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

CRIMINAL APPEAL NO.AAU 0164 of 2016
[In the High Court at Lautoka Case No. HAC 111 of 2012]

BETWEEN	:	**APISAI NATUITAGALUA**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Mr. M. Fesaitu for the Appellant**
	:	**Mr. S. Babitu for the Respondent**
Date of Hearing	:	**09 September 2020**
Date of Ruling	:	**14 September 2020**

RULING

[1] The appellant along with another (Epeli Saukuru, the appellant in AAU 171 of 2016) had been indicted in the High Court of Lautoka on three counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Act, 2009 and two counts of Assault with Intent to Commit Rape, contrary to Section 209 of the Crimes Act, 2009 committed at Nadi in the Western Division on 25 August.

[2] The particulars of the offences are as follows.

'Count 1

*"**Apisai Natuitagalua** on the 25th of August 2012, at Nadi in the Western Division inserted his penis into the vagina of ROSALIA TINANISOKULA without her consent"*

Count 2

"Epeli Saukuru on the 25th of August 2012 at Nadi in the Western Division inserted his penis into the vagina of ROSALIA TINANISOKULA without her consent"

Count 3

*"**Apisai Natuitagalua** on an occasion other than that referred to in Count 1 on the 25th of August 2012 at Nadi in the Western Division inserted his penis into the vagina of ROSALIA TINANISOKULA without her consent".*

Count 4

*"**Apisai Natuitagalua** on the 25th of August 2012, at Nadi in the Western Division assaulted ROSALIA TINANISOKULA with intent to rape her"*

Count 5

"Epeli Saukuru on the 25th of August 2012 at Nadi in the Western Division assaulted ROSALIA TINANISOKULA with intent to rape her"

[3] The evidence placed against the appellant in brief as could be gathered from the sentencing order dated 17 October 2016, is as follows.

'It was proved at the conclusion of the hearing, that you consumed alcohol with the victim, the second accused and few others at the house of one Joji on the 25th of August 2012. After the drinking party, you, the second accused and one Sitiveni went to the Nawaka River to drink more beer. On your way to Nawaka River you found the victim was standing beside the main road, waiting for her transport. You went to her and forced her to come with you. While all of you were drinking beer under a mango tree at the river bank, you pulled the victim and dragged her to nearby bush close to a cassava patch. You then forcefully removed her cloths. You punched on her chest. She got injured while she was dragged to that place. You then forcefully inserted your penis into her vagina and had sexual intercourse without her consent. Subsequently, you came back to the mango tree and continue to drink. Sitiveni went to the victim and brought her back to the mango tree. When the drinks finished, second accused and Sitiveni went back to their houses. You forcefully dragged the victim with you and took her to another place, where you forced her to lie down. You then strangled her neck, threatening her to be quite. You then forcefully inserted your penis into her vagina without her consent and had sexual intercourse. The victim was seventeen years old at the time of this alleged incident took place.'

[4] At the close of the summing-up on 03 October 2016 the assessors had returned with a divided opinion. Two assessors had found the appellant (and the other) guilty of all the counts as charged in the information. However, one assessor had found the appellant not guilty of the first count of rape and the fourth count of assault with intent to commit rape. That assessor had found the appellant guilty of the third count of rape and also found the other accused not guilty of any of the charges that he was charged with.

[5] The learned trial judge had agreed with the majority opinion and convicted the appellant (and the other) as charged in his judgment delivered on 07 October 2016 and on 17 October 2016 sentenced the appellant to 13 years and 06 months of imprisonment on the first and third counts of rape and 02 years and 06 months of imprisonment on the fourth count of assault with intent to commit rape; all sentences to run concurrently with a non-parole period of 12 years.

[6] The appellant's timely appeal against conviction and sentence had been signed on 02 November 2016. The Legal Aid Commission had tendered two amended grounds of appeal against conviction and one ground of appeal against sentence along with written submissions on 31 December 2019. The state had tendered its written submissions on 19 June 2020.

