IN THE SUPREME COURT OF FIJI
[APPELLATE JURISDICTION]

CRIMINAL PETITION NO. CAV 0007 of 2024
[Court of Appeal No. AAU 0015 of 2019]

BETWEEN	:	**SILAS SANJEEV MANI**
		Petitioner
AND	:	**THE STATE**
		Respondent
Coram	:	**The Hon. Justice Anthony Gates, Judge of the Supreme Court** **The Hon. Justice Terence Arnold, Judge of the Supreme Court** **The Hon. Justice Lowell Goddard, Judge of the Supreme Court**
Counsel	:	**Petitioner in person** **Ms. R. Uce for the Respondent**
Date of Hearing	:	**08 October 2025**
Date of Judgment	:	**30 October 2025**

JUDGMENT

Gates, J:

[1] I agree with the judgment of Goddard J and with the orders.

Arnold, J:

[2] I also agree with the judgment of Goddard J and the orders proposed.

Goddard, J:

[3] The petitioner was tried in the High Court of Lautoka in October 2018 on a representative charge of rape, committed during the period 30 April 2016 and 11 July 2016. The victim was a nine-year-old girl. She is the half-sister of the petitioner and was living in his care at the time of the offending. At the conclusion of the trial the three assessors returned a unanimous opinion of guilt with which the trial Judge concurred. The petitioner was duly convicted and sentenced on 16 November 2018 to a term of imprisonment of 18 years with a non-parole period of 15 years.

[4] In passing sentence, the learned trial Judge commenced his remarks by saying:

> *"The facts proved in court are shocking. This is one of the worst child rape cases I have ever tried in Fiji. The victim in this case was only 9 years old at the time of the offence."*

[5] The petitioner filed an appeal against conviction on numerous grounds, which are extensively listed in the decision of the full Court of Appeal. He had earlier been refused leave to appeal on three of the same grounds by a single Judge of appeal and refused an enlargement of time in which to appeal. Although the initial delay in bringing his appeal had not been substantial, the single Judge was of the view that none of the three grounds had any prospect of success.

[6] His appeal was heard by the full Court of Appeal on 6 February 2024 and judgment delivered on 28 February 2024. Leave for an enlargement of time in which to appeal was refused and his appeal against conviction was dismissed.

[7] The petitioner moved swiftly to file an application for special leave to appeal to the Supreme Court with an affidavit in support. His petition contains 16 grounds of appeal against conviction. Many of the grounds are repetitious and concern the same or overlapping issues. They include a renewal of the three grounds for which leave was refused by the single Judge of Appeal. There is also a 'fresh evidence' application seeking to adduce further evidence not called at trial. This was filed at the time of his appeal to the

full Court of Appeal but was unable to be dealt with at that time. The application is supported by affidavits sworn by the petitioner and four other deponents. The affidavits concern family discussions said to have taken place immediately or soon after the incident and purport to contain disclosures by the victim that she had been abused by a boy at her school. This 'fresh evidence' also includes a visit to Sigatoka Police Station on 22 June 2016 by the victim and two aunts, followed by a medical examination of the victim at Sigatoka Hospital. In combination, these matters are said to be further proof that the petitioner did not rape the victim, and that she fabricated her complaint due to personal grudges.

[8] A further fresh evidence application was filed in this Court in July of this year. By this application the petitioner is seeking the leave of the Court to have the victim brought back before the Court to be re-examined, based on affidavit evidence from two aunts who depose that she told them she was forced by her biological father to give false testimony at the trial and that she now wishes to be recalled to give her true testimony.

The Trial

[9] The State called the victim to give evidence at the trial. Also her natural father, Avinesh Reddy, who had taken the victim into his custody after learning that something wrong had happened to her while she was living with the petitioner.

[10] The defence called the petitioner and two other witnesses: Roselyn Nisha, an aunt-in-law, in whose house the victim and petitioner were living at the time of the offending; and another aunt, Suman Kanta, with whom the victim had been living before she went to live with the petitioner in Aunt Roselyn's house.

[11] The facts, as established in evidence at trial, were distilled by the trial Judge in his summing-up and in his sentencing notes, as follows:

> *"The accused is the brother of the victim. She was living with her mother and siblings in Kulukulu. They are from a broken family. Victim's mother went to prison after being convicted of murdering her own daughter. The deceased in the murder case is victim's elder sister. Accused's wife (victim's sister-in-law) also went to*

prison with the victim's mother in the same murder case. The victim went through all the agonies and bitter experiences of her household.

After her mother and sister-in-law went to prison, the victim had to be relocated in several places. Firstly, she was taken by Suman, one of her aunties. Suman could not keep the victim for long as she had a dispute with her husband and had to leave her own house. The victim had to be relocated again. Finally, the victim was taken care of by the accused.

When the incident occurred, the victim was living with the accused and his two children in a two-bedroom house owned by another aunty, Roselyn. The victim shared a double bunk bed with the accused and his children. The victim slept on the top bunk and the accused and his children slept on the bottom bunk.

