

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

CRIMINAL APPEAL NO. AAU 0032 OF 2015  
(High Court No: HAC 30 of 2012)

BETWEEN : RAVINESH SINGH  
*Appellants*

AND : THE STATE  
*Respondent*

Coram : Chandra, RJA

Counsel : Mr T Lee for the Appellant  
Ms P Madanavosa for the Respondent

Date of Hearing : 12 November, 2018

Date of Ruling : 27 June, 2019

## RULING

- [1] The Appellant was charged with one count of Rape contrary to section 207(1)(2)(a)(3) of the Crimes Act 2009.
- [2] The Appellant was convicted after trial on 17<sup>th</sup> March 2015 and sentenced on 20<sup>th</sup> March 2015 to 13 years imprisonment with a non-parole period of 11 years imprisonment.
- [3] His co-accused who was charged and convicted along with the Appellant applied to abandon her appeal against both conviction and sentence which was allowed and her appeal was dismissed on 31<sup>st</sup> March 2017.
- [4] The Appellant in his notice of appeal which was amended through his Solicitors, the Legal Aid Commission, has set out the following grounds of appeal against his conviction:
  1. The Learned Trial Judge erred in law when he failed to warn the Assessors of the danger of convicting on uncorroborated evidence of the child victim.
  2. The Learned Trial Judge erred in law when he failed to conduct competency inquiry as required by section 10(1) of the Juveniles Act (Cap 56) and failed to remind the witness the importance of telling the truth.
  3. The Learned Trial Judge erred in law and in fact to admit the confession in the caution interview and charge statement as admissible despite evidence of oppression.
- [5] At the time of the incident, the victim had been 12 years old. The co-accused had gone to the victim's house and brought her to the stall to assist her in selling watermelon. The co-accused had called her husband, the Appellant to come saying that 'she was here'. The Appellant had then taken the victim to the nearby bush and raped her. The victim had been bleeding heavily thereafter. The co-accused allegedly had told the mother of the victim that she was having menses. The victim had relayed the alleged incident to her mother, and the matter was reported. In his caution interview the Appellant had admitted to the offences to the Police. The Appellant challenged the confession on the grounds that

he was assaulted by the Police to make the confession. He also alleged oppression due to long hours of interrogation and custody. At the Voir Dire Inquiry the confession was ruled admissible. At the trial, the Appellant had maintained his position that he made the confession under oppression and he denied the alleged offences.

- [6] The first ground of appeal is on the basis that the learned Trial Judge had failed to warn the Assessors of the danger of convicting on uncorroborated evidence of the child victim.
- [7] The Appellant's Counsel has cited an extract from the Supreme Court decision in **Rahul Ravinesh Kumar v The State** CAV 0024 (27 October 2016) to support this ground.
- [8] The citation of the extract from the judgment in that decision has been used out of context to support this ground. The Supreme Court had stated thereafter that section 10 of the Juveniles Act was inconsistent with the Constitution and therefore the requirement of corroboration of a child victim's evidence is invalid. The Court went on to hold that the learned Judge's direction to the Assessors that corroboration was not required in the case of a child victim's evidence was correct.
- [9] Therefore as there is no requirement of corroboration of a child victim's evidence this ground has no merit.
- [10] The second ground of appeal is regarding the failure of the Learned Trial Judge to conduct the competency inquiry as required by section 10(1) of the Juveniles Act and failure to remind the witness the importance of telling the truth.
- [11] In the absence of the record at this stage, it is uncertain as to whether the learned Trial Judge had conducted the competency inquiry when the victim was called to give evidence. The summing up does not refer to this. Therefore it is not certain whether the victim gave sworn or unsworn evidence.
- [12] When the record is available the Full Court can consider this ground and therefore I would grant leave on this.
- [13] The third ground of appeal is regarding the admission of the confession.

- [14] The complaint of the Appellant was that he was assaulted by the Police Officers and had been kept for more than 48 hours in Police custody.
- [15] There was no medical evidence to support his complaint that he was assaulted although he was taken before a Doctor for examination. Further, the learned Trial Judge had held in ruling the confession to be admissible, that there was no oppression on the basis of being kept in custody for long hours as alleged.
- [16] There is no merit in this ground of appeal.

**Orders of Court:**

*Leave to appeal is granted only on ground 2 of the grounds of appeal.*



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