[7] In terms of section 21(1)(b)and (c) of the Court of Appeal Act, the appellant could appeal against conviction and sentence only with leave of court. The test for leave to appeal is **'reasonable prospect of success'** (see **Caucau v State** AAU0029 of 2016: 4 October 2018 [2018] FJCA 171, **Navuki v State** AAU0038 of 2016: 4 October 2018 [2018] FJCA 172 and **State v Vakarau** AAU0052 of 2017:4 October 2018 [2018] FJCA 173, **Sadrugu v The State** Criminal Appeal No. AAU 0057 of 2015: 06 June 2019 [2019] FJCA87 and **Waqasaqa v State** [2019] FJCA 144; AAU83.2015 (12 July 2019) in order to distinguish arguable grounds [see **Chand v State** [2008] FJCA 53; AAU0035 of 2007 (19 September 2008), **Chaudry v State** [2014] FJCA 106; AAU10 of 2014 and **Naisua v State** [2013] FJCA 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds.

[8] Further guidelines to be followed for leave to appeal when a sentence is challenged in appeal are well settled (vide **Naisua v State** CAV0010 of 2013: 20 November 2013 [2013] FJSC 14; **House v The King** [1936] HCA 40; (1936) 55 CLR 499, **Kim Nam Bae v The State** Criminal Appeal No.AAU0015 and **Chirk King Yam v The State** Criminal Appeal No.AAU0095 of 2011). The test for leave to appeal is not whether the sentence is wrong in law but whether the grounds of appeal against sentence are arguable points under the four principles of ***Kim Nam Bae's*** case. **For a ground of appeal timely preferred against sentence to be considered arguable there must be a reasonable prospect of its success in appeal**. The aforesaid guidelines are as follows.

> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration.*

[9] Grounds of appeal urged on behalf of the appellant are as follows.

> *1. The learned trial judge erred in law and in fact when he failed to adequately address the issue of recent complaint.*
>
> *2. The learned trial judge erred in law and in fact in failing to provide a balanced and adequate analysis of the totality of evidence.*
>
> *3. The learned trial judge erred in his sentencing discretion by issuing a non-parole period too close to the head sentence which conflicts with the sentencing practice regarding remission.*

01st ground of appeal

[10] The appellant argues that the trial judge was wrong to have directed the assessors in paragraph 169 as follows as the first person the complainant met after the incident was not the doctor but one neighbour called Roko who was not called by the prosecution to give evidence.

> *'169. You have to determine whether the victim actually informed Dr. Anareta about the history as recorded under D10 of the Medical Report. If you determined that the victim has actually stated those information to Dr. Anareta, you can then consider it as evidence of recent complain.'*

[11] The evidence of the complaint is found in paragraph 37 and 38 (first act of rape by the appellant), 39 (second act of rape by the other accused) and 40 and 41 (the third act of rape) of the summing-up on the two alleged incidents of rape and the other counts of assault with intent to commit rape.

> *'37. Rosa found herself under a rain tree when she regained conscious. She saw the old man and other two Fijian men were drinking under the tree. It was close to a river and surrounded with a cassava patch and barbed wire. The old man slapped on her face to wake her up. He then pulled her up and dragged her to the nearby bush. He grabbed her by her vest and pulled up to stand up. She fell and the barbed wire hit her stomach. However, he continued to drag her. Other two Fijian men were just drinking at that time. He dragged her about fifty meters. She got scratches and bruises on her thighs. Those injuries caused by barbed wire when she fell. The old man then made her laid down on the grass and slapped and told her to keep quite. He pressed her thighs so hard and punched on her chest. He told her to keep still. Rosa said that she struggled and tried to push him away. She was weak and helpless.*
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> *38. The old man then removed all of her cloths and knelt down beside her. He lifted her both legs up and kissed her neck and made love bites. He then fondled her breast. He forcefully inserted his penis into her vagina and forcefully pushed it in and out. Rosa said it was really painful. He did it for about five minutes. He then put on his cloths and went back to the place where other two men were drinking. She put her cloths on and stayed at the same place and cried. One of the Fijian men came and helped her. He took her back to where they were drinking. She seated next to that man. The old man talked to the other man who did not come to help her in Navaka dialects.*
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> *39. The other Fijian man, who did not help her, then came straight to her and started to pull the top of her vest and hair. He dragged her to the same place where the old man dragged her before. He made her laid down and pulled the top collar of her vest and started to fondle her breast with his mouth. The man who helped her told this Fijian man to stop this but this man and the old man started swearing at him. She was weak and helpless. Rosa said that she couldn't defend herself. He then took off her cloth and lifted her legs up. He inserted his penis into her vagina and it was really painful. Rosa said that she did not consent to him to do this. He did it for about five minutes. He then told her to put her cloths on and helped her to stand up. He then took her to the place where other two were drinking. When she was taken to that place, she begged the man who helped her to take her to the main road. But he was scared of the other two men.*
>
> *40. After they finished drinking, the old man told that he was going to drop her to the main road. It was getting dark at that time. He actually took her somewhere, instead of taking her to the main road. She couldn't see and did not know how far it was from the place they consumed liquor. Rosa said that*

