IN THE SUPREME COURT OF FIJI
[CRIMINAL APPELLATE JURISDICTION]

CRIMINAL PETITION No: CAV 0014.2018
(On Appeal from Court of Appeal No: AAU 0059.2014)

BETWEEN : KALI DASS

Petitioner

AND : THE STATE

Respondent

Coram : **Hon. Mr. Justice Saleem Marsoof, Judge of the Supreme Court**
Hon. Madam Justice Chandra Ekanayake, Judge of the Supreme Court
Hon. Mr. Justice Kankani Chitrasiri, Judge of the Supreme Court

Counsel : **Mr. M. Fesaitu for the Petitioner**

Ms. P. Madanavosa for the Respondent

Date of Hearing: **18 October 2018**

Date of Judgment: **02 November 2018**

JUDGMENT

Marsoof, J

1. This is a pathetic case involving the repeated rape of a 10 years old female child named "DY" (actual name suppressed) by the Petitioner who was her biological father. D.V was born on 3rd September 2001, and as she was less than 13 years of age at the time of each incident of rape, her consent was not an element of each count.

2. Charges against the Petitioner consisted of three counts, each alleging that the Petitioner did (a) between 1st November 2010 and 31st December 2010, (b) between 1st June 2011 and 31st August 2011, and (c) between 1st September 2011 and 5th September 2011, at Nadi, in the Western Division, inserted his penis into the vagina of DY, a 10 year old girl, and committed rape punishable in terms of Section 207 (1) and (2) and (3) of the Crimes Act No. 44 of 2009.

3. The trial commenced on 20th February 2014 and lasted five days. On behalf of the prosecution, DY, her aunt Karishma Devi, Dr. Karalaini, Medical Officer of the Nadi Hospital and four police witnesses, to wit, DC Shailend Sashi Krishna, DC Vishal Kumar, DC Arif Khan and WPC Virisila Rakadi, testified for the prosecution. The Petitioner testified on his own behalf and was the only defence witness.

4. At the conclusion of the trial at Lautoka High Court, the assessors returned a divided opinion, the 1st Assessor finding the Petitioner guilty of all three counts of rape, the 2nd Assessor finding the Petitioner not guilty of all three counts, and the 3rd Assessor finding the Petitioner guilty of only the first count, and not guilty of the other two counts of rape.

5. Since the learned Trial Judge was not in agreement with the opinions of the 2nd and 3rd Assessors, he pronounced Judgement on 26th February 2014 convicting the appellant on the second and the third counts as well. Accordingly, the Petitioner was convicted on all three counts of rape.

6. By his subsequent order dated 11th March 2014, the learned Trial Judge sentenced the Petitioner to 13 years 8 months imprisonment on each count of rape, the sentences to run concurrently. The sentencing order also fixed a non-parole period of 12 years of imprisonment.

7. The Petitioner appealed against his conviction to the Court of Appeal, and the learned Single Judge of the Court of Appeal by his Ruling dated 13th March 2015, granted leave to appeal on all the three grounds urged by him before the Court of Appeal.

8. The appeal was heard by the Court of Appeal on 15th May 2018, and by its unanimous judgment dated 1st June 2018, the Court of Appeal found that the three grounds of appeal urged by the Petitioner were without merit, and dismissed the appeal.

The Application for leave to appeal

9. By his timely application for leave to appeal dated 26th June 2018, which was received in the Registry of the Court of Appeal on 2nd July 2018 and duly forwarded to the Registry of the Supreme Court, the Petitioner has sought leave to appeal to this Court on the following 3 grounds:-

    (1) The learned Trial Judge erred in law and in fact when he failed to direct the assessors properly that the evidence of recent complaint is not evidence of the fact complained of and cannot be regarded as corroboration but goes to the consistency of the complainant's conduct with her evidence given as trial.

    (2) The learned Trial Judge erred in law and in fact when he convicted the Appellant for three counts of rape when there was no evidence towards one count of rape as per the victim's evidence.

    (3) The learned Trial Judge erred in law when he failed to remind the child victim about the importance of telling the truth before receiving her evidence resulting in unsafe conviction.

10. The Petitioner has by a subsequent application titled "Notice of Additional Grounds of Appeal" dated 27th June 2018 also received in the Registry of the Court of Appeal on 2nd July 2018 and duly forwarded to the Registry of this Court, sought permission to urge the following additional grounds in support of his application for leave to appeal.

