

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

Criminal Appeal No: AAU0051 of 2008

BETWEEN:

SELEVASIO BARUA; and
JOSAIA NAVONO

Appellants

AND:

THE STATE

Respondent

Coram: Byrne P
Goundar JA

Hearing: 1st June 2010

Counsel: Appellants in person
Ms P. Madanavosa for State

Date of Judgment: 11th June 2010

JUDGMENT OF THE COURT

- [1] The appellants were jointly charged with one count of rape of a twelve year old girl in Kadavu. They elected Magistrates' Court and on 18 October 2005 the trial commenced and was concluded on 21 October 2005. The appellants were convicted and sentenced to 10 years imprisonment.
- [2] They appealed against conviction and sentence to the High Court. At the hearing, they pursued appeal against sentence only and on 4 August 2006 their appeals were dismissed.
- [3] With the leave granted by a single judge they appealed against sentence to this Court. Initially, they appealed against conviction as well but at the hearing of the appeal they abandoned their appeals against conviction and pursued appeals against sentence only.
- [4] This being the second appeal, the appellants' rights of appeal are limited by section 22 of the Court of Appeal Act. Section 22 provides:

- (1) Any party to an appeal from a magistrate's court to the High Court may appeal under this Part, against the decision of the High Court in such appellate jurisdiction to the Court of Appeal on any ground of appeal which involves a question of law only.

Provided that no appeal shall lie against the confirmation by the High Court of a verdict of acquittal by a magistrate's court.

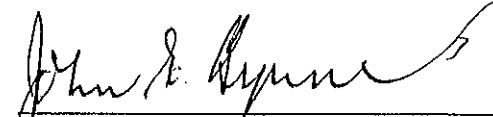
- (1A) No appeal under subsection(1) lies in respect of a sentence imposed by the High Court in its appellate jurisdiction unless the appeal is on the ground –

- (a) the sentence was an unlawful one or was passed in consequence of an error of law; or
- (b) that the High Court imposed an immediate custodial sentence in substitution for a non-custodial sentence.

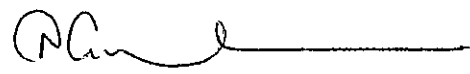
- [5] The grounds of appeal advanced by the appellants are vague and repetitive. Their main contention is that disparity in sentencing was shown in relation to the sentences that had been imposed in other cases involving rape. They have referred the Court to four cases where sentences of 5 and 6 years imprisonment have been imposed for rape.
- [6] On many occasions we have said that the parity principle, which applies where the sentences imposed on co-offenders are so disproportionate as to leave the offender with the larger sentence with a justifiable sentence of grievance, has limited relevance in unrelated cases. The identification of unrelated cases, with different objective and personal circumstances, may provide guidance for sentencing, but they cannot be used to justify a reduction of a sentence which was imposed after taking all the circumstances of a particular case.
- [7] We entirely agree with the learned High Court judge that the appellants committed a very serious offence. Although the appellants were young and first time offenders, the victim was a minor and there was evidence that she was traumatized by the incident. The term of 10 years imprisonment is not manifestly excessive and is consistent with the sentences imposed on offenders for rape of children (*State v. Nacanieli Marawa* HAC 016 of 2003, *State v. Navuniani Koro*i HAA050 of 2002 and *Mark Lawrence Mutch v. State* Crim. App. AAU0060/99. In future, offenders who commit sexual assaults on children can expect more severe sentences.
- [8] We are satisfied that no error of law is shown in relation to the sentences imposed on the appellants.

[9] The appeal is dismissed.





Hon. Mr. Justice J. Byrne
President, Court of Appeal



Hon. Mr. Justice D. Goundar
Judge of Appeal

Solicitors:

Appellants in person

Office of the Director of Public Prosecutions for State