

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL NO. HAA 007 OF 2020**

**BETWEEN** : **LEONE KATONIBAU MATAVESI**

**AND** : **STATE**

**Counsel** : Mr A Sen for the Appellant  
Ms J Fatiaki for the State

**Date of Hearing** : **29 October 2020**

**Date of Judgement** : **18 November 2020**

**JUDGMENT**

[1] This is an appeal against conviction only.

[2] The appellant was tried and convicted on a charge of indecent assault in the Magistrates' Court at Savusavu and sentenced to 15 months' imprisonment with a non-parole period of 9 months.

[3] The brief facts of the case are that on 26 February 2018 the appellant unlawfully and indecently assaulted a 9 year old girl by touching her buttocks.

[4] The appellant's grounds of appeal are as follows:

1. THAT the Learned Magistrate erred in convicting the appellant without properly analyzing the evidence before making a determination.

2. THAT the learned Magistrate erred in convicting the appellant when there were uncertainties as to the identification of the appellant.
3. THAT the learned Magistrate failed to analyze the appellant defence evidence (sic) before convicting him.

[5] All three grounds can be conveniently dealt together.

[6] The incident occurred on the night of 26 February 2018 at the victim's residence. The appellant was a guest attending a birthday celebration at the victim's home that night. He was a work colleague of the victim's father.

[7] The victim was 9 years old at the time. Her account was that she felt someone touch her neck while she was asleep. She did not see anyone touch her.

[8] The eye witness to the incident was a 56-year old woman (PW2). She was also a guest at the victim's home. She slept in the same room as the victim. Her account was that she saw the appellant crouching over the victim and fondling and caressing her buttocks. Her account is not inconsistent with the account of the child victim who said she only felt someone touching her neck but did not know if someone had actually touched her as she was fast asleep.

[9] The appellant was solely convicted on PW2's account. The learned magistrate found her evidence credible and her identification of the appellant reliable. PW2 identified the appellant as she knew him as "Pale" who lived at Nukubalavu village. The identification was made in a well lit room and from a close distance without anything obstructing her view. At the trial, PW2 was allowed to identify the appellant in the dock.

[10] Another work colleague of the appellant who was at the function at the victim's residence on 26 February 2018 gave evidence saying the appellant was with him between 7pm and 10pm and then he disappeared for a while and returned after 12 midnight. After that the appellant went away and never came back.


[11] The appellant admitted that he was at the victim's residence on the night of 26 February 2018, but by 11.45pm he had returned to his home. The appellant's sister gave evidence that when she returned home from work after 11.30pm that night, she saw the appellant asleep in his room. The learned magistrate did not believe the appellant or his witness. He said both the appellant and his witness could not elaborate more when questioned about details.

[12] It is clear that the identification of the appellant by PW2 was not a fleeting encounter. Both the appellant and the witness attended the same function at the victim's residence before the incident took place. The witness recognized the appellant by his alias "Pale" in a well lit room and from a short distance and without anything obstructing her view. Despite that the learned trial magistrate cautioned himself of the danger of dock identification before acting on PW2's evidence.

[13] The learned magistrate carried out a detailed analysis of all the evidence including that of the appellant and his witness. The appellant's contention that the learned magistrate failed to properly evaluate the inconsistencies between the victim's account and the eye witness's account has no merits. Further, there was no error in the exercise of discretion to allow PW2 to identify the appellant in the dock during the trial.

[14] The appeal is dismissed.



  
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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Maqbool and Company for the Appellant

Office of the Director of Public Prosecutions for the State