

IN THE FIJI COURT OF APPEAL
Criminal Appeal No. 19/91

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BEFORE THE HON JUSTICE MICHAEL M HELSHAM
PRESIDENT OF THE FIJI COURT OF APPEAL
AND THE HON JUSTICE SIR MOTI TIKARAM
RESIDENT JUDGE OF APPEAL
AND THE HON JUSTICE SIR MARI KAPI
JUDGE OF APPEAL

WEDNESDAY THE FOURTH DAY OF MARCH, 1992 AT 2.15 P.M.

BETWEEN: PENE ERENIO APPELLANT

AND : S T A T E RESPONDENT

APPELLANT
MS N SHAMEEM & MS L LAVETI

IN PERSON
FOR THE RESPONDENT

O R D E R

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JUSTICE HELSHAM

: On the 2nd of July 1991, the appellant was convicted of rape in a trial that lasted 2 days before the High Court. He was sentenced to imprisonment for 5 years. He lodged a Notice of Appeal on the 17th of July 1991 to this court.

At the hearing of the appeal today, the accused submitted a written statement in support of the grounds of appeal.

On the aspect of the appeal against conviction, he raised in effect three matters. The first was that the evidence of the victim should not have been accepted or believed because it was not credible and was not supported by the medical evidence that was adduced and because another person who was alleged to have acted in concert with the appellant, had been acquitted. The learned trial Judge carefully advised the assessors on the matters of credit and the medical evidence. There is no substance in these aspects. The fact that the other person involved in the episode was acquitted has no bearing on this case at all.

The second matter raised in support of the appeal is that the Judge did not properly consider whether the accused's statement to the police should be admitted, nor did he give the accused the opportunity of contesting the admissibility of such a statement. As pointed out by the learned Deputy Director in the submissions which have been filed:

"It is a fact that the Appellant did not object to his caution interview statements being admitted. The learned trial Judge specifically raised the matter with the Appellant and he admits that the statements were voluntarily made."

JUSTICE HELSHAM
(Contd)

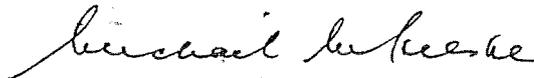
On page 9 of the record, the following passage occurs

"The accused on being questioned by me states that he has no objection to his statement to the Police being led in evidence. I too find that there is nothing incriminatory of the accused in the statement. He made it voluntarily. I allow learned state counsel to lead it in evidence."

There is no substance in this submission.

Thirdly, the appellant submits that he was not given adequate warning of the hearing of this trial and that he was prejudiced as a result. This was not raised as a ground of appeal and there is no evidence or material of any kind to support this allegation.

The accused put various matters in his written submission on the question of the severity of the sentence. We have taken them into consideration. We do not accept that they give any reason for altering the sentence imposed by the learned trial judge. The appeal is accordingly dismissed.



PRESIDENT
FIJI COURT OF APPEAL