(1) That the learned trial judge erred in law in admitting the police records of interview statement that was unsafe, unsatisfactory and not supported by evidence.

(2) That the learned Trial Judge erred in law in not giving cogent reasons for disagreeing with the majority opinion of the assessors that the Petitioner was not guilty.

(3) That the Learned Trial Judge erred in not making an independent assessment of the evidence before confirming with the assessors that that the Petitioner was guilty of Rape, which was unsafe, unsatisfactory and not supported by evidence.

(4) That the Learned Trial Judge erred in law and in principle in taking into consideration irrelevant matters when sentencing the Petitioner and not taking into account relevant consideration(s).

(5) That the Learned Trial Judge erred in principle and also erred in exercising his sentencing discretion to the extent that the Learned Trial Judge took a high starting point of 12 years imprisonment rather than the tariff set.

11. The three grounds included in the Petitioner's initial application for leave to appeal dated 26th June 2018 were against the conviction, and the first three additional grounds urged in the Petitioner's subsequent "Notice of Additional Grounds of Appeal" dated 27th June 2018 were also against the conviction, and grounds (4) and (5) of the said subsequent notice were against the sentence.

12. The exclusive jurisdiction of the Supreme Court of Fiji to hear and determine appeals from all final judgments of the Court of Appeal is derived from section 98(3)(b) of the Constitution of the Republic of Fiji. Section 98(4) of the said Constitution provides that an appeal may not be brought to the Supreme Court from a final judgment of the Court of Appeal unless the Supreme Court grants leave to appeal.

13. The circumstances under which this Court is permitted to grant leave to appeal to a petitioner in a criminal petition are set out in section 7(2) of the Supreme Court Act 1998 which provides that:

> "In relation to a criminal matter the Supreme Court must not grant leave to appeal unless:
>
> (a) a question of general legal importance is involved;
>
> (b) a substantial question of principle affecting the administration of criminal justice is involved; or
>
> (c) substantial and grave injustice may otherwise occur."

14. The aforesaid criteria for granting leave under section 7(2) have been the subject of frequent judicial comment over the years. The stringency of the said criteria is amply illustrated in the following *dictum* of Lord Sumner in *Ibrahim v Rex* [1914] A.C. 599 at page 614:-

> "Leave to appeal is not granted "except where some clear departure from the requirements of justice" exists: *Riel v. Reg* (1885) 10 App. Case. 675; nor unless by "a disregard of the forms of legal process", or by some "violation of the principles of natural justice or otherwise, substantial and grave injustice has been done": *In re Abraham Mallory Dittet* (1887) 12 App. Case. 459."

15. Following the same line of reasoning, this Court has observed recently in paragraph 18 of its judgment in *Sharma v State* [2017] FJSC 5; CAV0031.2016 (20 April 2017) that-

"It is to be observed that the injustice that is said to have occurred *must not only be one that is substantial but also one that is grave.* As such, even if the party succeeds in establishing that some injustice had been caused, that by itself may not be sufficient to obtain relief unless the party is capable of establishing that the injustice referred to is one that meets the threshold laid down in section 7 (2) paragraph (c) of the Supreme Court Act."(*Emphasis added*)

16. I am mindful of the stringency of the said criteria which are required to be satisfied in granting leave to appeal, and note that all the grounds included in the Petitioner's application for leave to appeal as well as the additional grounds advanced by him are couched in language most appropriate for appealing against the decision of the High Court to the Court of Appeal, and not a single ground urged on behalf of the Petitioner seek to assail the decision of the Court of Appeal in its impugned judgment.

17. The three grounds set out in the Petitioner's initial application for leave to appeal dated 26th June 2018 are intended to re-argue the same grounds that had been raised before the Court of Appeal. The five grounds raised in the subsequent "Notice of Additional Grounds of Appeal" dated 27th June 2018 are all fresh grounds that had not been raised, argued or considered by the Court of Appeal in its impugned judgment.

18. Considering the fact that though represented at the hearing before this Court by learned Counsel assigned by the Legal Aid Commission, the Petitioner was not so assisted while he applied for leave to appeal while being an incarcerated prisoner, all the grounds urged by him will be considered showing the leniency and indulgence customarily extended to person so circumstanced.

