

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

**CRIMINAL APPEAL NO. AAU 154 OF 2017**  
(High Court Action No: HAC 163 of 2013)

**BETWEEN** : VINIT VIKASH CHAND

*Appellant*

**AND** : THE STATE

*Respondent*

**Coram** : Chandra, RJA

**Counsel** : Mr G O'Driscoll for the Appellant  
Mr L J Burney for the Respondent

**Date of Hearing** : 24 July, 2019

**Date of Ruling** : 22 August, 2019

**RULING**

- [1] The Appellant was charged with one count of rape contrary to section 207(1) and (2)(c) and one count of attempted rape contrary to s.208 of the Crimes Act, 2009.

- [2] The Appellant was found guilty and convicted of the offences and was sentenced to 9 years and 10 months and 20 days imprisonment with a non-parole period of 8 years.
- [3] The Appellant in his notice of appeal seeking leave to appeal against conviction and sentence set out the following grounds of appeal:

*“Against Conviction*

1. *That the Learned Trial Judge erred in law and in fact in not adequately/sufficiently/referring/directing/putting/considering and or/misdirecting himself and the assessors on the confessional statement that was allegedly made by the Appellant.*
2. *That the Learned Trial Judge erred in law and in fact in not analyzing all the facts before him before he made a decision that the Appellant was guilty as charged on the charge of Rape.*
3. *That the learned Trial Judge erred in law and in fact in not analyzing all the facts before him before he made a decision that the Appellant was guilty as charged on the charge of Rape. Such error of the learned Trial Judge in law by failing to make an independent assessment of the evidence, before affirming a verdict which was unsafe, unsatisfactory and unsupported by evidence, giving rise to a grave miscarriage of justice.*
4. *That the Learned Trial Judge erred in law and in fact in not directing himself and or the Assessors to refer to any Summing up the possible defence on evidence and as such by his failure there was a substantial miscarriage of justice.*
5. *That the Learned Trial Judge erred in law and in fact in not adequately/sufficiently/referring/directing/putting/considering himself or the Assessors the evidence of the Appellant on oath.*
6. *That the Learned Trial Judge erred in law in not adequately directing/misdirecting himself the previous inconsistent statements made by the main Prosecution witnesses and as such there has been a substantial miscarriage of justice.*

*Against Sentence*

1. *That the Appellant’s appeal against sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case.*
2. *That the Learned Trial Judge erred in law and in fact in taking irrelevant matters into consideration when sentencing the Appellant and not taking into relevant consideration.*
3. *That the Learned Trial Judge erred in law and in fact in not taking into consideration the provisions of the Sentencing and Penalties Decree 2009 when he passed the sentence against the Appellant.”*

- [4] The incident complained of related to the Appellant who was said to have accompanied the complainant to help him sell coriander or dhania for his pocket money. The complainant being his cousin. The Appellant is said to have taken the complainant who was 8 years old to a mango tree and asked to suck his penis. When the complainant was trying to run away he had forcefully opened his mouth and inserted his penis into his mouth. Then he had spat in the complainant's anus and forced him to sit on his erected penis. In his caution interview he had admitted making the complainant suck his penis and rubbing his erected penis on his anus.
- [5] At the trial the Appellant had elected to give evidence and had denied the allegation.
- [6] The Assessors brought in a unanimous opinion of guilt.
- [7] The grounds of Appeal against conviction are in a generalized form without reference to the items of evidence that could be made use of to substantiate the grounds of appeal.
- [8] Ground 1 relates to the confessional statement not being put to the Assessors adequately and the learned Judge misdirecting himself regarding same. Apart from a general statement there is no specific reference to any matter relating to the confessional statement which after a *voir dire* inquiry was held to be admissible. This ground is vague and has no merit.
- [9] The 2<sup>nd</sup> ground is a complaint that the Learned Judge failed to analyze the facts before him before finding the Appellant guilty.
- [10] Here again there is no specific reference to any facts which would support the contention made in the ground of appeal. It is vague and has no merit.
- [11] Ground 3 is a repetition of ground 2.
- [12] Ground 4 refers to the learned Judge failing to refer in his summing up the possible defence on the evidence.
- [13] The Appellant gave evidence and denied the allegation. This ground has no basis and therefore devoid of any merit.

- [14] The 5<sup>th</sup> ground is that the learned Judge failed to adequately consider the evidence of the Appellant on oath.
- [15] The learned Judge in his summing up referred to the evidence of the Appellant and in his judgment too referred to his evidence and concluded that his evidence was not credible. This ground has no merit.
- [16] The 6<sup>th</sup> ground refers to the failure of the learned Judge to direct himself and the Assessors regarding previous inconsistent statements of the main prosecution witnesses.
- [17] The inconsistent statements have not been pointed out in the submission except for setting out dicta from various authorities.
- [18] This ground is not arguable.
- [19] Regarding the grounds of appeal against sentence, it is necessary to show that there was an error in the sentencing judgment.
- [20] Apart from setting out general matters regarding the sentences, to the effect that it is harsh and excessive, has considered irrelevant matters and failed to consider the provisions of the Sentencing and Penalties Act, no specific reference is made regarding these matters.
- [21] The complainant was a boy who was 8 years old. The sentence imposed on the Appellant, who was 18 years at the time of the offence, was at the lower end of the tariff for rape of children. The learned Judge commenced his sentencing judgment at the lower end of the starting point of 10 years and after consideration of the aggravating and mitigating factors imposed a sentence of 9 years 10 months and 20 days imprisonment with a non-parole period of 8 years.
- [22] The grounds of appeal against sentence are not arguable.

*Orders of Court:*

*Leave to appeal against conviction and sentence is refused.*



A handwritten signature in blue ink, which appears to read "Suresh Chandra".

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