On the day of the incident, the accused woke the victim up and told her to come down to_the bottom bunk. Accused smelled of liquor and was drunk at that time. The victim refused to come down. She was then slapped and forced to come down. She finally complied and came down to the bottom bunk. Accused then carried both his children up and put them on the top bunk. Accused then came to the bottom bunk. He lifted victim's dress, took off her panty and inserted his penis into her vagina. It was a painful experience for her. She screamed. She was slapped and told to keep quiet. She started crying. When the accused heard somebody knocking at the [bedroom] door he stopped and [put on his clothes] and went [to the door]."

The victim's evidence about this was:

"Q: And what did you do when he inserted his urinating thing into your urinating thing?
A: I screamed my Lord.
Q: And what did Silas do when you screamed?
A: He slapped me my Lord.
Q: He slapped you. Where did he slap you?
A: On my face my Lord.
Q: Can you show us how he slapped you? And what did you do after he slapped you?
A: I was crying my Lord.
Q: How did you feel when he put his urinating thing into your urinating thing?
A: It was painful.
Q: So what happened after he put his urinating thing into your urinating thing?
A: He slapped me and told me to keep quiet.
Q: Can you recall how long he inserted his urinating thing into your urinating thing? And did he stop inserting his urinating thing into your urinating thing?
A: Yes.
Q: What happened after he stopped?
A: Then somebody was knocking the door.
Q: So what happened after he heard somebody knocked at the door?

> *A: He wore his clothes and went to open the door and I went on the top bunk and I went to sleep."*

[12] The victim complained about what the petitioner had done to Aunt Roselyn the next morning. When Roselyn noted blood in victim's vagina, her response was to slap the victim and give her a pad. She said to the victim that she knew what was going on.

[13] In her statement to the police and in her evidence in chief at trial and again under cross-examination, the victim described the offending as having started from the time she came to stay with the petitioner at Aunt Roselyn's house. She said it happened many times and the petitioner told her she was not to tell anyone about it and would slap her. She said she also complained about it to Aunty Roselyn many times:

> *"Q: And you also said he inserted his urinating thing what does he use his urinating thing for?*
> *A: To pass urine.*
> *Q: So now, you said it happened that night. Did [he] do this to you any other time?*
> *A: Yes.*
> *Q: How many times?*
> *A: Many times.*
> *Q: So he did it to you many times after the first time and it happened only when you were staying with him in Malaqereqere?*
> *A: Yes.*
> *Q: And after it happened to you many times did you complain to anyone?*
> *A: Yes. My aunty, Roselyn.*
> *Q: What did she do?*
> *A: She use to slap me and she use to tell me she knows what is going on."*

[14] The incident of the victim's bleeding seems to have come to the attention of the school. The first reference to this emerged during cross-examination of the victim. The victim thought that both Aunt Roselyn and the petitioner had gone to a meeting at the school about it. It is notable that neither Roselyn nor the petitioner referred to such a meeting when they gave their evidence. However, Roselyn in her police statement on 31 August 2016 (made after the victim had been removed from her house) said she had gone to the school and told the head teacher that a class 8 boy had inserted his finger into the victim's private part.

[15] The victim's evidence about that matter was elicited from her in cross-examination by defence counsel, as follows:

> *"Q: Now Koyal did you tell your aunt that a boy from school had inserted where you urinate inserted a finger, did you tell your aunt about that?*
> *A: Silas teach me to say that.*
> *Q: So you saying that Silas taught you to say that?*
> *.....*
> *Q: Now after that your aunt Roselyn, Silas went to the school?*
> *A: Yes.*
> *Q: You told the Head Teacher what happened?*
> *A: Yes my Lord.*
> *....*
> *Q: What did you tell the Head Teacher?*
> *A: I told the Head Teacher that one boy from school had done bad stuff.*
> *Q: The boy was brought by the Head Teacher in front of you?*
> *A: No.*
> *Q: And after that you had told Silas that it was a lie?*
> *A: No my Lord."*

[16] The victim was briefly re-examined on the matter by counsel for the State and remained firm in her evidence that the petitioner had told her to say that a boy at school had digitally penetrated her:

> *"Q: You said, Ms Singh asked you, what did you tell the Head Teacher, and you said, I told the Head Teacher that one of the boy from school had done bad stuff. Who told you to say that?*
> *A: My half-brother.*
> *Q: That is Silas?*
> *A: Yes."*

[17] The victim's natural father, Avinesh Reddy, gave evidence. He said he was first alerted to the issue when he received a message that something was happening to the victim at Roselyn's house. He went to the school and the headmaster informed him that something had happened to the victim and they had reported the matter to the police. Avinesh then applied for custody. Interim custody was granted to him and he brought the victim to live at his house on 12 July 2016. He asked his wife Noeline to find out from the victim what had happened to her.

[18] The petitioner's testimony at trial was relatively short. He completely denied the offending and denied that he had ever threatened the victim or that he had told her to lie about a boy at school putting his finger in her. He said the victim had been sent to live in his care by their aunt, Suman Kanta, because of behavioural issues. He admitted that at times he had slapped the victim for disciplinary purposes, and he agreed that he sometimes came home from work drunk.