Ground (1) The Evidence of Recent Complaint

19. This ground, which sought in essence to raise the issue as to whether the learned Trial Judge had given an "inaccurate direction" to the assessors concerning the evidence of

recent complaint has been taken up and argued before the Court of Appeal. The Petitioner's complaint arises from the learned Trial Judge's direction to the assessors concerning the testimony of DY's aunt Karishma Devi contained in paragraph 32 of the summing up, wherein the learned Judge said:

> "You saw her giving evidence in Court. She had given prompt answers to questions put to her by the defence. It is up to you to decide whether you could accept her evidence beyond reasonable doubt. If you accept her evidence *it corroborates the evidence of the victim* regarding recent complaint about last incident of rape."(*emphasis added*)

20. Learned Counsel for the Petitioner has submitted before this Court that the said direction was likely to confuse the assessors "whether to take into account the 3rd count of rape or the last two incidents as to what was complained". Although as noted by the Court of Appeal, the learned Trial Judge could and should have used clearer language in his summing up, in the context of the evidence of both DY and her aunt Karishma Devi, to which the attention of the assessors had been drawn by the Trial Judge, there can be no ground for complaint. As the Court of Appeal noted in paragraph [7] of its judgment, the words used by the learned Trial Judge, cannot be construed as a direction to the effect that "the alleged commission of the crime of rape finds corroboration from the recent complaint made by the victim to the witness Karishma Devi". The learned Trial Judge, had made a rather broad statement by highlighting the fact that Karishma Devi's evidence regarding the complaint she received from the victim does corroborate the evidence of the victim who in her evidence described how she reported the incident of rape to Karishma Devi.

21. In paragraph [8] of its judgment, the Court of Appeal has made the following observation:-

"[8] The State, in dealing with the impugned passage in the summing up contends that the passage has not caused a substantial miscarriage of justice. In support of the contention the respondent has cited, *Kehra v. State* [2016] FJCA 1; AAU0117. 2014 (12 January 2016). Another citation in support of this proposition is found in *Shameem Mohammed v. Reginam* 29 FLR 154. Further, it is the contention of the respondent that the evidence for the prosecution, taken as a whole is sufficiently strong to countermand any possible negative impact that may have been left by the impugned statement. In my view, there is no necessity for one to go that far in understanding the kind of purposiveness that the learned Trial Judge was seeking to reach by forming the directions in that fashion. *Primarily he was highlighting the nature of consonance emerging out of the evidence of different witnesses who testified for the prosecution at the trial and in my view, given the nature of the present issue any exercise that entails further analysis may be seen as superfluous.* Moreover, since the victim in this case had been a 10 years child when she fell victim of the alleged crimes and therefore the need to look for evidence of corroboration has no relevancy in law in this instance."(*Emphasis added*)

22. I do not consider the ground raised by the Petitioner merits any further discussion since the Court of Appeal has dealt with this ground carefully and very rightly dismissed the appeal on that ground.

Ground (2) Absence of Evidence of One Count of Rape

23. The second ground for seeking leave to appeal is that the learned Trial Judge erred in law and in fact when he convicted the Petitioner of three counts of rape when there was no evidence towards one count of rape on the basis of the evidence of DI.

24. Learned Counsel for the Petitioner has argued that though the Petitioner has in the course of his caution and charge interview admitted committing three incidents of rape, the child

victim had testified in court to only two incidents of rape. Learned Counsel for the Respondent has relied on paragraph [41] of the judgment of this Court in *Alfaaz v State* [2018] FJSC 17; CAV0009.2018 (30 August 2018) where it was considered trite that a "man may be convicted, even of murder, solely upon his confession."

25. Given the circumstances of this case, I am of the opinion that there is no merit in the submissions made on behalf of the Petitioner on the second ground for seeking leave to appeal. The Court of Appeal has examined this ground carefully and dismissed the appeal on that ground, and the ground raised does not satisfy any of the threshold criteria for the grant of leave to appeal.

Ground (3) The Importance of Telling the Truth

26. The third ground on which leave to appeal has been sought by the Petitioner was also taken up before, and considered by, the Court of Appeal. This ground raises the question whether the learned Trial Judge erred in law when he failed to remind the child victim DY about the importance of telling the truth before receiving her evidence resulting in an unsafe conviction.

