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

CRIMINAL APPEAL NO.AAU 127 of 2019
[In the High Court at Lautoka Case No. HAC 57 of 2017]

BETWEEN	:	**LAWRENCE PRASAD**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Mr. N. Nambiar for the Appellant**
	:	**Mr. A. Singh for the Respondent**
Date of Hearing	:	**22 January 2021**
Date of Ruling	:	**25 January 2021**

RULING

[1] The appellant had been indicted in the High Court of Lautoka on a single count of sexual assault and five counts of rape committed by the appellant on his adolescent step-daughter at Naikabula, Lautoka in the Western Division in 2016 and 2017. The victim had been 16 year old and the appellant had been 24 years of age at the time of the offending.

[2] The brief facts, as could be gathered from the sentencing order are as follows.

> *'[3] The incidents arose in 2016 when the victim came to live with her biological mother at Naikabula, Lautoka from Ba. At the time her mother was in a living relationship with the Accused. They lived in a one bedroom rented house. The Accused was 24 years old at the time while his partner, the victim's mother was in her early thirties. She had another child with special needs from another relationship living with her at the time. The complainant at the time was 16 years old and a Form 4 student. Her parents separated when she was 4 years old. Her paternal grandmother raised her until she passed away and the complainant came to live with her mother after 11 years following a court order.*

[4] The abuse started in October 2016. It started with fondling of the victim's breasts and genitals at night time in the living room. The touching was fleeting but intentional. The initial reaction of the victim was that she felt bad that such a thing was being done by a person who see called 'papa', meaning father. The next morning she complained to her mother when the Accused left home for work. Her mother did not believe her and mocked her.

[5] The victim went and complained to police after school. Her mother was called at the station. She convinced the police and a social welfare officer that the victim's character was questionable. The police did not register the victim's report. She was returned to her mother. When the victim returned home, her mother beat her up and subjected her to verbal abuse. The victim attempted suicide but was unsuccessful.

[6] By December 2016 the sexual abuse turned into rape. The first rape occurred in the home on 6 December 2016. Other indecencies were committed on the victim before sexual intercourse. Force was used to push the victim to the ground and remove her undergarment. When she resisted, the Accused slapped her and pressed her mouth with his hand. He had sexual intercourse for about 5 minutes. In her evidence she described her experience as painful. Her genitals were sore. She bled. She said she was crying and told him to stop, but he did not listen. After he was done, he got up and went away. She remained on the floor for about 5 to 10 minutes before putting on her clothes. She did not complain to anyone. She did not feel she had a voice. She was not heard when she complained to her mother, police and a social welfare officer on the first occasion. She was left without a voice, giving the Accused power to carry out a campaign of rape.

[7] Between a period of two months from December 2016 and January 2017, the Accused raped the complainant on five separate occasions in her home. The incident occurred either on the bed inside the Accused's bedroom or on the floor of the living room. She described the subsequent incidents as not as painful as the first one. On occasions he threatened her not to report the abuse.

[8] On some occasions her younger brother who was a toddler at the time was within the vicinity of the incidents but he may not have been aware of what was happening to the victim.

[9] By February 2017 the victim discovered that she was in an early stage of pregnancy after her mother took her to a local doctor. She said she was impregnated by the Accused. Her mother made her go through a non-intrusive procedure using prescription drug to terminate the pregnancy. That was done to protect and save the Accused from being exposed as the victim was still a child.

[10] Shortly after the victim was forced to terminate her pregnancy, she was rescued from her home by her relatives, whom she referred to her as her aunty and uncle. Both the Accused and the complainant's mother physically and verbally abused the victim in the presence of the relatives who went to take her to their home. All her clothes were thrown out on the yard and she was told that she was dead for the family.

[11] The victim did not only suffer physical trauma, she also suffered psychological trauma at the hands of the Accused. She contemplated suicide and even attempted one. The emotional trauma was obvious when she was not able to control her emotions when she gave evidence.

[3] The appellant had totally denied all allegations and attributed a sinister motive for the complainant to have made those allegations. He had suggested in cross-examination to the complainant and her aunt Shati Devi who had eventually rescued her from the sexual ordeal that those allegations had been fabricated in order for the complainant her to leave her house in Naikabula and return to her lover Divesh who was Devi's son. Both of them had denied the suggestion.

