasonable doubt to the prosecution case.*

Ground 2- *Trial Judge erred in law and in fact when convicting the appellant based on inconsistencies of the prosecution case.*

[36] Grounds 1 and 2 are closely related and in essence they challenge the evidence upon which the conviction is based. The appellant did not give evidence at the hearing and he had raised numerous inconsistencies, omissions and deficiencies in the evidence of the complainant and in the prosecution case as a whole in cross-examination of PW1 and PW2. The appellant submits these were sufficient to create a doubt in the

prosecution case. The appellant complains that trial Judge had not carefully considered, assessed and evaluated the prosecution evidence against the inconsistencies etc. in the complainant's evidence and their possible or probable effects in creating sufficient doubt in the prosecution case.

[37] The appellant maintains that the allegations against him were baseless, and the complainant had made up the story. His submissions are summarised in (E), paragraphs [20] to [24] above. He argues that the acceptance of the complainant's evidence, despite clear inconsistencies between her police statement and sworn testimony, constituted a misdirection in law and fact, which directly affected her credibility and reliability.

[38] Whether the learned trial Judge had correctly accepted the inconsistent evidence between the sworn police statement and the evidence given under oath in Court of both PW1 and PW2 under the circumstances? In **Praveen Ram v State** (supra) the Supreme Court confirming its earlier decision in **Swadesh Kumar** relating to disclosures of all material by the prosecution whether that material has the effect of strengthening or weakening the prosecution case or helping the cause of the defence, said :

“Where a witness has made a statement on oath directly inconsistent with evidence he or she gives in Court and particularly when the evidence implicates the accused person, the assessors should be informed of the importance of the statement made on oath. They should also be told they should be cautious before they accept a witness's sworn evidence that conflicts with a sworn statement the witness previously made.”

[39] The Court went on to lay down the guidelines for trial Judges , as follows:

“The Judges should remind the assessors of the explanations given by the witness for the earlier sworn statement and instruct them that the evidence given in Court should be regarded as unreliable unless the assessors are satisfied in two particular respects. Firstly, the explanations are genuine. Secondly, that, despite the witness being previously prepared to swear to the contrary of the version the witness now puts forward, he or she is now telling the truth” (Emphasis added)

[40] The cases clearly requires that caution be exercised in a situation of inconsistency in evidence of witnesses, and direct a judge on how to deal with issues of inconsistencies in evidence. A similar approach is adopted in **Nadim v State and Swadesh Kumar Singh v State** (supra) which require caution when a witness contradicts a prior sworn

statement and given that in that case the conviction rested almost entirely on the complainant's testimony, the inadequacy of judicial reasoning on inconsistencies was held to have rendered the verdict unsafe.

[41] The above guidelines emphasise the role of trial judges in a trial involving assessors as the arbiter of facts to assist the trial judge in determining whether an accused person is guilty or otherwise. It is the Judge who is the final arbiter of fact. When a Judge sits alone, it is the Judge alone that bears the responsibility, to be alert and conscious of the need to keep reminding himself or herself of the inconsistency between the sworn statement previously made to the police and the subsequent sworn evidence adduced. This especially when the relevant evidence implicates the accused.

[42] The trial Judge's approach to addressing inconsistencies and omissions is to decide whether it is significant, and whether it affects adversely the reliability and credibility of the witnesses. In the present case both PW1 and PW2 were cross examined meticulously by defence counsel on the inconsistencies between their police statements which they had given to the police when facts were fresh in their minds with their evidence in Court. The learned trial Judge held that inconsistencies and omissions can be taken into account, and the court is allowed to consider them when considering whether the witnesses were believable and credible. The police statements are not evidence of the truth of their contents. Inconsistencies and omissions do occur for various reasons depending on who is involved. But the court has to deal with them when the issues are raised at the trial.

[43] The learned trial Judge, in paragraph 66 of judgment stated:

"If there is any inconsistency or omission, it is necessary to decide firstly whether it significant and whether it affects adversely the reliability and credibility of the witnesses. If it is significant, then it is for this court to consider whether there is an acceptable explanation for it. If there is an acceptable explanation, for the change, then this court may conclude that the underlying reliability of the evidence is unaffected. If the inconsistency is so fundamental, then it is for this court to decide to what extent that influences the reliability of the witness evidence."