27. It is clear from the High Court Record that no oath had been administered on DY, the child victim in this case, before she testified at the trial. However, it is apparent from the proceedings of 24th February 2014, that the learned Trial Judge had asked DY a few questions to ascertain whether the witness could understand and answer questions. Having done so, the learned Trial Judge had concluded that "Considering answers, witness is fit to testify". What questions were in fact asked by the learned Trial Judge from DY, and how she responded to those questions, is not clear from the Court Record.

28. Nonetheless, I have examined the question and answer appearing as (1) in the proceedings of 24th February 2014 up to question and answer (26), which reveal that the witness understood the questions put to her by the learned Counsel for the State at the very commencement of her examination-in-chief and how they were answered by DY,

which demonstrate, in my opinion, two things: (1) DY has answered those questions extremely well and intelligently, and (2) the girl as young as she was, cooked her own food and also attended to some housekeeping chores, besides going to school. When asked what is her favourite subject in school, her answer was "Maths", and her best friend was "Jennifer." Her favourite cartoon was "Aladdin."

29. The learned Counsel for the Petitioner has submitted before this Court that the learned Trial Judge should have informed the child victim to tell the truth since she was a child of tender years. There is nothing in the record to show that the trial judge had informed DY about the importance of speaking the truth, although it is on record that she was not administered the oath before she testified in court.

30. In the course of submissions of Counsel before this Court and in the written submissions filed, the provisions of section 117 of the Criminal Procedure Act, 2009 and section 10 of Juveniles Act, Cap 56 were referred to. Section 117 of Criminal Procedure Act, 2009 provides as follows:

> "117. — (1) Every witness in any criminal cause or matter shall be examined upon oath or affirmation, and the court before which any witness shall appear shall have full power and authority to administer the usual oath or affirmation.
>
> (2) The court may at any time, if it thinks it just and expedient, *take without oath the evidence of any person* -
>
> *(a)* declaring that the taking of any oath whatsoever is according to religious belief unlawful or impermissible; or
>
> *(b)* who *by reason of immature age* or want of religious belief ought not, in the opinion of the court, to be admitted to give evidence on oath.

(3) The court shall *record the fact that evidence has been taken in accordance with sub-section (2), and the reasons for allowing the evidence to be taken without oath.* (*Emphasis added*)

31. Although the reasons for not taking the evidence of DY under oath has not been recorded by the trial judge as required by the above quoted provision, the fact that no oath was administered by reason of the "immature age" of DY is clear from the fact that the learned Trial Judge had asked some questions from the witness to ascertain her competence as a witness and has recorded the fact that in his opinion, she was "fit to testify." In my view, there has been substantive compliance of the provisions of section 17 of the Criminal Procedure Code in all the circumstances of the case.

32. Section 10 of the Juveniles Act provides as follows:-

> "10.(1) Wherein any proceedings against any person for any offence or in any civil proceedings any *child of tender years* called as a witness does not in the opinion of the court understand the nature of an oath, *his evidence may proceed not on oath, if, in the opinion of the court, he is possessed of sufficient intelligence to justify the reception of his evidence and to understand the duty of speaking the truth*; and the evidence though not given on oath but otherwise taken and reduced into writing so as to comply with any law in force for the time being, shall be *deemed to be a deposition* within the meaning of any law so in force;
>
> Provided that where evidence is admitted by virtue of this section on behalf of the prosecution, the accused shall not be liable to be convicted of the offence unless that evidence is *corroborated.*
>
> (2) If any child of tender years whose evidence is thus received wilfully gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be liable on conviction to dealt

with as if he had been guilty of an offence and the provisions of section 32 shall thereupon apply."(*Emphasis added*)

33. As already noted, the questions that the learned Trial Judge put to DY do not appear from the High Court Record, and it is not clear whether they were sufficient for the learned Trial Judge to conclude that DY was able to understand the nature of an oath or she was possessed of sufficient intelligence to justify the reception of his evidence and to understand the duty of speaking the truth. However, assuming that the learned Trial Judge had given his mind to the above quoted provisions of the Juveniles Act, and decided not to take DY's evidence under oath, it may be reasonable to infer that in his opinion, DY was possessed of sufficient intelligence to justify the reception of her evidence. However, as already noted, there is nothing on record to show that the trial judge did inform DY about the importance of speaking the truth.