[19] In her evidence, Roselyn denied ever having slapped the victim. She initially appeared confused about the time at which the victim had complained to her about bleeding from her vagina but then agreed that she had been told about it in the morning. She said she told the victim that perhaps it was her menses (even though she was so young) and that is why she had given her a pad and sent her off to school. She said she and her sister-in-law, Sunam Chand, had checked the victim when she came home from school and she was not bleeding. She said the victim told her that while playing at school a stone or something had hit her. Roselyn's other evidence was that she and Sunam Chand took the victim to Sigatoka Police Station on 22 June 2016 and to the hospital for a medical examination. Her evidence on that was also a little confused, perhaps due to the passage of time:

> "*Q: Yes she was having the blood in her vagina, not menses?*
> *A: Yes, in the morning she was having the blood but I gave the pad I thought she was having the period.*
> *Q: Yes you thought she didn't tell you she was having her menses you thought she was?*
> *A: Yes she told me aunty the blood is coming out from my private place, so I give her the pad.*
> ……
> *Q: And you send her to school?*
> *A: Yes.*
> ……
> *Q: And I put it to you Roselyn that after the first time Koyal complain to you about the bleeding from her vagina, I already told you that you slapped her, told her I know what's going on, you sent her back to school. Even after that, days after that she would come again and complain to you?*
> *A: No, only one day.*
> *Q: About what happened but you didn't do anything but just tell her to go?*
> *A: Yes, I gave the pad I told her to go, maybe I thought, I told her maybe you having your menses.*
> *Q: You told her that you thought?*

A: *Yes, I told her maybe you having your menses.*
Crt: ***Did you gave a statement to Police?***
A: *Yes, we went took statement to Police Station and I did medical, but the doctor said, she told doctors that she scrub with a comb on her private place.*

[20] She was then asked about the statement she made to Police on 31 August 2016 after the victim's removal from her house. The following extracts of the notes of evidence relate to this:

…….
Q: *… you gave your statement to Police, Police had recorded down your statement?*
A: *Yes.*
Q: *And this was on 31st August, 2016?*
A: *Yes,*
………
Q: *You mentioned in your statement that she was taken for medical examination?*
A: *Yes I took her."*

[21] In her police statement, Roselyn said:

> *"I could not recall the date but* ***I know it was one Saturday morning*** *when Koyal questioned me that she was bleeding on the vagina. I thought it was her menses and I then told her to put the pad on. I then told her to take the Panadol and lie down as she was complaining of stomach pain.*
>
> *At about 12.00pm midday that Saturday she got out of the bed and showed me that used pad. I could see a bit of blood stain on the pad and I told her to throw it away because I think that she had stopped bleeding.*
>
> *On Sunday afternoon I gave her another pad to use and throw the used one away and on Monday morning she put on a new pad and went to school and when she came back in the afternoon, I together with one Sonam we both checked her on her private part so we told Koyal that we will have to advise his brother Sillas Sanjeev Mani. I later told Sanjeev about the matter and went straight to school and spoke with the Head Teacher Mrs Ratu about the problem that Koyal claimed that one Class 8 boy insert his finger in her private part. The Head Teacher advised us to report matter.*
>
> *On Tuesday we went with Koyal to report the matter and then she was medically examined but there was no sign of Koyal losing her virginity. Later Koyal told me*

that she only used the comb to scratch her private part. Ever since Koyal moved in with us she never complained about anything she only complained once about the bleeding and nothing else."

[22] The Judge remarked about Roselyn's evidence when delivering his verdict:

> *"Roselyn was called by the Defence. She appeared to give evidence to save the accused. However, she admitted receiving a complaint and therefore there is no dispute that the victim was bleeding from her vagina when Roselyn received a complaint. Roselyn advanced several propositions to show that the blood noted in the victim's vagina had nothing to do with the rape allegation.*
>
> *Roselyn said she thought the victim was having menses. She also said that the victim had informed her that something [like a stone] had hit her while playing at school. She also tried to attribute injuries to scratching by a comb and self-fingering.*
>
> *It is relevant to note here that the victim had robustly denied scratching her private part when that was suggested to herby defence counsel in cross-examination."*

[23] The final witness for the defence was Sunam Kanta, another aunt of the petitioner and the victim. She had initially taken the victim into her house after their mother was sent to prison. She then sent the victim to live with the petitioner because she said the victim was causing problems in her own marriage because of her poor behaviour.

The Court of Appeal's judgment

[24] At the commencement of its judgment, the Court of Appeal traversed the numerous grounds of appeal filed by the petitioner on a continuing basis over an almost 3 year period between February 2021 and January 2024. The Court announced it would consider these in accordance with the legal principles applicable to the acceptance and admission of the many grounds of appeal but only after considering the appellant's renewed application for an enlargement of time.

