

**IN THE COURT OF APPEAL**  
**ON APPEAL FROM THE HIGH COURT**

**CRIMINAL APPEAL NO. AAU 34 OF 2013**  
**(High Court HAA 22 of 2012)**

**BETWEEN** : DEWAN CHAND

*Appellant*

**AND** : THE STATE

*Respondent*

**Coram** : Chandra RJA

**Counsel** : Ms. L Tabuakuro for the Appellant  
Ms. Prasad for the Respondent

**Date of Hearing** : 1 August 2014

**Date of Ruling** : 4 December 2014

**RULING**

1. The Appellant was charged in the Magistrate's Court at Labasa with one count of indecent assault contrary to section 154(1) of the Penal Code, (Cap.17) and 3 counts of defilement contrary to section 155(1) of the Penal Code (Cap.17). He was convicted of Counts one and four and was sentenced to a term of four years imprisonment with a non-parole period of three years and six months on 12 September 2012. He was acquitted on Counts 2 and 3.

2. The Appellant appealed against his conviction to the High Court. The High Court dismissed the appeal against conviction.
3. The Appellant filed an appeal against his conviction and the amended grounds of appeal which were relied on are as follows:
  - i. That the learned trial Judge erred in law in failing to comply with the legal principles of recent complaint and as a result admitted hearsay evidence.
  - ii. That the learned Judge erred in law in concurring with the Magistrate's Court decision in applying the legal principles of assessing credibility in sexual offences cases.
  - iii. That the learned Judge erred in law in upholding a conviction that was unsafe in law therefore a there is a substantial miscarriage of justice.
4. In December 2007, the complainant, who was 11 years old had been a Class 6 student when the Appellant allegedly indecently assaulted her. This was the basis of the 1<sup>st</sup> charge. The Appellant was a teacher at the same school. The other three alleged incidents of defilement, counts 2-4 had taken place in November 2008 and May 2009 at the complainant's home when the Appellant had visited her home at a time when her parents had not been there. At the trial 11 witnesses had given evidence for the prosecution while the defence had called 6 witnesses.
5. An appeal against a judgment of the High Court (which sits in appeal when hearing an appeal from a Magistrate's Court) is available only on a question of law. Section 22(1) of the Court of Appeal Act (Cap.12).
6. The Appellant has to show that the grounds taken up in support of the application for leave are questions of law.
7. The first ground taken up by the Appellant is regarding recent complaint and admission of hearsay evidence. In the written submissions filed on behalf of the Appellant emphasis was placed on inconsistent evidence and hearsay evidence in relation to ground 1. These

were the same arguments that had been placed before the High Court when the High Court heard the appeal from the Magistrate's Court. The learned High Court having considered the submissions of the Appellant as well as the Respondent held that the said ground of appeal had not been made out.

It is against that decision that the Appellant is making the present submission and has dealt at length regarding the manner in which the learned Magistrate should have dealt with the evidence of the witnesses before him. The Appellant has not set out any error in the judgment of the learned High Court Judge in relation to this ground and in fact in the whole of the written submission has not stated anything about the judgment of the High Court. In view of that position this first ground does not raise a question of law.

8. The second ground is regarding credibility of witnesses. Here again in the submissions that were made both oral and written by the Appellant the emphasis was on how the learned Magistrate should have dealt with the issue of credibility. The same arguments were taken up before the learned High Court Judge. The learned High Court Judge dealt with that argument in great detail and held that the question of credibility of witnesses was a matter for the trial Judge and the learned Magistrate had a discretion in dealing with that issue. The High Court Judge held that the learned Magistrate had exercised his discretion as to whose evidence was credible and reliable in arriving at his conclusion in finding the Appellant guilty. No errors have been pointed out in the judgment of the learned High Court relating to any questions of law. Therefore this ground too lacks merit.
9. The third ground was that the learned Judge erred in law in upholding a conviction that was unsafe in law and thereby there was a substantial miscarriage of justice.
10. The submissions that were made on behalf of the Appellant again deals with the trial Court and not with the judgment of the High Court. The submissions refer to trials before a jury and case law relating to such trials. The conclusion on this ground of the Appellant refers to the learned trial Judge upholding the conviction against the Appellant being

unsafe on the grounds of insufficient evidence, inconsistencies of evidence adduced by state witnesses and the acceptance of hearsay evidence. There is no mention about the judgment of the High Court which heard the appeal of the Appellant from the Magistrate's Court. The entire submission is misconceived and has failed to address any question of law arising out of the judgment of the High Court. Therefore this ground too lacks merit.

11. The grounds of appeal raised by the Appellant have no merit and do not raise any questions of law and therefore do not satisfy the requirements of section 22(1) of the Court of Appeal Act (Cap.12).

***Order of Court:***

The application for leave to appeal is refused.





**Hon. Mr Justice Chandra**  
**RESIDENT JUSTICE OF APPEAL**