she was sitting next to the old man when the drinks finished. He then grabbed her by her hand and pulled her to where he was going.

'41. He stopped at a place, where she could not recognised and spread a blue colour sulu under a tree, which she could not clearly recall whether it was a lemon tree or cassava patch. He then made her to lay down. She cried and tried to stop him. He then strangled her neck and told her to keep quite. He then removed all her cloths and knelt beside her. He then inserted his penis into her vagina. He did it for ten minutes. He then lay down beside her and knocked out. Rosa then managed to find her white vest and sulu. She couldn't find her other cloths. She did not know where was she exactly going. She came across a house and saw two young Fijian girls and one young Fijian boy were walking at the side of the road. She was still intoxicated. She asked help from those young people for her to stop a carrier and go. She found a carrier and came to Nadi town.'

[12] The exact evidence of how the complainant had met Roko is at paragraph 42 of the summing-up.

'42. When she came to Nadi, she saw a boy. He was Roko who was her neighbor. She went after him and met him near the ANZ bank. Rosa told him that she was raped and asked him to take her to the hospital. She was weak, injured and bleeding from her stomach. Roko took her to hospital when she reached the hospital, she fainted. When she woke up again, she found that she was given drips on her hand. . She was admitted at the hospital for three days. This matter was reported to the police on Sunday.'

[13] The evidence of Dr. Anareta and directions on recent complaint evidence is given in paragraphs 166 -171 of the summing-up.

166. I now draw your attention to D10 of the medical report, that is at page three, where Dr Anareta has recorded the history given by the victim during the examination as that

> *"the victim was drinking alcohol with her friends and sister from 11p.m. of Friday to 6 a.m. Saturday morning. Her friend dropped off her at the roundabout. Two boys put a sack on her head, punched her on face and she lost consciousness. When she awake, she was by the river bank in Nawaka under a mango tree. Four boys were nearby, three raped her while the other one tried to stop them. They raped her several time, hit her, laugh at her. She managed to climb over a fence nearby escaping there".*

167. Dr Anareta in her evidence stated that she could not exactly recall whether the victim related this history before or after the examination. Dr. Anareta said that as per the documentation, the history was related to her by

the victim. She explained the procedure of recording the history from a victim during the examination. If the victim was not in a condition to relate the history, they will proceed with examination but the recording of the history be kept hold until the victim is ready to do so.

168. Initially, Rosa in her evidence said that she could not remember giving that information which has been recorded under D10. She has given her consent to the medical examination and could remember that her mother was also present during the medical examination. However, during the cross examination by the learned counsel of the second accused, Rosa said that she gave this wrong information because she was really drunk. She further stated that she was not confused of what had happened.

169. You have to determine whether the victim actually informed Dr Anareta about the history as recorded under D10 of the Medical Report. If you determined that the victim has actually stated those information to Dr Anareta, you can then consider it as evidence of recent complaint.

170. The evidence of recent complaint is not evidence as to what actually happened between the victim and the accused persons. Dr Anareta was not present and witnessed what happened between them. You are entitled to consider the evidence of recent complaint in order to decide whether or not Rosa has told the truth. It is for you to decide whether the evidence of recent complain helps you to reach a decision, but it is important that you must understand that the evidence of recent complaint is not independent evidence of what happened between the victim and the accused persons. It therefore cannot of itself prove that the complaint is true.