[4] At the conclusion of the summing-up, on 20 July 2019 the assessors had unanimously opined that the appellant was guilty of all counts as charged. The learned trial judge had agreed with the assessors in his judgment delivered on the same day, convicted the appellant and sentenced him on 23 August 2019 to 17 years and 04 months of imprisonment with a non-parole period of 14 years.

[5] The appellant's timely notice of appeal and application for leave to appeal against conviction and sentence had been filed by Iqbal Khan & Associates on 20 September 2019 as solicitors for the appellant. On 09 September 2010 Messrs. Iqbal Khan & Associates had filed written submissions as solicitors for the appellant. The state had responded by its written submissions filed on 06 November 2020.

[6] At the hearing of the leave to appeal application both parties did not make any oral submissions but relied on their written submissions.

[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.

> *'Against Conviction*
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> *Ground 1 -* ***THE*** *Learned Trial Judge erred in law and in fact in not adequately/ sufficiently/referring/directing/putting/considering himself or the Assessors the Medical Report of the Complainant. That such failure by the Learned Trial Judge caused a substantial miscarriage of justice.*
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> *Ground 2 -* ***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. There was a substantial miscarriage of justice by the Learned Trial Judge when he came to a decision in upholding*

the guilty verdict of the Assessors when he failed to adequately analyze all the facts before him himself.

Ground 3 - ***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 and unsatisfactorily giving rise to a grave miscarriage of justice.*

Ground 4 - ***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.*

Ground 5 - ***THE*** *Learned Trial Judge erred in law and in fact in not directing himself and/or the Assessors that no reasonable explanation were given as to the reason for the delay in making a complaint against the Appellant and as such by his failure there was a substantial miscarriage of justice.*

'Against Sentence

Ground 1- ***THAT*** *the Learned trial Judge erred in law and in fact in not taking relevant matters into consideration but taking irrelevant matters into consideration when sentencing the Appellant.*

Ground 2 - ***THAT*** *the Learned Trial Judge erred in law and in fact in not taking into relevant consideration SENTENCING AND PENALTIES DECREE 2009 namely:-*

1. *Section 3 of the Sentencing and Penalties Decree;*
2. *Section 4 of the Sentencing and Penalties Decree; and*
3. *Section 5 of the Sentencing and Penalties Decree*

[10] The respondent resists leave to appeal *inter alia* on the basis that the written submissions filed on behalf of the appellant have failed to illuminate the grounds of appeal in any meaningful manner with little regard to the case-specific particulars of the summing-up, the judgment and the sentence order. The respondent has been critical of the manner in which the grounds of appeal had been advanced and the not particularized in the written submissions by Iqbal Khan & Associates. The respondent cites and **Prasad v State** [2020] FJCA 178; AAU049.2019 (24 September 2020) and **Pal v State** [2020] FJCA 179; AAU145.2019 (24 September 2020) as recent

pronouncements of this court frowning upon this unsatisfactory, irregular and unprofessional practice.

[11] I have dealt with this aspect in great detail in **Prasad v State** (supra) and **Pal v State** (supra) and therefore, do not intend to repeat myself here except to reproduce the following paragraphs.

> *'[25] In **Rauqe v State** [2020] FJCA 43; AAU61.2016 (21 April 2020) the Court of Appeal remarked as follows [see also **Kishore v State** [2020] FJCA 70; AAU121.2017 (5 June 2020), **Vunisea v Fiji Independent Commission Against Corruption** - Ruling [2020] FJCA 169; AAU83.2018 (16 September 2020) and **Vunisea v Fiji Independent Commission Against Corruption** [2020] FJCA 169; AAU98.2018 (16 September 2020)] on framing of appeal grounds.*
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> > **'***[14] It is clear that the sole ground of appeal is so broadly formulated that neither the respondent nor the court would have been in a position to understand what the real complaint of the appellant was. The Court of Appeal in **Gonevou v State** [2020] FJCA 21; AAU068.2015 (27 February 2020) reiterated the requirement of raising precise and specific grounds of appeal and frowned upon the practice of counsel and litigants in drafting omnibus, all-encompassing and unfocused grounds of appeal. The Court of Appeal said*
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> > *'[10] Before proceeding further, it would be pertinent to briefly make some comments on the aspect of drafting grounds of appeal, for attempting to argue all miscellaneous matters under such omnibus grounds of appeal is an unhealthy practice which more often than not results in a waste of valuable judicial time and should be discouraged.'*

[12] In **Talala v State** [2019] FJCA 50; AAU155.2015 (7 March 2019) Fernando J had remarked on the same topic as follows.

> *'[7] I intend to deal with the 22 issues raised in relation to the 40 grounds of appeal in the Appellants Counsel's submissions of 8 January 2019 repetitively, haphazardly and confusingly by categorizing and dealing with them under the following headings:…'.*

[13] It appears that in all the above cases except ***Rauqe v State*** (supra) the appellants' notices of appeal/applications for leave to appeal and written submissions had been filed by Messrs. Iqbal Khan & Associates.

[14] **Silatolu v The State** [2006] FJCA 13; AAU0024.2003S (10 March 2006) had critically described this approach also as a *'scatter gun'* approach in drafting the grounds of appeal where they are not substantiated with sufficient details at least in the written submissions.

[15] Very pertinent observations had been earlier made in the case of **Rokodreu v State** [2016] FJCA 102; AAU0139.2014 (5 August 2016) by Goundar J. on the notice of appeal and written submissions filed by Messrs. Iqbal Khan & Associates as follows.

> *'[3] The notice of appeal and the grounds of appeal were filed by the appellant's counsel of choice, Iqbal Khan and Associates. The written submissions on the question of leave were also filed by Iqbal Khan and Associates. At the leave hearing, Mr. Fa appeared on instructions and relied upon the written submissions filed by Iqbal Khan and Associates. Mr. Fa made no oral submissions.*
>
> *[4] I have read the appellant's written submissions. In his submission, apart from reciting case law, counsel for the appellant made no submissions on the grounds of appeal. The grounds of appeal are vague and lack details of the alleged errors. The Notice states that full particulars will be provided upon receipt of the full court record. This is not a reasonable excuse for not complying with the rules requiring the grounds of appeal to be drafted with reasonable particulars so that the opposing party can effectively respond to them.*
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> *[5] In the present case, the State was not able to effectively respond to the grounds because they were vague and lack details. It appears that the alleged errors concern directions in the summing up. A copy of the summing up, the judgment and the sentencing remarks were made available to the appellant after the conclusion of the trial. In these circumstances, the appellant cannot be excused for not providing better particulars of the alleged complaints in the summing up. Without reasonable details of the alleged errors, this Court cannot assess whether this appeal is arguable.'*

[16] Regrettably, the same observations have to be made and equally valid after nearly 4 ½ years since ***Rokodreu*** in this case too regarding the notice of appeal and written submissions filed by Messrs. Iqbal Khan & Associates. The counsel who appeared on their instructions for the appellant did not make any oral submissions in elaborating or clarifying the grounds of appeal but relied on the written submissions. The only reasonable conclusion to be drawn is that Messrs. Iqbal Khan & Associates continues

to show little respect and regard for the judicial pronouncements by appellate courts on this topic over the years.

[17] I also warned the practitioners as to the possible consequences of this practice in appeals in **Prasad v State** (supra) and **Pal v State** (supra) in the following terms as it was felt that repeated observations on this issue by the appellate courts have not had the desired effect as far as some solicitors/counsel are concerned. [See also for example the recent cases of **Atama v State** [2020] FJCA 253; AAU172.2017 (15 December 2020), **Naqau v State** [2020] FJCA 258; AAU173.2017 (22 December 2020) and **Tasere v State** [2020] FJCA 262; AAU175.2017 (29 December 2020) and **Chand v State** [2021] FJCA 5; AAU0070.2019 (13 January 2021)].

> *'[30] I should for the record mention that in future a notice of appeal or an application for leave to appeal (or an application for extension of time or bail pending appeal application) containing grounds of appeal which do not substantially meet the above requirements or are filed in negligent or careless disregard of them may also run the risk of the single judge of the Court dismissing the appeal on the basis that it is vexatious or frivolous under section 35(2) of the Court of Appeal Act.'*

[18] With these observations in the background I shall still consider the grounds of appeal in the interest of justice as far as the appellant is concerned.

01st ground of appeal

[19] No submissions whatsoever had been made on the first ground of appeal on behalf of the appellant. There is no reference to any medical evidence led by the prosecution in the summing-up or the judgment or in the sentencing order. I cannot simply fathom the basis of this ground of appeal.

02nd and 03rd grounds of appeal

[20] Both are repetitive in pith and substance. Both have not been particularized or elaborated at all in the written submissions. The gist of the complaint appears to be that the trial judge had not indulged in an independent assessment and evaluation of evidence in the judgment.

[21] I undertook some analysis of past several decisions of the Supreme Court and the Court of Appeal to arrive at some common principles regarding the duty of trial judges when they agree and disagree with the assessors in **Manan v State** [2020] FJCA 157; AAU0110.2017 (3 September 2020) and **Waininima v State** [2020] FJCA 159; AAU0142 of 2017 (10 September 2020), **State v Mow** [2020] FJCA 199; AAU0024.2018 (12 October 2020) and a few other rulings. I do not intend the repeat the same exercise here. However, my conclusions were subsequently summarized in **Raj v State** [2020] FJCA 254; AAU008.2018 (16 December 2020) as follows.

> *[12] There still appears to be some gray areas flowing from the past 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.*
>
> *[13] 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 a judgment but it is advisable for the trial judge to always follow the sound and best practice of briefly setting out evidence and preferably reasons for his agreement with the assessors in a concise written 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 ([vide **Mohammed v State** [2014] FJSC 2; CAV02.2013 (27 February 2014), **Kaiyum v State** [2014] FJCA 35; AAU0071.2012 (14 March 2014), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015) and **Kumar v State** [2018] FJCA 136; AAU103.2016 (30 August 2018)].*
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> *[14] 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 and the reasons must be capable of withstanding critical examination in the light of the whole of the evidence presented in the trial [vide **Lautabui v State** [2009] FJSC 7; CAV0024.2008 (6 February 2009), **Ram v State** [2012] FJSC 12; CAV0001.2011 (9 May 2012), **Chandra v State** [2015] FJSC 32; CAV21.2015 (10 December 2015), **Baleilevuka v State** [2019] FJCA 209; AAU58.2015 (3 October 2019) and **Singh v State** [2020] FJSC 1; CAV 0027 of 2018 (27 February 2020)]*
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> *[15] 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 to the assessors by the trial judge.

*[16] This stance is consistent with the position of the trial judge at a trial with assessors i.e. in Fiji, the assessors are not the sole judge of facts. The judge is the sole judge of fact in respect of guilt, and the assessors are there only to offer their opinions, based on their views of the facts and it is the judge who ultimately decides whether the accused is guilty or not (vide **Rokonabete v State** [2006] FJCA 85; AAU0048.2005S (22 March 2006), **Noa Maya v. The State** [2015] FJSC 30; CAV 009 of 2015 (23 October 2015] and **Rokopeta v State** [2016] FJSC 33; CAV0009, 0016, 0018, 0019.2016 (26 August 2016).*

[22] When the trial judge's short judgment is considered along with the summing-up, it is clear that he had given his mind to the evidence of the complainant and treated her as a truthful witness and believed her in respect of all counts. Accordingly, the judge had been satisfied that the prosecution had proved the guilt of the appellant beyond reasonable doubt.

[23] I have carefully considered and analyzed the complainant's evidence as set out in the summing-up and the appellant's defense and I find overwhelming evidence to support the assessors' opinion and the trial judge's verdict.

04th ground of appeal

[24] It is alleged that the trial judge had not referred to any possible defense on evidence in the summing-up. The written submissions have not highlighted any such defenses that had arisen from evidence. It had only cited authorities such as **R v Kachikwu** [1968] 52 Cr App Rep 538, **R v Porritt** [1961] 1 WLR 1372; [1961] 3 All ER 463, (1961) 45 Cr App Rep 348 and **Lee Chun v R** [1964] AC 220 to support that proposition of law. However, not a word had been said as to how the principles of law propounded in those decisions would apply to the current case.

05th ground of appeal

[25] It is also alleged that the trial judge had not directed the assessors and himself that no reasonable explanation had been given as to the delay in making the complaint. As in the case of other grounds of appeal this ground too had not been backed up by any submissions.

