IN THE SUPREME COURT OF FIJI
APPELLATE JURISDICTION

CRIMINAL PETITION NO. CAV 0043 of 2023
Court of Appeal No. AAU 0003 of 2019

BETWEEN : **ANANAIASA QAQATURAGA**

Petitioner

AND : **THE STATE**

Respondent

Coram : **The Hon. Justice Prematilaka, Judge of the Supreme Court**

Date of Order : **22 March 2026**

REVIEW ORDER IN CHAMBER

[1] In this case after the summing-up[1] three assessors expressed the opinion that the petitioner was not guilty. The judge took a different view and convicted the petitioner[2]. He was sentenced to 13 years and 9 months imprisonment with a non-parole period of 11 years and 9 months[3]. On his appeal to the Court of Appeal against his conviction, it was argued, among other things, that the judge had not given sufficiently cogent reasons for disagreeing with the unanimous opinion of the assessors. A judge of this court refused leave to appeal[4]. Upon renewal, the Court of Appeal concluded that the judge's reasons were sufficiently cogent, and they dismissed the appeal[5]. Finally, the petitioner appealed to the Supreme Court for leave to appeal

[1] ***State v Qaqaturaga*** **- Summing Up [2018] FJHC 1179; HAC399.2016 (6 December 2018)**
[2] ***State v Qaqaturaga*** **[2018] FJHC 1180; HAC399.2016 (10 December 2018)**
[3] ***State v Qaqaturaga*** **- Sentence [2018] FJHC 1208; HAC399.2016 (17 December 2018)**
[4] ***Qaqaturaga v State*** **[2021] FJCA 246; AAU0003.2019 (15 December 2021)**
[5] ***Qaqaturaga v State*** **[2023] FJCA 127; AAU003.2019 (27 July 2023)**

and the Supreme Court refused leave to appeal[6]. He is now seeking to review the Supreme Court decision. He has filed written submissions in support of his application.

Statutory framework and applicable principles for review

[2] The Supreme Court is the final appellate Court in Fiji[7]. However, an appeal cannot be brought to the Supreme Court from a final judgment of the Court of Appeal unless the Supreme Court grants leave to appeal[8]. In relation to criminal matters 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.*[9]

[3] On the review powers of the Supreme Court, section 98(7) of the Constitution states that the Supreme Court may review any judgment, pronouncement or order made by it. A bench of 06 judges of the Supreme Court in ***Balaggan v State***[10] extensively dealt with the review powers of the Supreme Court and *inter alia* held:

> *'[45] Section 98(7) provides an avenue for curative jurisdiction in rare cases of obvious mistake, glaring error, and irremediable injustice. Once applied for, within a reasonable time, and declined, that must be the end of the matter. There is no continuing right to bring review applications. The litigation is at an end.'*

[4] Since the legislature has not but ought to have provided a general guidance regarding the time within which a review petition may be filed by an aggrieved party, it must be filed within a 'reasonable time'[11].

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[6] ***Qaqaturaga v State*** [2024] FJSC 52; CAV0043.2023 (30 October 2024)
[7] Section 98(3) of the Constitution
[8] Section 98(4) of the Constitution
[9] Section 7(2) and 7(3) of the Supreme Court Act 1998.
[10] [2023] FJSC 3; CAV0022.2016 (27 April 2023)
[11] ***Balaggan*** (Supra)

[5] In the context of criminal litigation, Dickson J said in **Grierson v The King** (1938) 60 CLR 431, 435:

> *". . . a second appeal from a conviction could not be entertained after the dismissal, on the merits, of an appeal or application for leave to appeal and . . . the first appeal could not be re-opened after a final determination."*

[6] The power to re-open and to review was one "*to be exercised with great caution*" and a court of final appeal has power "*in truly exceptional circumstances*" to recall its orders even after they have been entered *"in order to avoid irremediable injustice."*[12] The purpose of the jurisdiction is not to provide a backdoor method by which unsuccessful litigants can seek to reargue their cases[13]. The same principal would apply in criminal appeals[14].

[7] ***Balagan*** summarized the applicable principles highlighted in ***Silatolu*** as to when the Court would not exercise review jurisdiction:

1) *'Attempting to re-argue the same case, repeating arguments which had earlier been considered and rejected by the Court.*
2) *Raising fresh matters not raised previously in any of the courts.*
3) *Matters raised lacking in substance*
4) *Failure to establish any error or mistake by the court in its reasons for judgment. Utterly irrelevant mistakes have no impact*[15].
5) *Failure to establish that the court had proceeded on some misapprehension of the facts and the relevant law having regard to the submissions then before it.*

[8] On ***Silatolu*** principles 'vexatious' applications amounting to abuse of process of court to would be refused. Frivolous applications too would suffer the same fate.

[9] It was said in ***Anisimai v State***[16] that the system must not be clogged with review applications:

> *'19. If so the hearing of appeals that are meritorious is inevitably delayed. The time of Fiji's top judges are wasted on cases that should never be before them. Also the*

[12] ***Silatolu v State*** - **Joint Judgment** [2008] FJSC 28; CAV0002.2006 (17 October 2008)
[13] Per Mason CJ in ***Autodesk Inc v Dyason*** (No.2) (1993) 176 CLR 300, 303
[14] ***R v Cross*** [1972] QB 937 CA, 941
[15] ***Mototabua v State*** [2009] FJSC 8; CAV0006.2006S (10 February 2009)
[16] 2012] FJSC 3; CAV0006.2008S (23 February 2012)

prestige of the Supreme Court suffers because at the top of the pyramid it is, as a court of final appeal, only supposed to be dealing with matters of public and general importance with regard to the administration of criminal justice.'

