

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

CRIMINAL APPEAL NO. AAU131 OF 2013
[High Court Case No. HAC 332/11]

BETWEEN : SAMISONI RASIGA
Appellant

AND : THE STATE
Respondent

Coram : Goundar JA

Counsel : Mr. S. Waqainabete for the Appellant
Mr. L. Fotofili for the Respondent

Date of Hearing : 20 October 2014

Date of Ruling : 14 January 2015

RULING

- [1] Following a trial, the appellant was convicted on three counts of rape. On 18 October 2013, he was sentenced to a total term of 10 years' imprisonment with a non-parole period of 8 years.
- [2] On 15 November 2013, the appellant filed a timely notice of appeal against conviction and sentence. However, after receiving legal advice, the appellant abandoned his sentence appeal and pursued his conviction appeal only.
- [3] The grounds of appeal against conviction are as follows:

Ground One

The Learned Trial Judge erred in law and in fact when he did not direct the assessors on the time the Appellant returned home at about 9.30pm according to Kesaia Lewa evidence and the time the Complainant departed the crime scene after the man who raped her left which was about 9.30pm and also make an independent assessment on the same.

Ground Two

The Learned Trial Judge erred in law and in fact when he did not properly consider and independently assessed the Appellant's evidence and also the evidence of Sovaia Ratubuli in relation to the assault done by the police officers and the fabrication of evidence against Appellant.


- [4] Both grounds raise factual contentions. Leave is required. The test for leave is whether the grounds are arguable (Simeli Bili Naisua v State, unreported Criminal Appeal No. CAV0010 of 2013; 20 November 2013).
- [5] Ground one relates to the timing of the offences. According to the complainant, the offences were committed between 6.30pm and 9.30pm on 3 March 2011. The appellant led alibi evidence from his mother who said the appellant came home at around 8.30pm and then went away. The appellant's aunt gave evidence that after having dinner the appellant left her home at around 8pm. The appellant's account was not entirely consistent with his mother's account. The appellant said he left home after 6.30pm and returned at about 12 midnight.
- [6] In his summing up, the learned trial judge highlighted the timing that the witnesses attached to the appellant's movements on the night in question. The trial judge was not obliged to direct on every piece of evidence. His duty was to give a fair and balanced account of the evidence. It was not in dispute that the complainant was raped in the evening of 3 March 2011. The issue was whether the appellant was the perpetrator? The guilty verdict obviously means that the assessors accepted the prosecution's evidence and not the evidence given by the appellant and his witnesses. This finding was available on the evidence. This ground is not arguable.

[7] In crafting his arguments on ground two, counsel for the appellant submits that if the trial judge had carried out his own analysis of the evidence, he might have come to a different conclusion on the weight of the appellant's confession. This submission is misconceived. The trial judge's duty was to fairly address the assessors on the issues presented at the trial. The weight of the appellant's caution interview was a matter for the assessors. The assessors found the caution interview to be reliable after the trial judge gave appropriate directions. The trial judge accepted the assessors' opinions of guilty. The law did not require him to carry out his own independent analysis when he was accepting the unanimous guilty opinions of the assessors (see, Abdul Kaiyum v The State, unreported Criminal Appeal No. AAU0071 of 2012; 14 March 2013). This ground is not arguable.

Result

[8] Leave to appeal against conviction is refused.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Director of Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State