[25] Many of the numerous grounds of appeal overlapped or were repetitious or duplications. Others were simply of no substance. They included a renewal of the three grounds for which the single Judge of Appeal had already refused leave. Two of those concerned the alleged delay in the victim's reporting of her complaint, and her aunt (Noeline) not being

called to confirm she had received the victim's complaint. Both of those grounds were considered together by the single Judge of Appeal and dismissed as having no prospect of success. Likewise, the other ground of appeal alleging error by the trial Judge in failing to "*fully consider there was a reasonable doubt in the State's case with the victim's admission that a boy from school had inserted a finger where she used to urinate from.*" was rejected by the single Judge as a red herring planted by the petitioner.

[26] The Court of Appeal approached the numerous grounds that had been filed over an almost 3 year period by distilling them into three broad categories that encompassed the gravamen of the petitioner's complaints.

[27] The first ground covered the alleged delay by the victim in reporting her complaint and the trial Judges' approach to that. The appellant argued that the time lapse between the time of the offending and the victim's disclosure to Aunt Noelene had affected the victim's credibility and therefore the veracity of her complaint.

[28] The second ground was the appellant's contention that the trial Judge had failed to fully consider whether there was a reasonable doubt in the State's case arising out of the victim's statement that a boy from school had inserted a finger where she used to urinate from. The appellant contended that trial Judge had not fully considered whether the victim's evidence that the appellant had taught her to say this, when coupled with her evidence that Aunty Roselyn and the petitioner had gone to the school to meet with the headmaster about it, rendered the truthfulness of her account questionable.

[29] The third ground encompassed the alleged error of law by the trial Judge in failing to consider the issue of delayed reporting and the apparent weakness of the evidence about this, when the victim's Aunt Noelene had not been called to confirm that such a complaint was made to her. This ground was closely linked to the first ground of appeal.

[30] The Court of Appeal found no substance in the first ground of appeal, as there was no doubt on the evidence as to what exactly had been complained about by the victim; and no doubt that she had complained to her Aunt Roselyn at the first opportunity she had to speak with

an adult other than the petitioner. The victim had done this the very next morning and been rebuffed by her aunt. The single Judge of appeal had referred to this rebuff as Roselyn treating the victim's complaint "*with disdain*". It was not until the victim was taken to the safety of her father's house in July that she had the opportunity to speak with a trusted adult and then a formal complaint to the Police was made.

[31] The Court drew on the careful direction of the trial Judge to the assessors on the issue of delay in making a complaint when summing-up:

> *"16. You can consider whether there is delay in making a prompt complaint to someone or to an authority or to police on the first available opportunity about the incident that is alleged to have occurred. If there is a delay that may give room to make-up a story, which in turn could affect reliability of the story. If the complaint is prompt, that usually leaves no room for fabrication. If there is a delay, you should look whether there is a reasonable explanation for such delay.*
>
> *17. Bear in mind, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint. Victims of sexual offences can react to the trauma in different ways. Some, in distress or anger, may complain to the first person they see. Others, who react with shame or fear or shock or confusion, do not complain or go to authority for some time. Victim's reluctance to report an incident could also be due to shame, coupled with the cultural taboos existing in her society, in relation to an open and frank discussion relating to sex, with elders. It takes a while for self-confidence to re-assert itself. There is, in other words, no classic or typical response by victims of Rape. It is a matter for you to determine whether, in this case, complaint victim made to police is genuine and what weight you attach to complaint she eventually made."*

[32] Turning to the second ground of appeal, this was eminently an issue for the triers of fact who had heard the evidence and seen the witnesses for themselves, including the petitioner. While there was no onus on the petitioner to give evidence at his trial, or to call any witnesses to give evidence on his behalf and he assumed no burden of proof in doing so, it is evident that neither the assessors nor the Judge believed his evidence. Conversely, after having seen and heard the victim give her evidence and face cross-examination, it is evident they were satisfied beyond reasonable doubt that she was a witness of the truth.

[33] In dismissing this ground of appeal, the Court said:

> *There are no doubts raised in the prosecution case as alleged. The ground is dismissed. It has no real prospects of success. It has no merit.*

[34] Ground 3 again related to the issue of delayed reporting and the petitioner's concern that the victim's aunt Noelene was not called as a witness by the prosecution. This is essentially the same complaint as that in the first ground of appeal. The fact that Noelene was not called as a witness for the prosecution, did not, of itself, create doubt about the State's case. The prosecution had called the victim's father, Avinesh, to establish how the incidents had come to light and been reported to the Police. In his judgment, the trial Judge said of this:

> *"... Victim's father Avinesh said that he received information that something bad was happening to the victim at Roselyn's place. He had taken custody of the victim and asked his wife Noelene to make inquiries. The victim had relayed the incident to Noelene and later given a statement to police. This is how the sexual abuse came to light. There are no material contradictions between victim's previous statement and her evidence in court. I am satisfied that the complaint victim eventually made to police is genuine."*

[35] In dismissing grounds 1 and 3, the Court of Appeal concluded its judgment, saying:

> *"In the circumstances of this case, leave for the enlargement of time against conviction is refused. The grounds have no real prospects of success in an appeal. The appeal on the merits is dismissed. No miscarriage of justice occurred as a result. The appellants' convictions are affirmed."*

The grounds of the petition

[36] Counsel for the State helpfully distilled the 16 grounds in the petition into six grounds that were the subject of consideration and determination in the Court of Appeal and therefore come within the jurisdiction of this Court for final determination.

First ground: *Whether the Court of Appeal correctly approached its task in considering whether the trial judge erred in law and in fact by failing to fully and properly consider the issue of delayed reporting of the complaint thereby bringing the credibility of the victim and the veracity of her complaint into question?*

[37] This issue of alleged delay was comprehensively dealt with by both the single Judge of Appeal and the full Court of Appeal, as discussed above. Relevant passages from the trial Judge's summing-up and from his judgment on the issue are set out in paragraphs [33] and [36] above.

[38] In this case there was both a recent complaint by the victim to her aunt and a formal complaint made later to the Police, both of which were made at the first opportunities that the victim had to do so.

[39] The recent complaint was made to Aunt Roselyn the very next morning. The victim was only nine years old at the time and Roselyn was the first adult she could speak to after the event.

[40] She was having to share a small bunkroom with the petitioner and his two children. She was therefore living in a close intimidatory situation with him. He admitted that he sometimes came home drunk after drinks at work and Roselyn in her Police statement said it was a Saturday morning when the victim told her she was bleeding. Although in her evidence at trial Roselyn said she assumed the blood was menstrual, that evidence was at least confirmatory of the fact the victim was bleeding from her vagina.

[41] The trial Judge and the assessors saw and heard Roselyn and the victim give their evidence and were therefore in prime position to assess their credibility as witnesses, and the veracity of their evidence. The victim was rigorously cross-examined and was not shaken in her evidence about what had happened to her and what she had told Aunt Roselyn about it and that Aunt Roselyn said she knew what was going on.

[42] The formal Police complaint could not be categorised as very delayed in the circumstance of the victim being relocated and settling into a new environment and also bearing in mind her tender age. Avinesh Reddy asked his wife Noeline to inquire of the victim what had happened to her after she went to live with them on 12 July 2016, and the matter was soon after reported to the Police on 29 August 2016. The trial Judge considered the question of time delay and gave the careful direction on this issue in his summing-up to the assessors, quoted in paragraph [33] above.

Second ground: *Whether the Court of Appeal correctly approached its task in considering whether the trial judge had erred in law and in fact by failing to fully consider there was a reasonable doubt in the State's case when the victim had admitted that a boy from school had inserted his finger she used to urinate from?*

[43] This ground can be shortly disposed of. The evidence relating to it is quoted in detail in paragraphs [17] and [18] above. The victim was unshaken in her evidence that this was something the petitioner had taught her to say. There is nothing of substance to consider.

Third ground: *Whether the Court of Appeal had correctly approached its task in considering whether the trial judge had erred in law and in fact by failing to fully consider there was a police report and medical done before the matter was reported by the victim and her father, according to the summing up paragraph 47?*

[44] This ground of appeal relates to the reference in Rosleyn's police statement of 31 August 2016 about going to Sigatoka on 22 June 2016 with Suman and the victim, to report to the Police and to have the victim examined at Sigatoka Hospital. In support the petitioner filed an application in the Court of Appeal in December 2023, seeking to:

> *"…re-open the decision of the trial court in neglecting the appellants request for the complainant's statement made on 22.06.2016 and Medical Examination report done on the same date, to be produced in the trial…*
>
> ……
>
> *The issue that needs to be looked into for this re-opening is in reference to the charge being defective and the two real evidence that was not allowed by the trial court with regards to the two reports is a strong evidence upon the questions of fact and test the credibility and reliability of the complainant and other witnesses that gave evidence in the trial."*
>
> ……
>
> *It is exceptional because the state had mentioned in the trial that it was not relevant to the case, nor was any such statement or medical been made.*
>
> *The appellant relies heavily on this two reports as it proves that the complainant was forced by her stepmother to falsely implicate the appellant committing the crime of rape and this two reports also would also contradicts this statement and other reports allowed during the trial in the high court.*

[45] The statements in the petitioner's application as quoted above do not however accurately reflect the situation, which I will deal with more comprehensively under paragraphs [59] – [66]. below relating to the petitioner's fresh evidence application.

Fourth ground: *Whether the trial judge erred in law and in fact when he failed to fully and properly consider the issue of delayed reporting and the apparent weakness in this evidence in light of the victim's aunt Noelene not being called to confirm that such a complaint was made to her?*

[46] It was for the State to decide which witnesses it would call and which it was unnecessary to call. The State obviously decided it was not necessary to call Noeline to give viva voce evidence about taking the victim to make a formal complaint to the Police. The State relied instead on the evidence of Avinesh Reddy to provide the link between the victim's removal from the petitioner's care into his custody, and the making of her formal complaint to the Police after talking with Noeline. There appears to have been no objection to this at trial. It was open to the petitioner to request that Noeline be called by the State or to call her himself, if he thought that would have been a wise course to pursue.