[10] Thus, finality of decision making in the appellate courts, bringing as it does finality to litigation issues, must trump perpetual scrutiny.[17] Review is not rehearing of the appeal all over again, and it has to be shown that there has been a miscarriage of justice. Even if the applicant succeeds in establishing that there may be another view possible on the conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice.[18] It has been said that a decision of a final appellate court is one of great sanctity. It should not be disturbed save in exceptional circumstances. That is not to say that an application for a review of a previous judgment of the Supreme Court can never be granted, but it does mean that only compelling reasons will justify taking that course.[19]

Procedure for review

[11] As to the procedure for the exercise of the review jurisdiction, ***Balagan*** approved the consideration of the review application without an oral hearing and dismissal on the papers alone in order to prevent abuse.

Consideration of the review application

[12] I shall now consider the petitioner's review application in the light of the above statutory provisions and guiding principles.

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[17] ***Balagan*** (supra)

[18] **Sundar v State** by Inspector of Police, Review Petition (Crl.) Nos. 159-160 of 2013 in Criminal Appeal Nos. 200-201 of 2011 decided on 21 March 2023; **Mofil Khan v State of Jharkhand**, Review Petition (Criminal) NO. 641 of 2015 in Criminal Appeal No. 1795 of 2009 decided on 26 November 2021

[19] **Dromudole v State** [2015] FJSC 28; CAV0013.2013 (23 October 2015)

[13] The petitioner's main point of contention is based on paragraph 22 of the Supreme Court judgment which is as follows:

> *22. I turn to the cogency of the trial judge's reasons. I have set out earlier in this judgment the reasons which the trial judge gave for disagreeing with the opinions of the assessors. In my opinion, the reasons he gave for rejecting the points made on behalf of Ananaiasa were cogent – as were the telling points made by the prosecution (which the trial judge expressly adopted) that there had to be some reason why MS was in such distress when she got to her cousin's home and that no motive was ever advanced on behalf of Ananaiasa for why MS should tell lies about him. It has been known, of course, for women to make false allegations of rape – invariably because they were ashamed to have engaged in consensual sexual activity – but that cannot have been the case here because Ananaiasa's case at trial was that no sexual activity had occurred at all.*[20]

[14] Apart from that the appellant somehow seems to argue that it requires 03 witnesses to establish the truth implying that he should not have been convicted on the complainant's evidence alone. It is trite law that an accused could be successfully prosecuted and convicted on the victim's evidence alone. There is no rule of evidence or procedure that a certain number of witnesses must be called to prove a criminal case. Section 129 of the Criminal Procedure Act, 2009 states that where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; and in any such case the judge or magistrate shall not be required to give any warning to the assessors relating to the absence of corroboration. Thus, corroborative evidence of even a single witness is not essential to prove a charge of rape.

[15] In ***Director of Public Prosecutions v Hester*** [1973] AC 296 at 324), Lord Diplock stated that, *"in common law systems, unlike some other systems, an accused can be convicted on the testimony of a single witness "*. Common law systems do not impose a numerical rule requiring

[20] That was what the trial judge understood Ananaiasa's case to be – no doubt because in cross-examination it had been put to MS by Ananaiasa's counsel that he had not raped her at all. Indeed, in para 15 of his judgment, the trial judge said: "The defence is totally denying that the accused raped the complainant in the bathroom that morning whilst she was doing the washing." He had said much the same thing to the assessors in para 66 of his summing-up. However, this does not sit well with one of the things Ananaiasa said in his affidavit in support of his petition: "I admit with the complainants consent to massage and lay down with me on bed, I then pull down her clothes with her help … I admitted that what I had done aboved [*sic*], I was drunk."

more than one witness. The focus is on quality, not quantity of evidence. Evidence has to be weighed, not counted.

[16] Secondly, the appellant picks on the statement at paragraph 22 of the Supreme Court judgment that there had to be some reason why MS (*i.e.* complainant) was in such distress when she got to her cousin's home and that no motive was ever advanced on behalf of Ananaiasa for why MS should tell lies about him. He argues that MS's evidence on its own is unreliable and incredible in that (i) after the petitioner raped her she did not complain to any of the two teachers sitting on his verandah drinking grog but ran straight to her cousin's house (ii) MS's mother saw her coming towards her but upon seeing the mother, MS turned towards her cousin's home (iii) MS's evidence that both she and the petitioner were standing when he inserted his penis into her vagina which was an impossible act.

[17] All these aspects have been dealt with by the trial judge in differing with the assessors and thoroughly examined by the Supreme Court in the judgment for the cogency of reasons given by the trial judge. The Supreme Court held:

> *14. 'For example, some of his grounds of appeal, when properly analysed, amount to a contention that the trial judge did not take sufficient account of, or give sufficient weight to, a particular aspect of the evidence. An argument along those lines has its limitations. As has been said before, the weight to be attached to some feature of the evidence, and the extent to which it assists the court in determining whether a defendant's guilt has been proved, are matters for the trial judge, and any adverse view about it taken by the trial judge can only be made a ground of appeal if the view which the trial judge took was one which could not reasonably have been taken.'*
> (emphasis mine)

[18] The Supreme Court concluded that in all the circumstances, it is not possible to characterize the reasons which the judge gave for disagreeing with the opinions of the assessors as anything other than cogent.

[19] Therefore, applying the law and principles set out above for a review of the Supreme Court decision, I see no reason to grant leave to appeal as the petitioner's review application falls far short of the threshold for leave to appeal for a review of the Supreme Court decision.

Orders of the Court:

(i) Leave to appeal to review the Supreme Court judgment dated 30 October 2024 is refused.

(ii) Review application is dismissed.

Hon. Mr. Justice C. Prematilaka
JUDGE OF THE SUPREME COURT