[26] It appears from the summing-up that after the first incident in the night involving sexual abuse in October 2016 the complainant had complained to her mother in the following morning but the latter had not only disbelieved her but had also blamed her for creating a rift between the couple. Not stopping at that the complainant had gone to the police station to lodge a complaint. The police had called the mother to the police station and the complainant had to come back home with the mother. Upon their return home the mother had beaten her up for complaining to the police which led to her suicide attempt. The complainant had again complained to her mother on the day following the incident of first act of rape on 06 December 2016 but the mother had simply disregarded her complaint. Thereafter, she had not complained regarding the four subsequent acts of rape as she had felt that it was of no use to make complaints to the mother. After the last incident she had been tested positive for pregnancy and undergone an abortion at the instance of the mother. She managed to make the second complaint to police in February 2017 after leaving her mother and the appellant after she was rescued by her aunt and uncle.

[28] Regrettably, there had been criminal negligence or absolutely deliberate omission on the part of the police in disregarding the complainant's first complaint which obviously allowed further opportunity and emboldened the appellant to commit rape with impunity on five more occasions bringing misery to the life of the complainant.

[29] Applying *"the totality of circumstances test"* as expressed in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018), I do not think that there is any basis whatsoever in the above circumstances to impeach the complainant's credibility on the basis of delayed reporting or complaint and therefore there was no factual basis for the trial judge to have directed the assessors of a belated complaint.

[30] Therefore, none of the grounds of appeal against conviction has any reasonable prospect of success.

Grounds of appeal against sentence

[31] The first appeal ground states that the trial judge had not taken relevant matters into consideration and also taken irrelevant matters into consideration. The written submissions had not elaborated at all what these relevant and irrelevant matters are.

[32] The trial judge in the sentencing order has guided himself according to **Raj v State** [2014] FJSC 12; CAV0003.2014 (20 August 2014) where the sentencing tariff for juvenile rape was set between 10-16 years of imprisonment and **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018) where sentencing tariff for juvenile rape was enhanced and fixed between 11 to 20 years. He had identified mitigating and aggravating factors and prescribed the sentences of 03 years for the sexual assault charge and 18 years of imprisonment for all rape charges and made all of them concurrent. After deducting the remand period the final sentence had come down to 17 years and 04 moths.

[33] The methodology adopted by the trial judge is *"instinctive synthesis"* method identified by the Supreme Court in **Qurai v State** [2015] FJSC 15; CAV24.2014 (20 August 2015).

> *'[49] In Fiji, the courts by and large adopt a two-tiered process of reasoning where the sentencing judge or magistrate first considers the objective circumstances of the offence (factors going to the gravity of the crime itself) in order to gauge an appreciation of the seriousness of the offence (tier one), and then considers all the subjective circumstances of the offender (often a bundle of aggravating and mitigating factors relating to the offender rather than the offence) (tier two), before deriving the sentence to be imposed. This is the methodology adopted by the High Court in this case.*
>
> *[50] It is significant to note that the Sentencing and Penalties Decree does not seek to tie down a sentencing judge to the two-tiered process of reasoning described above and leaves it open for a sentencing judge to adopt a different approach, such as "instinctive synthesis", by which is meant a more intuitive process of reasoning for computing a sentence which only requires the enunciation of all factors properly taken into account and the proper conclusion to be drawn from the weighing and balancing of those factors.'*

[34] It is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered (vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006). In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range (**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

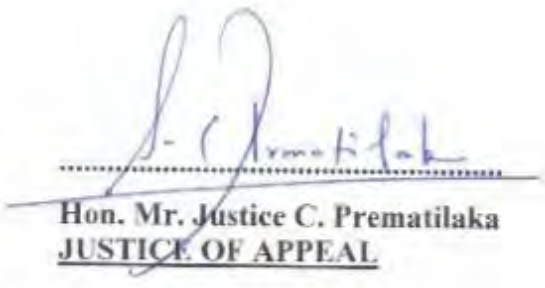
[35] Given the abhorrent manner in which the complainant had been subjected to repeated sexual abuse resulting in her near suicide and forced pregnancy and termination, in my view, the appellant deserved the sentence he was given.

[36] The counsel under the second ground of appeal has stated that the trial judge had not taken into account section 3, 4 and 5 of the sentencing and Penalties Act but not highlighted in what manner or instances the trial judge had failed to do so.

[37] Therefore, there is no sentencing error or a reasonable prospect of success on his appeal sentence.

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