[47] The trial Judge considered the matter of the victim's formal complaint to the Police and how it came to be made, and directed the assessors accordingly:

> *"42. When she was taken to her dad's place in Malolo in July, 2016, she told aunty Noelene of what happened to her. Noelene took her to the Nadi Police Station and then for a medical."*

[48] When delivering his judgment, the Judge said:

> *"13. Victim's father Avinesh said that he received information that something bad was happening to the victim at Roselyn's place. He had taken custody of the victim and asked his wife Noelene to make inquiries. The victim had relayed the incident to Noelene and late given a statement to police. That is how the sexual abuse came to light. There are no material contradictions between victim's previous statement and her evidence in court. I am satisfied that the complaint victim eventually made to police is genuine."*

Fifth ground: *Whether the Court of Appeal erred in law by failing to consider whether the trial judge had overlooked the format defect in the information and failed in law to make an amendment. (i.e.) the use of a technical term bolstering the prosecution case before the prosecution had proved prima facie the elements of the offence charged***.**

[49] This ground refers to the wording of the charge in the indictment. The complaint is that wording was defective because it used technical and loaded terms which are said to have bolstered the prosecution case instead of using ordinary language. This, it is contended, would have affected the minds of the lay assessors and caused injustice to the petitioner.

[50] The charge in the indictment was a representative charge of rape contrary to section 207(1) (2) (a), (3) of the Crimes Decree No.44 of 2009. The particulars of the charge were that the *"SILAS SANJEEV MANI between the 30th of April 2016 and 11th of July 2016 at Sigatoka in the Western Division inserted his penis into the vagina of [the victim], a 9 year old girl"*.

[51] The petitioner made two points in support of his argument. First, that the wording as used was a material defect which had affected the lay assessors' minds, with the result the assessors had already convicted him before the State had proved a prima facie case on the ingredients of the offence. Ordinary language should have been used in the charge, such as *"was alleged to have had carnal knowledge of [the victim], a 9 year old girl."* The lack of the term '*allegedly*' in the charge had bolstered the State's case.

[52] His second point was that a technical term such as "*inserting his penis into the vagina"* should not have been used as there was no independent expert evidence brought by the prosecution to prove the inserting of a penis or that penetration had occurred to any extent. To use such terminology was therefore unfair.

[53] The submission was that the way the charge in the indictment was worded and the omission of *"allegedly"* in the charge amounted to errors of law and the trial Judge should have taken immediate action to correct these defects in the information.

[54] There is however no indication from the trial record that any objection was taken to the wording of the charge in the indictment at the time of trial (or earlier). The petitioner himself pointed to section 214 (1) and (2) of the Criminal Procedure Act and the directions therein, that the time for objection to an information is immediately after the charge has been read to an accused person; or if at any time during the trial the information appears to be defective.

[55] There is no substance in this ground of appeal. The wording in the indictment was not defective and appropriately records all the elements of the offence in plain language. There could have be no confusion about the nature and ingredients of the charge the petitioner was required to meet and no objection to it was taken by him.

Sixth ground: *Whether the Court of Appeal had correctly approached its task in law when the trial judge had not directed himself and/or the assessors, to what extent had the penetration occurred when the medical report was never produced in court to ascertain the second element and whether such omission raises a doubt in the State case.*

[56] Under this ground of appeal the petitioner argued that the prosecution had failed to tender any expert or forensic evidence to prove that penetration had occurred. For instance, the prosecution had not produced the victim's medical report and it was argued this failure had created a reasonable doubt about the State's case.

[57] The verdicts in this case turned on the assessors and the trial Judge's acceptance of the State's case as proven to the standard of beyond reasonable doubt. That they accepted the State's evidence as proven to this high standard is evident from the assessors' unanimous opinion, with which the trial Judge concurred, giving full and cogent reasons in his judgment. Acceptance of the State's case as proven centred on the veracity of the victim's evidence and the circumstantial evidence that supported that. It was not dependent on forensic evidence for corroboration and cases of this nature are most unlikely to have eyewitness evidence.

Applications to adduce further evidence

[58] Two applications to adduce further evidence require attention. One is a purported fresh evidence application and the second is an application to adduce new evidence from the victim who it is said wishes to recant the evidence she gave at trial.

The fresh evidence application

[59] In general, appellate courts will consider evidence to be "fresh" if it is fresh, credible and cogent. If the evidence is credible but not fresh, the question is the potential impact it may have on the safety of a conviction. The evidence may be considered if there is a risk of a miscarriage of justice caused by its exclusion, even if it is not fresh. The overriding consideration is what is in the interests of justice.

