

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

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

BETWEEN : **DEWAN CHAND** *Appellant*

AND : **THE STATE** *Respondent*

Coram : **Calanchini P**

Counsel : **Mr J Reddy for the Appellant**
Ms P Madanavosa for the Respondent

Date of Hearing : **23 October 2019**

Date of Ruling : **27 November 2019**

RULING

- [1] Following a trial in the Magistrates Court at Labasa the appellant was convicted on one count of indecent assault and one count of defilement. On 12 September 2012 he was sentenced to a term of imprisonment of 4 years with a non-parole period of 3 years 6 months. The appellant subsequently filed in the High Court a notice of appeal against conviction. In a written judgment delivered on 22 February 2013 the appeal was dismissed.

- [2] On 12 April 2013 the appellant filed a notice of appeal against the High Court decision pursuant to section 22 of the Court of Appeal Act 1949 (the Act). Leave is not required for such an appeal. However the right to appeal and hence the Court's jurisdiction is restricted to grounds of appeal that involve errors of law only. Furthermore the appeal was filed outside of the 30 days allowed under section 26 of the Act. During the course of the proceedings the State indicated that it would concede the issue of time and seek to have the appeal dismissed under section 35(2) of the Act on the basis that the grounds of appeal do not raise errors of law only and hence there is no right of appeal under section 22 the Act.
- [3] There are valid reasons for the delay thus far in bringing the appeal to the point of determining the issue of jurisdiction. Those reasons have nothing to do with the issue that is now before the Court.
- [4] The only issue before the Court is whether any of the appeal grounds involved a question of law only. At the hearing the appellant, with the consent of the respondent, was given leave to file an amended notice of appeal in order to ensure that the appeal could properly be said to include a ground of appeal that raises an error of law only.
- [5] In the amended notice filed on 25 October 2019 there are 8 grounds of appeal listed all of which are stated to be errors of law. However that alone does not render a ground of appeal as one involving an error of law only.
- [6] I am satisfied that ground 8 does raise an error of law only. The appellant had filed in the High Court an application by summons to adduce new evidence. The procedure is permitted under the Criminal Procedure Act 2009. The learned High Court Judge appears not to have considered that application at any time before delivering his judgment on 22 February 2013.

[7] As a result there is a right to appeal under section 22 of the Act and the ground cannot be described as frivolous or vexatious.

Orders:

1. *There is jurisdiction under section 22 of the Act to appeal to the Court of Appeal.*
2. *The appeal record is to be prepared no later than 28 February 2020.*
3. *The appeal is to be listed for callover on a date to be fixed for hearing in the May 2020 session of the Court.*



W. Calanchini

Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL