

IN THE COURT OF APPEAL FIJI ISLANDS  
ON APPEAL FROM THE HIGH COURT OF FIJI

CRIMINAL APPEAL NO. AAU0032 OF 2003S  
(High Court Criminal Action No. HAA 011 of 2003S)

BETWEEN:

BERA YALIMAIWAI

*Appellant*

AND:

THE STATE

*Respondent*

Coram:

Ward, President  
Gallen, JA  
Scott, JA

Hearing:

Wednesday, 27 July 2005, Suva

Counsel:

Appellant in Person  
Mr D. Goundar for the Respondent

Date of Judgment: Friday, 29 July 2005, Suva

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JUDGMENT OF THE COURT

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- [1] in November of 2001 the present applicant was charged in the Magistrate's Court at Suva on a charge that he had carnal knowledge of a girl without her consent.
- [2] After various adjournments counsel for the Applicant Mr Fa accepted that there was a prima facie case for the charge to be referred to the High Court for trial, and he consented to committal without consideration of the evidence. The prosecution agreed and the proceedings were accordingly referred to the High Court.

- [3] In June 2003 at 11 am on that date the Judge was advised by Mr Fa that there was a possibility of a plea of guilty and the proceedings were stood over to the following Monday when in the absence of a plea of guilty the trial was to proceed.
- [4] On Monday the 30 June the information was read to the applicant who stated that he understood the charge and entered a plea of guilty.
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- [5] Mr Fa entered a plea in mitigation on behalf of the accused and he was sentenced at 11 am on that morning.
- [6] The applicant was sentenced to imprisonment for a term of seven years.
- [7] On the 23 September the applicant acting on his own behalf without the benefit of counsel applied for leave to appeal out of time to the Court of Appeal against both conviction and sentence. The application was heard by a single Judge of this Court who considered that the seriousness of the charge and the sentence imposed justified the granting of leave and granted leave accordingly. The Judge further recommended that legal aid be granted to the applicant.
- [8] The appeal came before the Court of Appeal on the 16 March 2005. The applicant appeared on his own behalf and the judgment shows that at the hearing the applicant abandoned his appeal against conviction, proceeding only with an appeal against sentence.
- [9] The Court dismissed the appeal and confirmed the sentence of seven years imprisonment.
- [10] The applicant now seeks leave to appeal to the Supreme Court against both conviction and sentence.

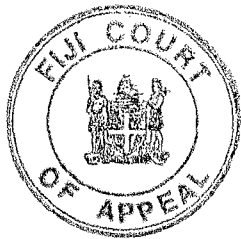
**Grounds of Appeal**

- [11] (i) That the learned High Court Judge erred in Law and in fact in accepting the uncorroborated evidence of the Complainant.
- (ii) That the learned trial Judge erred in Law and in fact in admitting the medical report as evidence of the fact that the Complainant was raped.
- (iii) That the learned trial judge erred in Law and in fact in failing to give reasons for either believing or disbelieving the material witness.
- (iv) That the learned trial judge misdirected herself as to the onus of proof that lay on the prosecution.
- (v) That the verdict is unsafe, dangerous and unsatisfactory and cannot be supported having regard to the evidence as a whole.
- (vi) That the sentence is harsh and excessive having regards to all the circumstances of the case.

**Decision**

- [12] The first five grounds of appeal all related to the evidence against the appellant. The applicant complains that the evidence of the complainant was uncorroborated and that certain medical evidence ought not to have been admitted. He contends that the Judge ought to have given reasons for either believing or disbelieving the material witness (presumably the complainant) that she misdirected herself as to the onus of proof and that the verdict was unsafe and could not be supported.
- [13] The problem for the Applicant is that he entered a plea of guilty so that the matters of which he complained were not before the Judge and not pronounced on by her.

- [14] It appears that the applicant now contends that he was persuaded by counsel, against his will to enter the plea of guilty.
- [15] Unfortunately he abandoned his appeal against conviction in the Court of Appeal so that none of the matters of which he now complains were considered in that Court. The abandonment of the appeal against conviction in the Court of Appeal results in there being no decision of that Court which is appealable.
- [16] We cannot certify that the appeal against sentence in this case gave rise to a question of significant public importance or that there were grounds for giving leave to appeal.
- [17] The application is accordingly declined.



*Ward*

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Ward, President

*R. Gallen*  
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Gallen, JA

*A. Scott*  
\_\_\_\_\_  
Scott, JA

**Solicitors:**

**Appellant in Person**

**Office of the Director of Public Prosecutions, Suva for the Respondent**