

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

**CRIMINAL APPEAL NO. AAU 0098 OF 2023**  
**[Lautoka High Court: HAC 13 of 2020]**

**BETWEEN** : **LIVAI QORAQORA BUEBOTO**

**Appellant**

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

**Respondent**

**Coram** : Mataitoga, P

**Counsel** : Romanu I, for the Appellant  
Shameem, S for the Respondent [ODPP]

**Date of Hearing** : 4 December, 2024

**Date of Ruling** : 18 February, 2025

**RULING**

1. The appellant [Livai Bueboto] was indicted by the DPP and charged as follows:

- i) Count 1 - Sexual Assault, contrary to section 210 (1)(a) of the Crimes Act 2009;
- ii) Count 2 – Rape, contrary to section 207(1) and (2)(b) of the Crimes Act 2009;
- iii) Count 3 – Rape, contrary to section 207(1) and (2)(b) of the Crimes Act 2009.

2. After pleading not guilty to the charges, the trial was held at the High Court in Lautoka over 4 days. The prosecution called the complainant, the doctor who carried out the examination of the complainant and the complainant's father. For the defense, the appellant gave evidence on oath.
3. The trial judge at the end of the trial ruled that the Rape charge in count 2 have not been proven beyond reasonable doubt and found the appellant not guilty of it.
4. The appellant was convicted on count 1 and count 3 as charged in the Information by the DPP. He was sentenced on 5 December 2023 to 14 years imprisonment 9 months with a non-parole period of 11 years and 9 months imprisonment.

#### The Appeal

5. The appellant submitted a Letter of appeal dated 18 October 2023 which was received in the Court Registry on the same date. The appeal ground is unclear but it is based on the appellant's claim he impregnated the complainant on 4 January 2020, it could not have been possible because 4 months later the complainant gave birth to a child. This matter was not raised by counsel at the trial nor did the appellant himself this evidence when he was giving his testimony during the trial.
6. Using this letter as the starting point of the appeal, I consider the appeal timely.
7. The appellant filed Notice of Appointment of Solicitors on 1 December 2023, appointing MIQ Lawyers of his solicitor.
8. On 26 April 2024, MIQ Lawyers filed Amended Grounds of Appeal against conviction.

#### Grounds of Appeal

9. Appellant's Solicitors submitted the following Amended Grounds of Appeal against Conviction:

- i) The trial judge erred in law and fact when he failed to give proper consideration as to the credibility of the complainant and her father, given that the aunt was not called to give evidence to substantiate their evidence in Court;
- ii) The trial judge erred in law and fact in that he failed to consider the evidence regarding the aunt was all hearsay evidence and should have been disallowed since she was not presented in court to prove the evidence of both the complainant and her father;
- iii) The trial judge erred in law and fact in that his Lordship failed to consider that the father gave evidence that it was through her sister-in-law that he knew of the incident. And that he reported the matter to the police after receiving the call although his statement was taken 2 days later.

#### Relevant Law

10. The grounds of appeal submitted involves both question of law and facts, therefore pursuant to section 21(1)(b) of the Court of Appeal Act 2009, leave of the Court is required for appeal to the full court.
11. This being a timely appeal, the test for leave to appeal against conviction is 'reasonable prospect of success' see: Caucu v State [2018] FJCA 171; Navuki v State [2018] FJCA 172 and State v Vakarau [2018] FJCA 173; and Sadrugu v The State [2019] FJCA 87.

#### Assessment of the Grounds of Appeal

12. In his submission in support of his grounds of appeal, the appellant discussed ground 1 and 2 together; set out as i) and ii) in paragraph 9 above.
13. These two grounds allege that the evidence of the father with regard to the complaint he lodged with the police was instigated by the phone call that he received from the complainant's aunt. What is not established by the appellant is how that affects the

credibility of the evidence of the complainant during the trial. The claim of hearsay evidence is not applicable in this case; both the complainant and her father gave direct evidence that was relevant to charges the appellant faced.

14. At paragraphs 53 to 56, the trial judge stated:

*"[53] Therefore, considering the totality of the evidence in this case, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.*

*[54] Having analysed all the evidence in its totality, it is my considered opinion that the complainant's evidence, can be accepted as truthful, credible and reliable. The complainant withstood the rigorous cross examination by the Defence and remained consistent throughout her evidence, in relation to the material particulars of this case.*

*[55] It must also be mentioned once again that in terms of the provisions of Section 129 of the Criminal Procedure Act, where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; although in this case the medical evidence clearly supports the prosecution case.*

*[56] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the charges of Sexual Assault and Rape with which the accused has been charged."*

15. Grounds 1 and 2 have no merit.

16. Ground 3 has no merit, as it is misconceived. It raised no issue of law and fact which the trial judge erred in, in deciding the case. The taking of the complainant's father statement 2 days after he reported the matter to Police is not an error.


17. At the trial, as part of the Agreed Facts, the appellant agreed that the issue to be determined for count 1 and 3 is consent. The appellant effort to widen the issues for his appeal from those he agreed to for his trial shows a misconception of what took place at the trial.

18. This ground has no merit.

**ORDER:**

1. Application for leave to appeal against conviction is refused.



  
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**Hon. Justice Isikeli U. Maitoga**  
PRESIDENT, COURT OF APPEAL