IN THE COURT OF APPEAL
[On Appeal from the High Court]

CRIMINAL APPEAL NO. AAU0085 OF 2014
[High Court Criminal Case No. HAC252 of 2012]

BETWEEN	:	**SAVENACA TURAGAKECE** ***Appellant***
AND	:	**THE STATE** ***Respondent***
BEFORE	:	The Hon. Justice Daniel Goundar
Counsel	:	Mr. M. Yunus for the Appellant Mr. V. Perera for the Respondent
Date of Hearing	:	3 August 2015
Date of Ruling	:	10 August 2015

RULING

[1] The appellant was charged with two representative counts of indecent assault and five representative counts of rape in the High Court at Suva. The appellant pled guilty to the two representative counts of indecent assault before the commencement of the trial. He was convicted on the five representative counts of rape after trial. On 9 June 2014, he was sentenced to a total term of 14 years' imprisonment with a non-parole period of 13 years for all seven offences.

[2] This is a timely application for leave to appeal against conviction and sentence. The test for leave is whether any of the ground of appeal is arguable (**Naisua v State** unreported Cr. App. No. CAV0010 of 2013; 20 November 2013). The grounds of appeal are:

1. *The learned Trial Judge erred in law and in fact when he failed to direct and guide the assessor on how to approach the evidence contained in the caution interview and the weight to be attached to the disputed confession and admission.*

2. *The learned Judge erred in fact and in law when he failed to take into account the period that the Appellant was in remand before sentence and failed to award an appropriate discount or deduction for such time already spent in remand as a separate factor.*

3. *The learned Trial Judge erred in principle and also erred in exercising his sentencing discretion to the extent that the non-parole period is too close to the head sentence resulting in much more severe punishment.*

[3] At trial, the prosecution led evidence of a confession made by the appellant under caution. The appellant contended that the confession was fabricated by the police. In his summing up the trial judge gave no directions to the assessors as to how they should evaluate a confession which the appellant said was not made by him but was fabricated by the police (see, **Burns v The Queen** [1975] 132 CLR 258 at 261). Counsel for the State submits that this ground raises a pure question of law on which the appellant can proceed as a matter of right under section 21(1) (a) of the Court of Appeal Act Cap.12.

[4] The first ground of appeal against sentence is that there was no separate discounting of the appellant's remand period. In giving the discount for the remand period, the trial judge subsumed the remand period with the other mitigating factors.

[5] I bear in mind that there is no hard and fast rule regarding the methodology for discounting of the remand period. The only compelling mitigating factor was the appellant's previous good character. The remand period was 1 year and 11 months. The total discount given was 3 years for the mitigating factors, which effectively meant that the appellant was given a reduction of 1 year and 1 month for previous good character and 1 year and 11 months for the remand period. It is therefore not arguable that the appellant's remand period was not given due weight.

[6] The second ground of appeal against sentence is that the non-parole period of 13 years is too close to the head sentence of 14 years' imprisonment. Counsel for the appellant submits that there is nothing in the sentencing remarks to indicate that the trial judge directed his mind to rehabilitation of the offender when exercising his discretion to fix the non-parole period too close to the head sentence of 14 years' imprisonment, citing the case of **Paula Tora v State** unreported Cr. App. No. AAU0063 of 2011; 27 February 2015 as the authority.

[7] Section 18(1) of the Sentencing and Penalties Decree 2009 states that the court must fix a non-parole period when an offender is imprisoned for life or for a term of more than 2 years or more. Under section 18(2), the court may decline to fix a non parole period under subsection (1) under limited circumstances, that is, if the nature of the offence, or the past history of the offender, make the fixing of the non-parole period inappropriate. If the court fixes a non-parole period, then the only restriction is that the non-parole period must be at least 6 months less than the total head sentence.

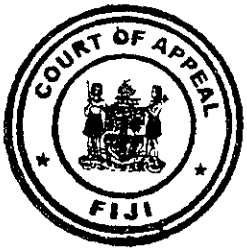
[8] Section 4(1) (d) of the Sentencing and Penalties Decree 2009 states that one of the purposes for which a sentence may be imposed is to establish conditions so that rehabilitation of the offender may be promoted or facilitated. Deterrence, denunciation, protection of the community and proportionality are the other purposes of sentence. The sentencing court may consider any combination of these purposes.

[9] The complaint relates to the length of the non-parole period. The appellant's contention is that rehabilitation was not taken into account by the trial judge when he fixed the non-parole period too close to the head sentence. What constitutes a term too close to the head sentence is a matter for interpretation. In **Tora's** case, one year gap between the head sentence and the remand period was considered too close. The gap between the head sentence and the non-parole period in the present case is also one year. In my judgment, whether rehabilitation is an important consideration in determining the length of a non-parole period is an arguable question of law alone.

[10] **Result**

Leave to appeal conviction granted.

Leave to appeal sentence granted on the second ground only.



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Hon. Mr. Justice Daniel Goundar
JUSTICE OF APPEAL

Solicitors:
Office of the Legal Aid Commission for the Appellant
Office of the Director of Public Prosecutions for the Respondent