

**IN THE SUPREME COURT OF FIJI**  
**[APPELLATE JURISDICTION]**

**CRIMINAL PETITION NO. CAV 0008 of 2024**  
**[Court of Appeal No. AAU 0116 of 2019]**

**BETWEEN** : **TAITUSI MANUCA**

***Petitioner***

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

***Respondent***

**Coram** : **The Hon. Justice Brian Keith, 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**  
**Mr. R. Kumar for the Respondent**

**Date of Hearing** : **09 October 2025**

**Date of Judgment** : **30 October 2025**

**JUDGMENT**

**Keith, J:**

[1] I agree with the judgment of Goddard J which I have read in draft. There is nothing I can usefully add.

**Arnold, J:**

[2] I had read the judgment of Goddard J in draft and agree with its reasoning and conclusions.

**Goddard, J:**

**Introduction**

- [3] The petitioner and his co-accused were tried before a High Court Judge and three assessors on charges of rape and sexual assault. The offences involved a single victim and were committed at Taveuni in the Northern Division on 8 July 2017. The central issue at trial was the identification of the offenders by the victim. At the conclusion of trial, the assessors returned a unanimous opinion of guilt in respect of both accused on both counts. The trial Judge agreed with the assessors' opinion and convicted the accused accordingly.
- [4] Following trial, the petitioner was sentenced to 14 years imprisonment for rape (with an appropriate deduction for the remand period) and to a concurrent sentence of 7 years imprisonment for the sexual assault. His co-accused, Jone Colata, was similarly sentenced.
- [5] Both prisoners belatedly appealed their convictions to the Court of Appeal. The delays in prosecuting their appeals amounted to almost a year. Despite such a substantial delay, the single judge of appeal considered whether there may be a real prospect of success and granted an enlargement of time to appeal to the full Court of Appeal, on two grounds:

**“Ground 1**

*THAT the Learned Trial Judge had erred in law and in fact having not directed the assessors and himself on the Turnbull directions to assess and/or evaluate the correctness of identification as the appellant had denied the allegations of rape.*

**Ground 2**

*THAT the Learned Trial Judge had erred in law and in fact having not directed the assessors and himself on how to approach the evidence of recent complaint.”*

- [6] On 9 February 2024, the appeals of both men came before the full Court of Appeal for determination.
- [7] After thoroughly reviewing the evidence and discussing the applicable legal principles, the Court of Appeal dismissed the appeals of both appellants on 24 February 2024.

[8] The petitioner has sought the leave of this Court to appeal against the decision of the Court of Appeal on the same two grounds: error by the Judge in failing to direct the assessors and himself in accordance with the guidance in *R v Turnbull*<sup>1</sup>; and the absence of a direction on recent complaint evidence.

### **The Facts**

[9] On the evening of June 2017, the victim and her husband, who had recently moved to Tavenui to start a business, were relaxing at a beach when they were approached by Jone Colata and his girlfriend, who asked them for cigarettes. The couple obliged and also offered to share their beer. A little later they were joined by the petitioner and his girlfriend and the sharing of cigarettes and alcohol continued. At around midnight they all went into town and bought a bottle of rum and then spent another hour or so at a drinking spot. The girlfriends were then delivered home. At around 3am it was decided the remaining four would have a final drink at another popular spot known as the Korean Wharf.

[10] When they arrived at the Korean Wharf the victim said there were no other people there. She and her husband both went for short swims. Then they drank rum at the back of the couple's double cab utility vehicle, but the victim said she had soon had enough and went to rest in the front passenger seat of the double cab, leaving the door open. Before the swim she had been wearing long trousers with a long top but took her trousers off to swim and so was wearing only her long top over her underwear.

[11] At around 4 am, the victim, who had fallen fast asleep, was woken by the weight of a man's body on top of her. Her underpants had been pulled aside and the man was penetrating her while kissing her neck and mouth. She reached out and touched him and immediately knew it was not her husband and that it was the petitioner. She knew it was the petitioner because of his body type and voice. She then realised that Jone Colata was also there, standing right beside the petitioner and talking to him. They were referring to her by name and making remarks about her physical attributes. She felt confused and very

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<sup>1</sup> [1977] QB 224

frightened as she couldn't hear any sound from her husband and did not know where he was. She was afraid that something had happened to him.