34. It is evident from paragraph [27] of the impugned judgment of the Court of Appeal, the relevant part of which is reproduced below, that it did entertain some doubts as to whether the provisions of the Juveniles Act would apply to a child of DY's age. In paragraph [27], Gamalath JA, with whom Chandra JA., and Bandara JA., concurred, observed that –

> [27] Before concluding I wish to place on record another issue that attracts my attention within the pale of the facts and circumstances of this Appeal. This is in relation to the extent to which the operational sphere of Sec 10 of the Juveniles Act should be extended. In that context what is directly relevant is that Section 2 of the Juveniles Act defines a "Child" as a person who has not attained the age of fourteen years. It means in effect, that it covers a range of those who are in their infancy (Sect 8 of the Act) up to the upper age limit of 14 years. However, Section 10(1) speaks of a "Child of tender years" who has been called in as a witness in any court proceedings, including any civil proceedings". *In my understanding, the application of Section 10(1) is confined to "children of tender years", a phrase that finds no specific definition in the Juveniles Act.* In other

words not all children who are under the age of 14 years are to be considered as "children of tender years." *For instance, there can be many children who come forth as witnesses whose power of comprehension of the oath and its significance may not be in doubt* and whether such children should also be included within the category of "children of tender years" who should be exempted from the implementation of Section 10 of the Juveniles Act is doubtful to me. (*Emphasis added*)

35. There is no definition of the phrase "child of tender years" in the Juveniles Act. Section 10 of the Act, which uses the phrase to delineate its ambit, had its origins in section 38 of the Children and Young Persons Act of 1933 enacted by the Parliament of the United Kingdom, which too did not contain a definition of the said phrase. The proviso to section 38 of that Act, as does the proviso to section 10(1) of the Juveniles Act, provides that "where evidence admitted by virtue of this section is given on behalf of the prosecution the accused shall not be liable to be convicted of the offence *unless that evidence is corroborated by some other material evidence in support thereof implicating him.*"

36. It would appear that the phrase "child of tender years" has been used in different senses depending on the objective of the statute in which it finds a place, and it is therefore necessary to consider the meaning of the phrase for the purposes of the Juveniles Act of Fiji, in its special context. This Act deals with juveniles who comes into contact with the law or are in need of protection under the law. A "juvenile" is defined in the Act as "a person who has not attained the age of seventeen years, and includes a child and a young person." A "child" is defined in the Act as "a person who has not attained the age of fourteen years," and a "young person" as "a person who has attained the age of fourteen years, but who has not attained the age of seventeen years." This twofold classification of juveniles in the Act is important in delineating the ambit of section 10 of the Act, which applies only to a "child of tender years". As Gamalath JA has observed in the above quoted passage from the judgment of the Court of Appeal, not all children below fourteen years of age fall within the ambit of section 10 of the Juveniles Act, and the question is

whether DY, who according to the High Court Record was born on 3rd September 2001, was a child of tender years at the time she testified in court on 24th February 2014. At the time of testifying in Court, DY was a little more than 12 years and 5 months in age. Her testimony in court, specially her answers to question put to her in cross-examination, shows without any semblance of doubt that she comprehended the questions put to her and responded to them as any adult would. In these circumstances, in my own opinion, there can be very little doubt that DY was not a "child of *tender years*" for the purpose of the Juveniles Act.

37. The Court of Appeal nevertheless considered the provisions of section 117 of the Criminal Procedure Act, 2009 as well as section 10 of the Juveniles Act, Chapter 56 of the Laws of Fiji in the light of the recent judgment of this Court in *Ravinesh Kumar v State* [2016] FJSC 44; CAV0024.2016 (27 October 2016) in arriving at its conclusions. Having done so, the Court observed as follows:

> "[16] I find that it is important to state at this stage that the questions that are asked to determine the competency of the witness should have a clear reflection in the Court Record, so that anyone who has a legitimate interest in finding the nature of the test carried out by the learned trial judge could gain access to the relevant procedure. The requirement to carry out the test of competency and the need to administer the oath of a witness are intrinsically interconnected with the norms of the right to a fair trial. *In a situation where having regard to all the attendant circumstances a court is of opinion that the need to administer the oath should be dispensed with, then the procedure that is carried out in arriving at such conclusion should have a reflection in the court record.* In the same way the court record should bear the evidence of the nature of the competency test carried out in determining the ability and the level of intelligence of a witness to testify without administering an oath. *Section 117 of the Criminal Procedure Act has made this requirement mandatory*".(*Emphasis added*)

38. In the light of the facts of the instant case, the Court of Appeal observed in paragraph [23] of its judgment that "the procedure adopted by the learned High Court Judge falls short of clear adherence to the provisions of law. The Court of Appeal went on to observe that-

> "In other words, the decision to forego the need to administer the oath and to carry out a competency test are not to be treated as functions to be performed perfunctorily. Strict adherence with the degree of transparency that is required to be maintained through the relevant notes as per Criminal Procedure Act (Record of Evidence in the High Court) Rules 1950 would serve the purpose in situations akin to the instant case."