[60] As well as being credible, the evidence must be cogent, meaning that in combination with the other evidence at trial, it might reasonably have led to a finding of not guilty if it had been called. If the evidence is fresh, credible, and cogent, it should be admitted as "fresh evidence". If the evidence is credible but not fresh, the question is what potential impact the evidence may have on the safety of the conviction? The evidence may be admitted if there is a risk of a miscarriage of justice even if it is not fresh. The overriding consideration is what is in the interests of justice

[61] The 'fresh evidence' application was earlier referred to under the sub-heading **Third issue** at paragraph 48 above. In this application the petitioner seeks the production of certain specified documents in evidence, to:

> *"…re-open the decision of the trial court in neglecting the appellants request for the complainant's statement made on 22.06.2016 and Medical Examination report done on the same date, to be produced in the trial…*

[62] In support of this, the petitioner has submitted a series of affidavits sworn by relatives: - Roselyn Nisha who had already given evidence on his behalf at trial; Roselyn's husband

Sanjay Singh, who is the petitioner's uncle; Roselyn's brother-in-law, Rohan Singh; and Rohan's wife Sunam Chand. These affidavits, which contain a great deal of hearsay, were sworn in February 2023 and concern the same matters –viz. discussion about the victim's disclosure that a boy from her school had digitally penetrated her; the action that was taken in response to that; the visit to Sigatoka Police Station on 22 June 2016 where a statement was said to have been taken from the victim and the existence of a medical report confirming that she was seen in the Outpatients Department of Sigatoka Hospital the same day.

[63] This proposed evidence about the visit to Sigatoka police station and hospital is not fresh, having been well known to the petitioner at the time of trial (and before trial) and the deponents were all available to him at that time. He could have instructed defence counsel in advance of the trial to call them as witnesses, had he wished to do so. Defence counsel was not given timely advice about the existence of a medical report from Sigatoka Hospital. Its existence only came to her attention after she read a witness statement the day before the trial was to begin (presumably Roselyn's police statement of 31 August). Defence counsel then raised the matter promptly with the Court on the first morning of trial and State counsel undertook to see if the report could be located. All of that is clear from the transcript of the first day of the trial. The report was not located during the trial, but it has since been produced and is before this Court. It contains no information other than that the victim was seen in Outpatients on 22 June 2018.

[64] In any event, Roselyn herself gave evidence under cross-examination about having taken the victim for a medical examination at Sigatoka Hospital and she agreed that she had done so.

[65] In relation to the other 'fresh' evidence put forward, the material in the affidavits from the various family members is far from fresh, and there is little of probative value. Much of the content is speculative and based on third hand hearsay. The impartiality and plausibility of the deponents is also questionable.

[66] There is nothing in this ground.

The application to adduce new evidence

[67] By this application the petitioner seeks to have the victim brought before the Court to be re-examined on his behalf. The application is based on affidavits sworn by two of their aunts, Kashmir Kaur and Pushpa Wati. Both aunts are sisters of the petitioner's and victim's mother, who is currently serving a prison sentence.

[68] The basis of the application is an assertion that the victim was unable to give a correct statement at the trial because she was forced to give a false statement by her father. This is what the aunts have deposed to in their affidavits. The petitioner asserts that the victim now wishes to give her "*correct statement*" and he wishes the Court to examine her and to let her "*give her true and correct statement to avoid injustice to the petitioner*."

[69] The petitioner's application is dated 28 May 2025 and the supporting affidavits of the two aunts were sworn on 14 May and 15 May 2025, one in Auckland NZ and one in Suva. The aunt who resides in Auckland states that she visited her sister in prison in Fiji in March this year and then she met with the victim who made a confession to her. The aunt who lives in Suva says she received a phone call from her sister in prison who said the victim would like to speak with her and gave her the phone number of a teacher and through that she was able to contact the victim and speak with her. She says that during the phone conversation the victim mentioned she would like to confess something in regards to her brother and that she was forced to give a false statement about him.

[70] There is no affidavit from the victim nor any indication to the Court as to her attitude in the matter apart from the assertions made by the aunts in their affidavits. All that has been put forward in relation to the victim is a copy of a handwritten note sent to her mother in prison. The note is not detailed or explicit and simply talks about coming to visit her mother for her birthday in November. Towards the end of the note the victim says she knows she has taken a wrong step against her mother and her brother but that was not her intention and she is sorry. Such a statement is not conclusive of anything and cannot be construed as a desire to recant or an acknowledgment of wrongdoing. It may simply reflect

regret for the situation that her mother and brother are in. The affidavits of the aunts are hearsay in relation to the truth of the victim's retraction.

[71] Counsel for the State advised the Court that she has tried to contact the victim to ascertain her position but has not been able to speak with her.

[72] The recantation or purported recantation of evidence by a victim is a serious matter, particularly when it concerns a child victim. It is not an unusual phenomenon, particularly when a child's testimony has resulted in the event of a close family member going to prison, with all the flow-on emotional and financial effects of that on the family unit and the recriminations and feelings of guilt.

