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

CRIMINAL APPEAL NO. AAU 0062 OF 2021
[High Court: HAC 272 of 2019]

BETWEEN : **PITA TUNI VUNI**

Appellant

AND : **THE STATE**

Respondent

Coram : Qetaki, RJA

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

Date of Hearing : 23 January, 2026
Date of Ruling : 10 March, 2026

RULING

(A). BACKGROUND

[1] The appellant was convicted of rape on 15 March 2018, and he was sentenced on 16 March 2018, to life imprisonment with a non-parole period of 20 years.

[2] By letter dated 5 April 2021, the appellant sent a Notice of Motion for Leave to Appeal against conviction and sentence which was filed in the Court Registry on 16 April 2021. There was a delay which has nothing to do with the appellant but was due to bureaucratic inefficiency of processing the appellant‘s application. On that basis the application is treated as timely.

[3] In an earlier ruling dated 2nd April 2024, the appellant’s application for leave to appeal against conviction was refused. The appellant’s application for leave to appeal

sentence was not argued before the President of the Court of Appeal at that time, hence the need to now hear the appellant's application for leave to appeal sentence.

[4] At the hearing on 23rd January 2026, the appellant rely on his written submissions filed in Court. The Respondent also rely on its written submissions.

(B). GROUNDS OF APPEAL

[5] The Grounds of Appeal against sentence are twofold:

Ground 1: *That the imposition of the life sentence is not justified according to the nature of the offending, culpability and previous offending of the appellant.*

Ground 2: *That the 20 years non-parole term of imprisonment is excessive and not justified according to the circumstances of the offending.*

(C). GUIDELINE ON SENTENCE APPEAL

[6] The guidelines to be followed when a sentence is challenged on appeal is set out in **Kim Nam Bae v The State** [1999] FJCA 29, that is where a Judge:

(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.

(D). APPELLANT'S CASE

[7] Ground 1: The appellant submits that the imposition of life imprisonment with a non-parole period of 20 years on a single count of rape is harsh and excessive when compared with the sentence imposed in **Waqanivalu v The State** CAV 005 of 2007, where both this Court and the Supreme Court confirmed the 19 years minimum term. That the margin of the severity of sentence between that case and the appellant's case is significant and substantial compared to the five counts of murder (in **Waqanivalu)** One does not have to be an expert on sentencing to notice the significant difference in sentencing, given the facts and circumstances of the two cases.

[8] Ground 2: That the sentence of life imprisonment with the 20 years non-parole term cannot be justified and a serious miscarriage of justice, when compared with **Priya Darshani's** sentence of life imprisonment with 17 years minimum term for two counts of murder and 3 counts of attempted murder (See AAU0064/2014 (1 June 2018). The Court of Appeal had reduced the minimum term to 17years from 20 years.

[9] Given the facts and circumstances, it is apparent that the Court was more lenient in **Darshani** where the offending was *"a brutal and nasty series of crimes committed against a mother and her baby on the one hand and the mother's three older children on the other hand."*

[10] The sentence imposed on the appellant is harsh and excessive in comparison and its imposition is in breach of the equality before the law principle embedded in section 26(1) of the Constitution.

(E). Respondent's Reply

[11] The respondent submits that the two grounds of appeal against sentence can be considered together for practicality as the overall complaint can be summarized as *"the sentence appears harsh vis a vis the head sentence of life imprisonment, with a 20 years non-parole term, for a violent child rape".*

[12] Although the sentence in this case may appear justified from the public perspective given the prevalence of rapes, be they of children or adults, however, the case of **Bati v State** [2023] FJCA 160; AAU002.2021 (23 August 2023) suggest that leave may be properly allowed to enable the Full Court to review the life sentence for its overall propriety vis a vis the gravity of the offending.

[13] The respondent quoted extensively from Honorable Justice Prematilaka's observations in **Bati,** where he reviewed (paragraph [19]), the sentencing tariff for juvenile rape, and observed:

> *"[19] The trial Judge was aware of the sentencing tariff for juvenile rape as 11-20 years (vide **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018).He had set out aggravating factors as follows:*
>
> > *9. "The aggravating factors in this case were as follows:*
> >
> > ***(i) Serious Breach of Uncle's Trust**……..*

(ii) Rape of Children. *Unfortunately this problem is becoming prevalent in our society, despite the heavy prison sentence passed by the courts for the rape of children. The court had said in the past, and will keep on saying that it will not tolerate the abuse of children in our society. As it had done in the past, and is now doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.*

(iii) *By offending against the three child complainants, you had no regard to their rights as children, no regard to their rights as human beings and no regards to their rights to live a happy and peaceful life.*

[20] One may argue that rape of children is anyway built into the above tariff and considering it as a separate aggravating factor amounts to double counting. On the other hand, though the trial judge had considered the appellant as a first time offender, he is not qualified to be one because of his repeated sexual abuse of not one but 3 female children of 8-10 years old.