171. The recent complaint needs not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence.

[14] What is clear from the history recorded in D10 of the medical report, even if actually made by the complainant to the doctor (according to D10 it had been related by the complainant who could not remember giving it or given wrong information due to drunkenness) is that it only relates to acts of rape and not to the identity of the appellant (and the other). Thus, even if it is considered as a recent complaint it is only on acts of rape by some 'boys'. The trial judge had not directed the assessors to consider D10 – history as recent complaint on the identity of the appellant.

[15] The identity of the appellant had been established by her evidence given in paragraph 43 of the summing-up.

> *'43. The Fijian man who raped her came to her home and met her mother. He apologised for what had happened. He spoke to her mother and she saw and identified him. She in her evidence then explained the build and physical features of the old man and other person who raped her.*

[16] The appellant had admitted having had consensual sexual intercourse with the complainant.

> *112. Once the drinks finished, Epeli and Sitiveni went and followed the feeder road. He came down to go his house. He told Rosa to come and go to his house. Rosa followed him. The reason he asked Rosa to come to his house was her attire as it was not an appropriate dress to cross the village. She can get a sulu from his house and then she can walk across the village. On their way they had to open the gates of the barbed wire fence. While they were walking, she started to hug him and then touched the front of his pants. <u>They then kissed and had sexual intercourse. Rosa told him that she wanted the marble in his penis. He first perfumed oral sex on her vagina and vice versa. She then came on top of him and started to have sexual intercourse</u>. While they were having sex, he fallen into sleep. The place that they had sexual intercourse is called as Emuri. It is a farming area and had nine blocks of land. They have been separated by fence with barbed wire.'*

[17] Thus, the identity of the appellant had not been an issue at the trial. The only issue had been that of 'consent'. The recent complaint evidence and its effect has been articulated in **<u>Raj v State</u>** [2014] FJSC 12; CAV0003 of 2014 (20 August 2014) and **<u>State v Likunitoga</u>** [2018] FJCA 18; AAU0019 of 2014 (08 March 2018). The appellant cites **<u>Singh v State</u>** [2020] FJSC 1; CAV 0027 of 2018 (27 February 2020) in support of his submissions that in any event what the complainant had told the doctor could not be regarded as recent complaint evidence. Justice Keith said in ***<u>Singh</u>***

> *'[131] .....*
>
> *(1) recent complaint is only available as an exception to the rule against hearsay in criminal proceedings in sexual cases. This was not a sexual case and in any event Devi was not a complainant;*
>
> *(2) <u>a complaint in sexual cases is only recent if it is made at the first opportunity which reasonably presents itself</u>. Devi's report to her father was made five days after the alleged killing and, even ignoring the fact that it was not a report by a complainant in a sexual case, <u>it could not be said to have</u>*

been made at the first opportunity which reasonably presented itself and, accordingly, it was not appropriate to categorise it as a recent complaint; and

(3) in any event, even in cases of sexual offences where evidence of recent complaint is admitted, the complaint is not evidence of its truth; it goes, rather, to consistency. In the present case, the judge did not explain to the assessors that the statement by Devi to her father could not on any view be taken as establishing the truth of what Devi had told her father.

[18] Firstly, in ***Singh*** the Supreme Court was considering a case of murder and not a case of sexual abuse and to that extent the observations in paragraph 131 (2) was *obiter dicta*. In any event no authority had been cited in ***Singh*** or submitted to me by the appellant's counsel, which has authoritatively held that in a case involving a sexual offence only a statement made at the first available opportunity that could be regarded as recent complaint evidence. Nevertheless, the words *'reasonably presented'* in paragraph 131 (2) in ***Singh*** may mean that the opportunity need not necessarily be the first opportunity numerically presented to the complainant. There can be a very legitimate reason for the complainant in any given case not to divulge the sexual abuse to the first person she meets or at the first available opportunity, for example lack of confidence in the first person. Therefore, in my view the only criterion to allow or disallow or to consider or not to consider any such complaint as a 'recent complaint' should not be whether it is made at the first available opportunity or not. That question should be determined in the whole context and circumstances of the case.