[12] After raping and sexually assaulting the victim, the petitioner stood aside and Jone Colata took his place and also raped and indecently assaulted her. She knew it was Jone Colata by his body type and voice, having become familiar with both men's physiques and voices from having spent a long evening with them. Jone Colata also had a distinctive bad body odour that she had noticed during the evening. When Jone Colata had finished raping and indecently assaulting the victim, the petitioner then sexually violated her for a second time. Throughout most of this ordeal she kept her eyes shut and pretended to be asleep or unconscious because she was so frightened, but at times she opened her eyes and saw the men.

[13] After a time, her husband's voice was heard from the far side of the vehicle. On hearing him, the petitioner and Jone Colata quickly rearranged the victim on the front seat and adjusted her clothing. Her husband appeared to be disoriented and was completely unaware of what had happened. He said it was time to go home. The two accused got into the back seat of the double cab. The victim in the front pretended she was still asleep but whispered to her husband to "get them out of the car". However, she wasn't sure that he heard her. They drove to the main street where the petitioner and Jone Colata got out of the vehicle. The victim then told her husband that she had been raped. She saw that he had a bruise or mark on the top of his head which looked like evidence of an assault. They went straight to their home base and immediately alerted their family members to what had happened. They then went to the Police to report the matter and from there went to the Taveuni District Hospital.

### **The indictment**

[14] The charges against the petitioner in the indictment contained the following particulars:

*"On 8 July, 2017, at Taveuni, in the Northern Division, penetrated the vagina of **SB.**, with his penis, without her consent."*

*“On 8 July 2010, at Taveuni, in the Northern Division. Unlawfully and indecently assaulted SB., by masturbating her genitalia.”*

Jone Colata, was similarly indicted.

### **The trial**

[15] The trial was held at Labasa on 30, 31 July and 01 August 2018. The victim and her husband both gave evidence. The central issue was the victim’s identification of the two accused as the men who had sexually violated and indecently assaulted her at the Korean Wharf.

[16] The victim’s evidence in chief at trial was given behind a screen. At the conclusion of it, the screen was lowered and she was asked to look around the courtroom and say if she could see the two men who had sexually violated her. She was able to clearly identify each of the accused as her assailants.

[17] Both accused elected to give evidence and both denied any involvement in the alleged offending. Each called a witness in support but neither of their witnesses were able to contribute anything of consequence.

[18] While most of the victim’s identification evidence centred on voice recognition and the sensory perceptions of touch and smell, she also gave visual identification evidence about her assailants. This evidence was elicited in cross-examination by counsel for the petitioner who asked her “..did you see the person?”. She answered, “Yes I did” and the following further answers were then elicited:

*“Mr. Korotini: When you were -did you see the person.*

*Ms. B: Yes I did.*

*Mr. Korotini: Ms. B you just mentioned earlier on that you just felt and recognized their voice?*

*Ms. B: As we as-as well as.*

*Mr. Korotini: But-did-you did not see them?*

*Ms. B: I did- I did see them. Yes. I-I had my eyes mostly closed on. I was trying to- while pretend to be asleep but certainly I could do- I*

*could see them occasion I didn't watch them all the way through but certainly I saw them yes.*

Mr. Korotini: *Ms B you had mentioned that you felt in and out of conscious during this time.*

Ms. B: *That's right.*

Mr. Korotini: *How were you able to identify?*

Ms. B: *Well like I said I saw them, I smelled them and I felt them and I recognized their voices. I had spent the whole evening with them and I was now familiar with their voices.*

.....

Ms. Boseiwaqa: *And you said in your evidence that you could only feel the shape of their bodies on top of you, Correct?*

Ms. B: *No I could feel them, I could smell them and I did see them also and I could hear them. So there was the number of things that lead me to identify them and the fact that they called me by my name constantly throughout the act.*

.....