[44] There are steps to be followed by a Judge when faced with arguments on inconsistencies etc. Whether the inconsistency is significant and whether it affects the reliability of the witnesses. If significant, whether there is an acceptable explanation for it. If there is an acceptable explanation for the change in evidence, the court may

conclude that the underlying reliability of the evidence is not affected. If the inconsistency is fundamental, then the court is to decide to what extent that influences the reliability of the witnesses evidence. In the present case , the learned trial Judge after commenting on the inconsistencies and giving reasons in paragraph 102 of the judgment observed (in paragraph 103) that the complainant was not shaken as to the basic version of her allegations.

[45] In **Bharwada Bhoginbhai Hiribhai v State** (supra), the Supreme Court of India (per Thakur J) in explaining the limitation and nature of human capacity to observe, stated as follows:

“.....Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses therefore cannot be annexed with undue importance. More so when the all-important “probabilities-factor” echoes in favour of the version narrated by the witnesses. The reasons are: (1) By and large a witness cannot be expected to possess a orographic memory and to recall all the details of an incident. It is not as if a video tape is replayed on the mental screen (2) ordinarily it happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental facilities therefore cannot be expected to be attuned to absorb the details; (3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement may emboss its image on one person’s mind whereas it might go unnoticed on the part of another; (4) By and large people cannot recall conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder.....;”

[46] The Indian Supreme Court in **State of UP v MK Anthony** (1985) 1 SCC 505, stated as follows:

“While appreciating the evidence of a witness the approach must be to ascertain whether the evidence of the witness read as a whole appears to have a wring of truth. Once the impression is formed, then the court should scrutinize the evidence more particularly to find out whether deficiencies, drawbacks and other infirmities pointed out in the evidence is against the general tenor of the evidence. Minor inconsistencies on trivial matters not touching the core of the case should not be given undue importance. Even truthful witness may differ in some details unrelated to main incident because power of observation, retention and reproduction differ with individuals.....”

[47] Having carefully read through the Disclosures and the Video Transcripts (Trial Record) of the evidence of PW1 and PW2, given in examination in chief and especially in cross-examination, the material evidence of the complainant and the

recent complaint that goes to the core of the offending or the elements of the offence of rape, the trial Judge concluded that despite the inconsistencies, deficiencies and omissions highlighted by the appellant, the complainant's evidence was not shaken or adversely affected.

[48] The accused was in denial and his counsel's line of questioning was effective in raising inconsistencies, omissions and deficiencies in the evidence of PW1 and PW2 given in their police statements and in Court. The proven inconsistencies rather than affecting the evidence pertaining to the core elements in a charge of rape, to sufficiently cast doubt on the prosecution case, were peripheral. The core evidence that determined whether the accused is guilty or otherwise in this case, is the evidence adduced on what the accused did in the complainant's room. That is the evidence on matters which was not discredited or shaken, supported by the proper identification and recognition of the accused as the perpetrator, established through the step-by-step application of the *Turnbull* Guidelines, and supported by the recent complaint evidence, and the fact that both the complainant and the accused were known to each other and accommodated within the same police barracks.

[49] The inconsistencies raised should not be given undue importance. They do not shake the core base of the prosecution case. PW1 and PW2 withstood intense cross-examination and stood their ground. The trial Judge was not mistaken in law and in fact when he convicted the appellant despite the proven inconsistencies, omissions and deficiencies. It was open to him on the totality of the evidence adduced at the trial to arrive at conclusion, he did. Grounds 1 and 2 have no merit. There is no miscarriage of justice.

Ground 3 – *The learned trial judge erred in law and in fact when convicting the appellant based on hearsay and non-admissible evidence of Penina the prosecution witness.*

[50] Was the learned trial judge mistaken in law and in fact in convicting the appellant based on hearsay and non-admissible evidence of PW2? The discussion in relation to grounds 1 and 2 above is applicable to this ground also. The ground is misconceived as it fails to grasp the nature of the evidence provided by PW2, which is "recent complaint". The critical role of "recent complaint" evidence is to show consistency

of the complainant's conduct with her evidence given at trial. The complainant had informed PW2 of what happened to her or what the appellant did to her on the evening of Sunday 19th. What the accused/appellant had done to her in her room, which was consistent with the complaint. The trial Judge accepted that PW2 merely relayed what the complainant had told her and that goes to issue of consistency and credibility of the complainant.

[51] PW2's evidence is summarised in paragraphs 48 and 49 of Judgment.