[19] On the other hand, even if the trial judge made an error in the directions in paragraph 169 of the summing-up and in paragraph 30 of the judgment where he had stated that the history related by the victim to the doctor could be considered as evidence of recent complaint as it was the first time the victim has informed someone about the incident that she went through, the 'recent complaint' evidence alone was not the basis or even the foundation of the appellant's conviction. The history had nothing to do with the identification of the appellant which was not disputed by the appellant himself. The issue of consent had been based on the complainant's evidence believed by the majority of assessors and the trial judge. The trial judge's impugned direction specifically had not focused on the matter of consent but a general remark.

[20] In the circumstances, the appellant has no reasonable prospect of success in this ground of appeal.

02nd ground of appeal.

[21] The appellant argues that the trial judge had failed to provide a balanced and adequate analysis of the totality of the evidence. Particular attention had been paid to paragraphs 35 and 37 of the judgment in this connection.

> *35. Having considered the old blood that was found around perineum and vaginal vault, Dr. Anareta said that she could not specifically confirm whether the victim had sustained any micro injuries, which were not visible to the naked eye or not.*
>
> *36. In respect of the foreign objects inserted in the penis of the first accused person, Dr. Anareta stated that such foreign objects alone could not make any injuries as the purpose of such objects is to increase the pleasure of sexual intercourse and not to cause any injuries. It again depends on the force and aggressiveness of the penetration, but not on the impact of foreign object alone.*
>
> *37. In contrast, the wife of Apisai in her evidence stated that whenever she has sexual intercourse with her husband, she sustains vaginal injuries due to these foreign objects. Apisai did not dispute that he had a consensual sexual intercourse with the victim on that day. If the court accepted the version of the accused and his wife about the impact of foreign objects in sexual intercourse, then there is a greater possibility that the old blood that was found in the vagina of the victim was due to the micro injuries that the victim sustained during the alleged sexual encounter with Apisai.*

[22] The specific complaint is that the trial judge's conclusion in paragraph 37 as underlined above was not fair given that the expert medical evidence was that the doctor could not confirm whether the complainant had sustained any micro injuries.

[23] In fact it is the wife of the appellant who in her evidence had stated that whenever she had sexual intercourse with her husband, she sustained vaginal injuries due to the foreign objects (marbles) inserted in his penis. The appellant had earlier given evidence that he had marbles in his penis when he had sexual intercourse with the appellant which the appellant had not been aware of or spoken to. Paragraph 73 of the summing-up sheds more light on this issue.

> *'73. Dr. Anareta has not conducted any chest examination. During the vaginal examination, she had found old blood around the perineum area. According to the specific medical findings as it was record in the medical report, there were no active bleedings, no laceration, no tears were found during the vaginal examination. Perineum is the opening of the vagina to the anus. She then explained the possible causes for the old blood that she found around perineum area. There are two possible causes. The first is that due to micro injuries. They are not visible to naked eye and can be caused by force or aggressive penetration via a blunt object or forceful penetration that was not severe enough to cause visible injuries. Two kinds of test can be done to visualise these micro injuries, but they are not available in Fiji. The second reason could be that the victim was closing towards her menses. The colour of the blood was brownish red. The colour of the blood could not be able to determine whether the blood found around perineum was due to micro injuries or due to the menses as blood changes colour as time progress due to the loss of oxygen in the blood.'*

[24] However, the complainant had denied that she was nearing her menses at the time of the incident. Therefore, taken the medical findings, the appellant's evidence and the evidence of the appellant and his wife into account it was not illogical for the trial judge to have concluded that there was a greater possibility that the old blood that was found in the vagina of the victim was due to the micro injuries that the victim sustained during the alleged sexual encounter with the appellant.

[25] In addition, I have examined the summing-up which is exhaustive, detailed, objective and well-balanced in every sense and it was open to the majority of the assessors to have come to the conclusion they had arrived at on the criminal liability of the appellant.

[26] Having analyzed the Supreme Court decisions in **Lautabui v State** [2009] FJSC 7; CAV0024.2008 (6 February 2009), **Ram v State** [2012] FJSC 12; CAV0001.2011 (9 May 2012), **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014) **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Singh v State** [2020] FJSC 1; CAV 0027 of 2018 (27 February 2020) and the Court of Appeal decisions in **Kaivum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018), I commented in the ruling in **Waininima v State** AAU0142 of 2017 (10 September 2020) as follows.