Ms. Boseiwaqa: *Now when you gave your statement to the police isn't it true that you said that you had kept your eyes closed the whole time.*

Ms. B: *I pretended to be asleep the whole time so it's not necessarily that I had my eyes closed the whole time..."*

[19] The closing addresses of counsel and the summing-up of the trial Judge were delivered on the third day of trial. The summing-up did not include any specific directions to the assessors on how to evaluate the victim's identification of the two accused. Nor did it include any direction about the evidential value of the victim's recent complaint to her husband. At the conclusion of the summing-up the Judge enquired of counsel if they wished him to add to or amend his summing-up or his legal directions in any respect. No redirections were sought by counsel for either accused.

[20] The trial Judge made the following observations about the veracity of the victim and her husband in his judgment after verdict:

11. *I was impressed by the manner in which Mrs. B. gave her evidence. I allowed her to give evidence behind a screen because she was obviously nervous and distressed. She described the assaults in much detail and with honesty.*
12. *Despite the traumatic experience for her she was adamant that she was able to distinguish the two accused by their voices, their body shape and*

*even their odour. (She said that the second accused had a distinctive bad body odour). The differences in body types was obvious to all, the first accused being stocky and the second accused comparatively small and light.*

13. *After about 8 hours of drinking and talking I accept that she knew well the different voices of the two accused.*
15. *Both Mr. and Mrs. B. were frank and honest witnesses and endeavoured to tell the Court all the detail that they could recall and I believed them. Their evidence alone proved the prosecution case to the requisite standard.*
16. *The accused do not have to prove anything, but I disbelieved both of them. Neither of them said anything to make me doubt the prosecution case. Their witnesses were pathetic. The first accused's witness had obviously been coached and the second accused's witness didn't even know what he was meant to say.*
17. *In finding the case proved by the prosecution evidence I agree with the assessors' opinions and find each accused guilty of the two charges he faces. Each accused is convicted accordingly."*

### **This petition**

[21] The issue in ground 1 of the petition is whether the omission of any specifically tailored direction by the trial Judge to the assessors and himself, as to how they should approach the identification evidence given by the victim, and of the need for caution in line with the guidance in *R v Turnbull*, was an omission that rendered the convictions unsafe?

[22] The second issue raised is the effect of the failure by the Judge to give a direction or guidance on how the recent complaint evidence should be evaluated.

### **The Court of Appeal's Judgment**

#### *First ground*

[23] As the evidence on which the petitioner and his co-accused were found guilty had depended totally on acceptance of the victim's identification evidence, the issue arose as to whether the Judge should have directed himself and the assessors on the need for special caution by reference to the guideline direction in *R v Turnbull*. The question for the Court of Appeal

was whether the Judge’s omission to do so had resulted in a substantial miscarriage of justice.

[24] Counsel for the appellants did not dispute that they were with the victim and her husband for about 8 hours prior to the alleged offending. On that basis, counsel conceded this may have been a case of recognition rather than identification (perhaps a distinction without a difference on the facts). The point was made however that it was incumbent on the trial Judge to have given a direction in accordance with the guidelines in *Turnbull*. The decision in *Tubuduadua v State*<sup>2</sup>, a case in which the prosecution had relied primarily on voice identification, was cited in support.

### *Second ground*

[25] The second ground, concerning the trial Judge’s failure to give any direction to the assessors as to how they should approach the recent complaint evidence, was said to be a serious omission, particularly when regard was had to the Judge’s observations in his judgment about the victim and her husband being frank and honest witnesses whose evidence alone had proved the prosecution case to the required standard. This omission to direct on recent complaint, it was argued, had also led to a substantial miscarriage of justice.

### *The judgment*

[26] The Court referred early in its judgment to the proviso in section 22(6) of the Court of Appeal Act and its jurisdiction to dismiss any appeal if it considered that no substantial miscarriage had in fact occurred.

[27] In relation to the absence of a *Turnbull* warning by the Judge, the Court considered whether:

“[22] ... in the circumstances of this case a *Turnbull* direction would have been appropriate? Does the absence of the *Turnbull* directions pose a disadvantage to the appellants in this case causing a substantial miscarriage of justice?”