39. However, as the Court of Appeal stated in paragraph [24] of its judgment, after carefully examined the entirety of the testimony of the victim, "it is quite clear that the Court Record does not contain even a semblance of evidence to support the fact that she was an incompetent witness or a witness whose testimony cannot be trusted." Taking into consideration the fact that the prosecution's case is not solely dependent on the evidence of DY as the caution statement of the Petitioner by itself provided incriminating evidence against the maker, the Court concluded that this is an appropriate case to apply the proviso to Section 23 of the Court of Appeal Act.

40. In my view, the Court of Appeal has examined ground (3) carefully and dismissed the appeal. The testimony of DY has been corroborated by that of her aunt Karishma Devi and the medical evidence, and the caution statement of the Petitioner also points in the direction of its veracity.

41. The identical ground raised before this Court, in my opinion, does not satisfy any of the threshold criteria set out in section 7(2) of the Supreme Court of Act for the grant of leave to appeal to this Court.

Other Grounds for seeking Leave to Appeal

42. It is now necessary to consider grounds (1) to (5) urged by the Petitioner in his subsequent "Notice of Additional Grounds of Appeal" dated 27th June 2018. None of these grounds had been raised in the Court of Appeal or considered by it in the impugned judgment. As this Court observed in *Katonivualiku v The State* (CAV 1 of 1999; 17 April 2003)-

> "It is plain from this provision that the Supreme Court is not a Court of Criminal Appeal or general review nor is there an appeal to this Court as a matter of right and whilst we accept that in an application for special leave some elaboration on the grounds of appeal may have to be entertained, *the Court is necessarily confined within the legal parameters set out above, to an appeal against the judgment of the Court of Appeal.....*"(*Emphasis added*)

43. As his Lordship Gates P observed in paragraph [28] of his judgment in *Vaqewa v State* [2016] FJSC 12; CAV0016.2015 (22 April 2016), where any ground that had not been taken up in the Court of Appeal is raised for the first time before this Court, this court would not entertain such fresh ground of appeal "*unless its significance upon the special leave criteria was compelling*". In the instant case, the additional grounds urged by the Petitioner do not arise from the impugned judgment of the Court of Appeal, and no explanation has been provided as to why they were not taken up before that Court in the first instance. The Petitioner was represented by Counsel at the trial as well as in the Court of Appeal, which court was better placed to examine the type of issues raised in the additional grounds of appeal.

44. From the perspective of the State and the society in general, great prejudice will be caused to the child victim DY, and children of her age who when they grow up will constitute the citizenry of the nation, if there is no finality in these matters.

45. I have given anxious considerations to the additional grounds raised by the Petitioner in the totality of evidence in this case, and am of the view that they are not only lacking in merit, they do not satisfy the stringent criteria set out in section 7(2) of the Supreme Court Act for the grant of leave to appeal. No compelling reasons have been advanced for considering the additional grounds in depth at this stage of the proceedings.

Conclusions

46. In the result, I am of the opinion that there is no basis for granting the Petitioner leave to appeal in this case, and that leave to appeal has to be refused. The application of the Petitioner has to be dismissed.

Ekanayake, J

47. I have read in draft the judgment of Marsoof J. I agree with his reasoning, conclusions and proposed orders.

Chitrasiri, J

48. I am in agreement with the judgment of Marsoof J. and also with his reasoning, conclusions and proposed orders.

Orders of the Court:

1 Leave to appeal is refused.

2. Application is dismissed.

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Hon. Mr. Justice Saleem Marsoof
Judge of the Supreme Court

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Hon. Madam Justice Chandra Ekanayake
Judge of the Supreme Court

....

Hon. Mr. Justice Kankani Chitrasiri
President of the Supreme Court

Solicitors:

Office of the Legal Aid Commission for the Petitioner

Office of the Director of Public Prosecutions for the Respondent.