[73] Features of retraction by child complainants were discussed in a decision of the Supreme Court of New Zealand in 2015. The case concerned a trial in which expert evidence had been given on the subject at the trial. The medical expert's evidence about retractions was;

> *(a) A retraction of initial allegations may come from a child who may or who may not have been sexually abused.*
>
> *(b) A retraction may be truthful in an attempt to repair earlier untruthfulness or the retraction itself may be untrue and an effort to repair the unforeseen consequences of a truthful allegation.*
>
> *(c) Retraction of child sexual abuse allegations is not uncommon, especially in cases involving sexual offences perpetrated by family members.*
>
> *(d) Some retractions may occur because of direct pressure from the perpetrator, from the child's mother or from other members of the family. The investigative process that follows a complaint may also impact on whether a child retracts or not, if the child finds the process traumatic or fears loss of their family.*
>
> *(e) In a 2007 study of victims of child sex abuse, there was a reported retraction rate of almost a quarter: that is, almost a quarter of victims of sexual abuse had at one stage retracted their complaints. A child abused by a parental figure was more likely to retract and younger children were more likely to retract than older children.*
>
> *(f) A retraction is not diagnostic of sexual abuse but retractions may occur in some cases and the research literature indicates this is in response to anxiety, lack of support and family pressures and that many children who do retract later reaffirm their allegations.*

[74] As the expert evidence quoted above indicates, the fact that a complainant or witness recants does not necessarily make their trial testimony unreliable. It does not mean there must be a re-trial. The key question is why the complainant or witness recanted. Was it because their earlier evidence was untrue or are there other pressures being applied to encourage recantation?

[75] There are a number of established principles to be applied in considering these factors. These were usefully gathered in a decision of the New Zealand Court of Appeal[1] in 2013:

> *[62] The applicable law in connection with appeals brought on the basis of recanted evidence is found in the judgment of this Court in R v Baker and in the authorities discussed there.[2] The following principles emerge from these cases:*
>
> *(a) The mere fact that a complainant or witness recants does not make his or her trial testimony unreliable or mean there must be retrial.[3]*
>
> *(b) The critical enquiry is why the complainant has recanted – whether it is because the earlier evidence was untrue or because other pressures have come to bear upon the complainant. Courts must be alive to human frailties in this area. As was said in R v Flower[4]:*
>
> > *Witnesses may have second thoughts for a variety of different reasons. Some become emotionally disturbed, others brood on the effect of their evidence, whilst others are subject to more tangible pressures to induce them to depart from the truth. It is the witness's state of mind at the trial which matters and this ought to be judged by reference to the circumstances prevailing at that time.*
>
> *(c) Where an appeal is brought on the grounds of post-trial recantation, the appeal court has to grapple with "potentially difficult factual issues ... itself to appraise the effect of evidence which had been or was to be given".[5i]This will usually require the court to review the evidence given at trial, and the subsequent affidavits, and any oral evidence before them.[6]*

[1] Hamon v R [2013] NZCA 540
[2] R v Baker CA37/03, 5 August 2003.
[3] R v Flower [1966] 1 QB 146 (Crim App) at 150.
[4] At 150.
[5] R v Pendleton [2001] UKHL 66, [2002] 1 WLR 72 at 77.
[6] R v Baker, above n 6, at [36].

(d) *If the court is satisfied that the recantation is untrue, the appeal will be dismissed. If there is a doubt, a retrial will be required. In the exceptional circumstance that the appellate court concludes the complainant's recantation is true, an acquittal may be entered.*[7]

[76] As matters presently stand, the Court does not have sufficient information to make a decision about whether the victim has in fact said she wants to recant and, if so, whether her proposed recantation is genuine or the result of family pressure. The evidence of recantation that has been produced to the Court is weak and comprises hearsay by third parties. There is no direct evidence before the Court from the victim and a copy of a letter to her mother in prison, said to have been written by the victim, is not conclusive. That said, I would grant leave to appeal on this one ground, but on no others. I would grant leave on the basis that an independent counsel with relevant experience is to be appointed to act for the victim and to investigate in the first instance whether she does in fact wish to recant and, if so, her reasons for that. The Court will provide a memorandum of instructions for independent counsel once appointed and this should form the basis of a report by counsel back to the Court with, if necessary, an affidavit from the victim explaining her position. This should be done by 4 pm on Wednesday 11 March 2026 so that the matter can be considered at the next session of the Court in April 2026.

[7] R v Barr [1973] 2 NZLR 95 (CA) at 98.

Orders of the Court:

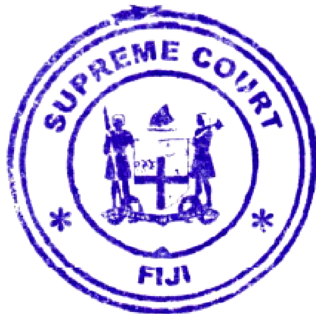
1. Leave to appeal under section 7(2) of the Supreme Court Act 1998 is refused in relation to grounds 1 – 6 of the petition.

2. The application to adduce fresh evidence in relation to the third ground of appeal is refused.

3. In relation to the application to adduce new evidence concerning possible recantation of the victim's evidence the following orders are made:

    a) independent counsel is to be appointed to interview the victim on the instructions of the Court.
    b) counsel is to report back to the Court by 4pm on Wednesday 11 March 2026.

The Hon. Justice Anthony Gates
Judge of the Supreme Court



The Hon. Justice Terence Arnold
Judge of the Supreme Court

The Hon. Justice Lowell Goddard
Judge of the Supreme Court

Solicitors:

Petitioner in person
Office of the Director of the Public Prosecution for the Respondent