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<sup>2</sup> [2022] FJCA 44; AAU120.2016 (26 May 2022)

[28] Following a careful and detailed analysis of the victim’s evidence, including quoting a number of passages from her evidence-in-chief and cross-examination, in which she had explained how she was able to identify the appellants as the men who had violated her, the Court concluded:

*“ ..., as the evidence shows the complainant had identified the appellants, not only in their voices, which is now challenged, but other means or modes also, through the human senses. It is evident that the complainant saw the appellants. She identified or recognized them by their odor or body smell, body type/size, and voice. In the circumstances, the complainant’s identification of the appellants is more certain, secure reliable and risk-free, noting that the learned trial judge and the assessors and counsel have been limited to assessing and evaluating voice identification only, of the appellants by the complainant. ”<sup>3</sup>*

And further:

*“[58] It is evident from the record, that the complainant had actually seen the appellants when committing the alleged offences. In cross-examination of the complainant by the counsel representing the appellants, the responses point categorically to the fact that the complainant had seen the appellants- see pages 227 (cross-examination by counsel for 1<sup>st</sup> appellant), and 230 (cross-examination by counsel for 2<sup>nd</sup> appellant, and paragraphs [36] and [37] of this judgment.”*

[29] In relation to the failure to direct on the weight to be given to the recent complaint evidence, the Court observed that:

*“[56] In law, no corroboration is required in rape cases. The absence of directions as alleged would not be sufficient to disturb the convictions or declare the trial to have been unfair and having caused any substantial miscarriage of justice.”*

[30] The Court concluded there had been no substantial miscarriage of justice in this case from the failure to direct on either ground of appeal and dismissed the appeal as without merit.

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<sup>3</sup> Notes of Evidence at paragraph 40

## Discussion

### *Failure to give a Turnbull direction*

[31] The direction in *Turnbull* is an established part of the law of Fiji and requires an appropriate direction to be given in cases where the prosecution case depends wholly or substantially on the accuracy of the identification of an accused. As the State's case was based solely on acceptance of the victim's identification of the petitioner and his co-accused, as the men who had sexually violated and indecently assaulted her, a direction along *Turnbull* lines should have been given for the assessors' guidance and as a reminder to the Judge himself about the need for caution.

[32] Such a warning would have alerted the assessors and oriented the Judge to the fact that a mistaken witness can be a convincing witness; of the need to give very close consideration to the circumstances in which the victim had made her identifications; to be mindful of any specific weaknesses in her identification evidence; to be mindful that even in the case of purported recognition by a witness of someone well-known to a person, mistakes can still be made; to be mindful of the need to identify and specify the evidence capable of supporting the identification, and conversely to identify any evidence that might appear to support the identification but does not in fact do so. Those are the particular *Turnbull* factors that are relevant to this case.

[33] The question is whether the lack of a *Turnbull* direction in this case did give rise to a substantial miscarriage of justice for the petitioner? The Court of Appeal concluded it had not; a conclusion with which I fully concur, for the following reasons:

- (1) The identification evidence given by the victim was powerful. Its context was a lengthy and very recent period of familiarisation. It was not a *'fleeting glimpse'* situation involving only a brief sighting of hitherto unknown persons, but had its basis in familiarity gained over the immediately preceding 8-hour period while in close company with the two accused.

- (2) The victim remained firm and unshaken in her identification of both her assailants under extensive cross-examination by counsel for both accused. She was able to clearly distinguish between the two men and their actions and there was no confusion in her evidence. That this was so, is evident in the relevant passages of her cross-examination reproduced by the Court of Appeal in its judgment.
- (3) The major challenge on appeal was to the victim's identification of her assailants' voices. The Court of Appeal gave very careful consideration to that issue and conducted an extensive review of all available authorities. This was not however a case comparable to *Mateni v State*<sup>4</sup>, for example, which had turned solely on voice identification. This was a case in which all of the victim's senses of touch, sight, smell and hearing were engaged, and on which her clear and unwavering identification of both accused was based.
- (4) In addition to the clear identification evidence from the victim, there was the circumstantial evidence of proximity, opportunity and the absence of anyone else in the vicinity at that hour.

[34] The Court of Appeal acknowledged the omission to give a *Turnbull* direction and dealt with it in the following way:

*“...There was no Turnbull guideline direction in this case. That is not fatal to the conviction. There was also strong unchallenged circumstantial evidence indicating that the only people around the crime scene at the material time were the complainant who was in the front passenger seat of the vehicle, the appellants, and Mr. B who was unconscious and not heard of for some time until he regained consciousness a while later. It was his voice that caused the appellants to cease their unlawful sexual assault and reorganize, as if nothing serious had occurred.”*

[35] Given the compelling nature of the victim's firm and detailed identification of the petitioner, coupled with the circumstantial evidence, it cannot be said that the lack of a *Turnbull* direction gave rise to a substantial miscarriage of justice in his case. There is no

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<sup>4</sup> [2020] FJCA 5; AAU061.2014 (27 February 2020)

doubt that the assessors and trial Judge would have come to the same conclusion had a *Turnbull* warning been given. The critical identification evidence was broadly based and compelling and the victim was unshaken in the face of extensive cross-examination.

[36] As the Court of Appeal found, there is no merit in this ground of appeal and therefore no substantial miscarriage of justice has occurred.

*The failure to give a direction about the recent complaint evidence.*

[37] The question is whether the absence of any instruction by the trial Judge in his summing-up about the probative value of the victim's initial disclosure to her husband; and the Judge's complete acceptance of both as frank and honest witnesses in reaching his verdict, are causes for concern.

[38] At the conclusion of his summing-up, the Judge asked if counsel required any redirections. None were sought by counsel.

[39] At the Court of Appeal hearing, counsel for the petitioner had argued that the Judge's observation in his judgment that "*[b]oth Mr. and Mrs. B. were frank and honest witnesses and endeavoured to tell the Court all the detail that they could recall and I believed them. Their evidence alone proved the prosecution case to the requisite standard*" suggested the Judge may have treated the recent complaint evidence as corroborative of the victim's rape allegations and based his verdicts on that assessment.

[40] The victim's 'recent complaint' was made to her husband at the earliest possible time that it was safe to do so, which was as soon as the petitioner and Jone Colata got out of their vehicle. She said:

*"Ms. B: They both got dropped off together and the minute they got out of the car they uh-closed the door and I said to [my husband] go-go and we pulled up uh-a couple of meters down the road and I said uh-those-those boys have raped me K and he said what and he started – he-he was very disoriented..."*

[41] Her husband's evidence about this disclosure was:

*“Ms. Vavadakua: And what happened right after they got off, you drop them off.  
Mr. B: My wife told me they raped her.  
Ms. Vavadakua: What was her appearance like when she told you? In what state was she in?  
Mr. B: Uh-completely dist[raught] uh-shaking and tears uh-yeah that's-that's what happened.  
...”*

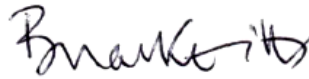
[42] Following the victim's initial disclosure, she and her husband drove straight to where they were staying and told their family members what had happened. The family members took charge of the situation and took them to the police station to make a complaint and then to the hospital. These matters were completed by about 8.45am that same morning and could be characterised as a continuum of complaints or 'hue and cry' that both subsumed and overtook the victim's initial disclosure. Given such a rapidly evolving complaint situation, it was unnecessary and would have been somewhat artificial for the Judge to have singled out the initial disclosure for a specific direction to the assessors and himself, as not probative of the victim's rape allegation but able to support the overall consistency of her evidence.

[43] Given the strength of the evidence at trial, including the medical evidence, and the series of swift complaints that followed the event, the absence of a recent complaint direction cannot have rendered the assessors' opinion or the Judge's verdicts unsafe.

[44] As the Court of Appeal concluded, there has been no substantial miscarriage of justice in relation to this ground of appeal either.

**Order of the Court:**

1. Leave to appeal under section 7(2) of the Supreme Court Act 1998 is refused.



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**The Hon. Justice Brian Keith**  
Judge of the Supreme Court



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**The Hon. Justice Terence Arnold**  
Judge of the Supreme Court



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**The Hon. Justice Lowell Goddard**  
Judge of the Supreme Court

**Solicitors:**

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