[21] In ***State v Vukici*** *[2018]FJHC 1193; HAC104.2017 (14 December 2018), the accused raped his biological daughter when she was ten years old, impregnated her when she was fourteen years old and continued to rape her when she was married and six months pregnant with a child from her husband. He then moved on to the second victim (his daughter and granddaughter) when she was ten years old and sexually abused her for sixteen years with impunity using his authority as the patriarchal head of the family. Imposing a life imprisonment Goundar said:*

"[26]…[30]

[31] This case presents a very disturbing criminal behavior by a father towards his children. You raped your biological daughter when she was ten years old, impregnated her when she was fourteen years old and continued to rape her when she was married and six month pregnant with a child from her husband. You moved on to the second victim (your daughter and granddaughter) when she was ten years old and sexually abused her for 16 years with impunity using your authority as the patriarchal head of the family.

[32] The physical and psychological; harm that you have caused to the victims is severe if not permanent. This is one of the worst cases of rape of children by their own biological father to come before the Court. A father who rapes his own child deserves very little mercy. Your crimes are so abhorrent that they must be denounced in the strongest term with the maximum sentence that the court can impose.

[33] I sentence you to life imprisonment on each count of rape and to 5 years' imprisonment on each count of indecent assault, to be served concurrently. I decline to fix non-parole period. Your release from prison is in the hands of the Executive now."

[14] Honorable Justice Prematilaka, briefly touched on **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006) and **Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015) and their role in the context of sentencing principles on appeals against sentence - (paragraph 24).

[15] The respondent submits that having regard to the observations in **Bati**, similar issues of double counting (considering "child rape as aggravation" when relying on the 11 – 20 - year child rape tariff) may be present in this case also. It is accepted that this was a disturbing case, it was not however, a campaign of rape. The respondent submits that leave to appeal sentence may be properly allowed to permit the Full Court to revisit the sentence to *see its propriety and assess whether it fits the gravity of the crime.*

(F). Analysis

[16] For an appeal against sentence to be successful, there must be an arguable or reasonably arguable case. The appellant must bring his case in line with the guidelines established in **Kim Nam Bae** (supra). The appellant's submissions on grounds 1 and 2 of the sentence appeal draws attention to disparity in sentencing between the sentence being appealed, and the cases previously decided.

[17] The sentence in this case seems harsh and excessive in comparison to **Waqanivalu v State** and **Dharshni v State** (supra), although the said cases were of murder related charges and not rape.

[18] The respondent conceded in its submissions for Grounds 1 and 2, that the appellant's contention may be allowed, that is, the argument that his sentence was under the circumstances harsh and excessive, accepting that the acts of offending were violent, but short of being classified as a campaign of rape, if only to ensure that the Full Court has the opportunity to review the sentence in light of the facts and circumstances of the case.

[19] The respondent based its submissions on child rape sentencing tariff in **Aitcheson v State** (supra) and **State v Vukici** (supra) which were relied upon and considered in sentencing in a rather similar case of **Bati v State** (supra). On sentencing, these cases, were more lenient to the appellants in their approach bearing in mind their individual facts and circumstances which are more serious and grievous then the facts and circumstances of this case .

[20] In **Bati v State** (supra) it was observed that:

> *"[22] It does not appear that the state counsel had called for the life imprisonment on the appellant. I do not find that the appellant's offending could be equated in terms of culpability and harm with that of **Vukici**.*
>
> *[23] Therefore, I think that in all the circumstances it is best that the matter of sentence is left to the full court to revisit to see its propriety and assess whether it fits the gravity of the crime. Every convict should be punished adequately but not more than adequately. Otherwise it might either grossly inadequate or excessive and harsh."*

[21] It is also relevant to bear in mind the principles/guidelines on how the appellate courts should approach a sentencing appeal as established in **Koroicakau v State** (supra), and to ensure the sentence given is within range: **Sharma v State** (supra). As also stated in **Bati v State:**

> *"[24] When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered [vide **Koroicakau v State**.....The approach taken by the appellate court in an appeal against sentence is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State**.....]; if outside the range, whether sufficient reasons have been adduced by the trial judge."*

[22] Given the foregoing, I am of the considered view that the application for leave to appeal sentence by the appellant be allowed to provide an opportunity for the Full Court, which will have the benefit of having before it the Record of proceedings in the High Court, to review the sentence in light of the facts and circumstances giving rise to the appeal in this case..

Order of Court

1. *Leave to appeal sentence is allowed.*

COURT OF APPEAL FIJI

Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors
Appellant in Person
Office of the Director of Public Prosecution for the State