[52] The recent complaint direction_which is thorough and very clear (see paragraphs 50 to 62) of judgment, is a moment in which the trial Judge reflects on the real issues of a complainant of a rape or other sexual offences, how they react after the event, after all they are human. They react differently depending on their very own nature and character in the circumstances of their case. That influences their decision making on matters, including who to tell their story to and when, and whether to report the matter to the police. There are no hard and fast rules that apply in such a situation as they confront the reality of what had occurred. The role of the Court in the context of recent complaint is to consider, assess and evaluate the evidence in its totality and determine whether to accept it as admissible. In paragraph 57 of judgment the learned trial Judge states:

"57. It is for the court to decide whether the evidence of recent complaint helps this court to reach a decision. The question of consistency or inconsistency in the complainant's conduct goes to her credibility and reliability as a witness. It is for the court to decide whether the complainant is reliable and credible. The real question is whether the complainant was consistent and credible in her conduct and in her explanation of it."

[53] The trial Judge dealt with previous inconsistent statements in the evidence of both PW1 and PW2 in paragraphs 63 to 66 of judgment – see the discussions on grounds 1 and 2 above.

[54] There were inconsistencies in PW2's evidence and the learned trial Judge had considered and addressed them. The inconsistency did not affect the evidence of both PW1 and PW2. The mistake with regard to the date and day of the incident was corrected and, in any event, it does not have any bearing on the substantive allegation. The evidence of PW2 that the accused threatened PW1, was denied by the complainant, is not a major inconsistency which does not affect the evidence of both

PW1 and PW2. PW2's evidence that PW1 was sad and crying was also accepted. It is what PW2 directly saw. If there were other evidence alleged as hearsay or inadmissible, they were not particularised or clarified. The learned trial Judge also clarified the scope and requirement as to disclosure in the context of recent complaint.

[55] In paragraph 109 - 114 of judgment, the learned trial Judge stated:

"109. I also accept the evidence of Penina Monumanunivalu as reliable and credible; she was able to relay what the complainant had told her. The defence had taken issue in respect of the date and day of the alleged incident mentioned in the police statement of Penina. However, defence exhibit 1 in the form of the Viber messages clearly indicates that something between the complainant and the accused had happened on 19th September hence the reaction by the complainant via Viber messages from early morning of the 20th (the following day).

110. I accept the evidence of Penina that the day and the date of 18th September mentioned in her police statement was a mistake. The date and day of the allegation has been confirmed by the complainant. The complainant denied telling Penina that the incident had happened on Saturday 18th September. In any event the above day and date of the incident does not have any bearing on the substantive allegation.

111. There was an inconsistency of evidence between the complainant and Penina about the threat made by the accused to the complainant. The complainant told the court that she did not tell Penina about the accused threatening her but Penina said the complainant had told her the accused had threatened the complainant. This is an obvious inconsistency between the two versions; however, this inconsistency is not a major inconsistency which does not affect the evidence of both the prosecution witnesses."

112. The decisive aspect of recent complaint evidence is to show consistency of the complainant's conduct with her evidence given at trial. In this case the complainant had relayed crucial information to Penina about what the accused had done to her in her room which was consistent with the evidence of the complainant. I also accept the observations of Penina that the complainant looked sad and was crying when she was narrating to Penina about what the accused had done to her.

113. The Supreme Court in Anand Abhay Raj v The State, CAV0003 of 2013 (20th August, 2014) at paragraph 39 made an important observation about the above as follows:

The complainant need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence."

[56] The ground has no merit. There is no miscarriage of justice.

(H). Conclusion

[57] In consideration of the foregoing, I am not persuaded that the appellant has demonstrated that the conviction is unreasonable and cannot be supported having regard to the evidence or that the judgment of the High Court, delivered on 31 July 2013 should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice. The appeal is dismissed.

Andrews, JA

[58] I agree with the decision of Qetaki, RJA.

Andrée Wiltens, JA

[59] I agree with the decision and have nothing to add.

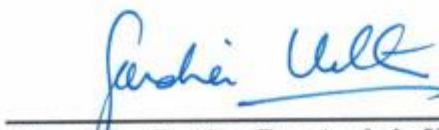
Orders of the Court

1. *The Appeal is dismissed.*
2. *The conviction is affirmed.*




Hon. Mr. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL


Hon. Madam Justice Pamela Andrews
JUSTICE OF APPEAL


Hon. Mr. Justice Gus Andrée Wiltens
JUSTICE OF APPEAL

Solicitors

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