'[17] Therefore, there still appears to be some gray areas flowing from the above judicial pronouncements as to what exactly the trial judge's scope of duty is when he agrees as well as disagrees with the majority of assessors.

[18] What could be ascertained as common ground is that when the trial judge agrees with the majority of assessors, the law does not require the judge to spell out his reasons for agreeing with the assessors in his judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and reasons for his agreement with the assessors in a concise judgment as it would be of great assistance to the appellate courts to understand that the trial judge had given his mind to the fact that the verdict of court was supported by the evidence and was not perverse so that a judge's agreement with the assessors' opinion is not viewed as a mere rubber stamp of the latter.

[19] On the other hand when the trial judge disagrees with the majority of assessors the trial judge should embark on an independent assessment and evaluation of the evidence and must give 'cogent reasons' founded on the weight of the evidence reflecting the judge's views as to the credibility of witnesses for differing from the opinion of the assessors.

[20] In my view, in both situations, a judgment of a trial judge cannot not be considered in isolation without necessarily looking at the summing-up, for in terms of section 237(5) of the Criminal Procedure Act, 2009 the summing-up and the decision of the court made in writing under section 237(3), should collectively be referred to as the judgment of court. A trial judge therefore, is not expected to repeat everything he had stated in the summing-up in his written decision (which alone is rather unhelpfully referred to as the judgment in common use) even when he disagrees with the majority of assessors as long as he had directed himself on the lines of his summing-up to the assessors, for it could reasonable be assumed that in the summing-up there is almost always some degree of assessment and evaluation of evidence by the trial judge or some assistance in that regard given to the assessors by the trial judge.

[27] Having examined the trial judge's judgment too, I cannot see any reason to criticize it regarding the discharge of his function in agreeing with the majority of assessors.

[28] Therefore, this ground of appeal has no reasonable prospect of success.

03rd ground of appeal *(sentence)*

[29] The appellant complains that the non-parole period is too close to the head sentence. The gap is 1 ½ years between the head sentence and the non-parole period.

[30] The purpose of fixing a non-parole period is given in **Tora v State** CAV11 of 2015: 22 October 2015 [2015] FJSC 23 and **Raogo v The State** CAV 003 of 2010: 19 August 2010 referring to the legislative intention behind a court having to fix a non-parole period as follows.

> *"The mischief that the legislature perceived was that in serious cases and in cases involving serial and repeat offenders the use of the remission power resulted in these offenders leaving prison at too early a date to the detriment of the public who too soon would be the victims of new offences."*

[31] In **Natini v State** AAU102 of 2010: 3 December 2015 [2015] FJCA 154 the Court of Appeal said on the operation of the non-parole period as follows:

> *"While leaving the discretion to decide on the non-parole period when sentencing to the sentencing Judge it would be necessary to state that* ***the sentencing Judge would be in the best position in the particular case to decide on the non-parole period depending on the circumstances of the case.***"
>
> *"... was intended to be the minimum period which the offender would have to serve, so that the offender would not be released earlier than the court thought appropriate, whether on parole or by the operation of any practice relating to remission".*

[32] As it existed then (and clearly now), section 18(1) of the Sentencing and Penalties Act, 2009 mandated a non-parole period to be fixed when the sentence was more than 02 years with no discretion to the sentencing judge. The non-parole period so fixed must be at least 06 months less than the term of the sentence [see section 18(4)]. Considering all the circumstances the mandatory duty exercised by the trial judge to impose a non-parole period which is now a must in all circumstances in terms of the Corrections Service (Amendment) Act 2019 and his discretion to set it at 12 years cannot constitute any error in sentencing principles. See for a detailed discussion on a similar ground of appeal - **Vakatawa v State** [2020] FJCA 63; AAU0117.2018 (28 May 2020).

[33] There is no reasonable prospect of success in this ground of appeal too.

Order

1. Leave to appeal against conviction is refused.
2. Leave to appeal against sentence is refused.

Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL