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

CRIMINAL APPEAL NO.AAU 169 of 2019
[In the High Court at Lautoka Case No. HAC 59 of 2018]

BETWEEN	**:**	**SITIVENI TUINASERAU**
		Appellant
AND	**:**	**STATE**
		Respondent
Coram	**:**	**Prematilaka, JA**
Counsel	**:**	**Mr. M. Fesaitu Appellant**
	:	**Ms. E. Rice for the Respondent**
Date of Hearing	**:**	**23 March 2021**
Date of Ruling	**:**	**24 March 2021**

RULING

[1] The appellant had been indicted in the High Court of Lautoka with one count of rape contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act, 2009 committed at Maururu, Ba, in the Western Division between the 01 March 2018 and 15 March 2018. The victim was 04 years old at the time of the incident and the appellant was 32 years of age.

[2] The information read as follows:

COUNT ONE

Statement of Offence

RAPE*: Contrary to section 207 (1) and (2) (b) and (3) of the Crimes Act, 2009.*

Particulars of Offence

> ***SITIVENI TUINASERAU****, between the 1st day of March, 2018 and the 15th day of March, 2018 at Maururu, Ba, in the Western Division penetrated the vagina of* ***AB****, a child under the age of 13 years, with his finger.*

[3] At the end of the summing-up on 14 February 2019 the assessors had unanimously opined that the appellant was guilty of the charge levelled against him. The learned trial judge had agreed with the unanimous opinion of the assessors in his judgment delivered on 15 February 2019, convicted the appellant as charged and sentenced him on 28 February 2019 to an aggregate sentence of 17 years and 08 months with a non-parole period of 16 years.

[4] The appellant's untimely notice of appeal against conviction and sentence had been signed by the appellant on 28 November 2019. The delay is about 08 months. The Legal Aid Commission had filed a notice of motion seeking enlargement of time, the appellant's affidavit, amended notice of appeal and written submissions against conviction and sentence on 23 November 2020. The state had tendered its written submissions on 08 January 2021.

[5] Grounds of appeal urged on behalf of the appellants are as follows:

> ***Conviction***
>
> ***Ground 1***
> *The trial judge had erred in law and in facts having not properly assessed the inconsistencies as to the date of the incident and the medical findings that would have created a reasonable doubt.*
>
> ***Ground 2***
>
> *The trial judge had erred in law and in facts having not adequately directed the assessors on the burden of proof, given the conflicting versions between the account of the prosecution and the appellant.'*
>
> ***Sentence***
>
> ***Ground 1***
>
> *The learned trial judge had erred in principle having accounted for aggravating factors that is reflected in the starting point that has resulted in double counting.*

[6] The trial judge had summarized the prosecution evidence as follows in the sentencing order:

> *2. The brief facts were as follows:*
>
> *Between the 1st day of March, 2018 and 15th day of March, 2018 the victim "AB" who was 4 years of age was taken by the accused her paternal uncle to a guava patch to pick some guavas.*
>
> *3. At the guava patch the accused poked the victim's vagina referred by the victim as her "pipi" with his little finger. The victim was lying down when the accused poked her "pipi". This resulted in blood coming out of the victim's vagina. The accused wiped the blood with some mango leaves, when the victim started to cry the accused gave her some guavas.*
>
> *4. The accused told the victim not to tell her mum about what he had done, however, the victim told her mummy about what the accused had done to her.*
>
> *5. The victim's mother reported the matter to the police, the victim was medically examined and the accused was subsequently charged.*

[7] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State**; **Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[8] In ***Kumar*** the Supreme Court held:

> *'[4] Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:*
>
> *(i) The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifying the appellate court's consideration.*
> *(iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
> *(v) If time is enlarged, will the Respondent be unfairly prejudiced?*

[9] ***Rasaku*** the Supreme Court further held:

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always*

endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'

[10] The remarks of Sundaresh Menon JC in **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100 shed some more light as to how the appellate court would look at an application for extension of time to appeal:

> '*(a)…….*
>
> *(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.*
>
> *(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.*
>
> *(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.*
>
> *(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach will be excused.'*

[11] Sundaresh Menon JC also observed:

> *'27……. It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an entitlement to an extension of time.'*

[12] Under the third and fourth factors in ***Kumar*****,** test for enlargement of time now is **'real prospect of success'.** In **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019) the Court of Appeal said:

> *'[23] In my view, therefore, the threshold for enlargement of time should logically be higher than that of leave to appeal and in order to obtain enlargement or extension of time the appellant must satisfy this court that his appeal not only has 'merits' and would probably succeed but also has a* ***'real prospect of success'*** *(see* ***R v Miller*** *[2002] QCA 56 (1 March 2002) on any of the grounds of appeal……'*

Length of delay

[13] The delay is about 08 months and very substantial.

[14] In **Nawalu v State** [2013] FJSC 11; CAV0012.12 (28 August 2013) the Supreme Court said that for an incarcerated unrepresented appellant up to 03 months might persuade a court to consider granting leave if other factors are in his or her favour and observed:

> *'In* ***Julien Miller v The State*** *AAU0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave.'*

[15] However, I also wish to reiterate the comments of Byrne J, in **Julien Miller v The State** AAU0076/07 (23 October 2007) that:

> *'... that the Courts have said time and again that the rules of time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned within the time prescribed by the relevant legislation.'*

Reasons for the delay

[16] The appellant's excuse for the delay in his affidavit is that he had lacked knowledge in preparing his appeal and had to seek assistance from inmates to help him draft the appeal papers. However, the appellant had not come out with this explanation in his initial application for extension of time filed in person. Further, He had ben defended by counsel and the appellant had not explained as to why he had not sought her

assistance or contact Legal Aid Commission until the lapse of 08 months. Therefore, the appellant's explanation is not convincing and acceptable.

Merits of the appeal

[17] In **State v Ramesh Patel** (AAU 2 of 2002: 15 November 2002) this Court, when the delay was some 26 months, stated (quoted in **Waqa v State** [2013] FJCA 2; AAU62.2011 (18 January 2013) that delay alone will not decide the matter of extension of time and the court would consider the merits as well:

> *"We have reached the conclusion that despite the excessive and unexplained delay, the strength of the grounds of appeal and the absence of prejudice are such that it is in the interests of justice that leave be granted to the applicant."*

[18] Therefore, I would proceed to consider the third and fourth factors in ***Kumar*** regarding the merits of the appeal as well in order to consider whether despite the delay and the absence of a convincing explanation, the prospects of his appeal would warrant granting enlargement of time.

[19] The prosecution had relied on the evidence of the child victim, her mother and the doctor who had examined the victim to establish its case against the appellant. It appears from the evidence that the mother had noted blood on the victim's undergarment at about 5 p.m. and when inquired, the daughter had informed the mother that the appellant had poked her vagina at the guava patch when she went with him to pick guava earlier in the day. According to the mother the victim had revealed the incident on 14 March 2018. On the following morning the mother had taken the daughter to hospital and then reported the matter to the police. She had given a statement to the police on 15 March 2018. The victim had stated in evidence that when the appellant inserted his finger into her vagina it had resulted in blood coming out of her vagina and the appellant had wiped out blood from the vagina with guava leaves and asked her not to tell her mother of what he had done.

[20] The medical evidence had revealed that the opening of the vagina was swollen, the hymen was not intact but there was no active bleeding or laceration noted. The doctor's opinion was that the hymen not being intact was indicative of abuse.

However, the doctor could not state how long the hymen was not intact but he had explained that the associated pain and swelling if more than one week old would have not caused much pain but he had noted the victim to be in great pain when being touched (vide paragraph 59(a) of the summing-up).

[21] The appellant in his evidence at the trial had admitted having gone to the guava patch with the victim, collected guava, given her share and asked her to go home as parents might be looking for her but denied that he had inserted his finger into her vagina. According to the appellant, the trip to the guava patch had been on 09 March 2018.

[22] The appellant's argument under the first ground of appeal is that there is a reasonable doubt as to whether he had committed the alleged act in the light of inconsistency in the date of the trip to the guava patch in the light of medical evidence.

[23] I do not agree. The victim was unable to give the exact date of the incident and given that she was just 04 years old it was not surprising at all. However, the mother was certain that she found blood on the daughter's panty and was told by her that the appellant had inserted his finger into her vagina on 14 March 2018. The medical examination on the following day *i.e.* 15 March 2018 had clearly indicated signs of such an intrusion into the victim's private part, such as her vagina being swollen and hymen not being intact. More importantly the fact that the victim had felt great pain when her vagina was touched at the medical examination had indicated that the insertion of her vagina would not have happened a week before *i.e.* around 09 March 2018 but very recently such as 14 Match 2018 prior to the examination on 15 March 2018.

[24] Thus, the medical evidence undoubtedly cast great doubt on the appellant's version that he accompanied the victim to the guava patch on 09 March 2018 but strongly corroborates the evidence of the mother of the victim that it had allegedly happened on 14 Match 2018.

[25] Medical evidence also corroborates the victim's evidence that the appellant had inserted his finger into her vagina early in the day when she had told her mother of what the appellant had done on 14 March 2018.

[26] Vitim's mother's evidence of having seen blood stains on the victim's undergarment in the afternoon on 14 March 2018 also goes to corroborate that the incident had happened on the same day in the early hours.

[27] Therefore, the totality of the evidence available unerringly points to the appellant having taken the victim to guava patch on 14 March 2018 where he had inserted his finger into her vagina. The appellant's version that he accompanied the victim to the guava patch on 09 March 2018 has no credibility at all. In any event, the information alleges that the appellant had committed the offence between 01 March 2018 and 15 March 2018 and as a matter of argument it would not make any difference even if the incident had happened on 09 March 2018.

[28] The first ground of appeal has no merits and it is vexatious and I would dismiss it under section 35(2) of the Court of Appeal Act.

02nd ground of appeal

[29] The appellant argues that the trial judge's directions on burden of proof given conflicting versions between the prosecution and the appellant are inadequate. He has relied on **Rokovesa v State** [2020] FJCA 188; AAU094.2016 (5 October 2020) where I discussed the decisions in **Gounder v State** [2015] FJCA 1; AAU0077 of 2011 (02 January 2015) and **Prasad v State** [2017] FJCA 112; AAU105 of 2013 (14 September 2017) and **Liberato v The Queen** [1985] HCA 66; 159 CLR 507.

[30] I undertook a further and deeper discussion on this topic in **Bebe v State** [2021] FJCA 75; AAU165.2019 (18 March 2021) and stated as follows:

> *'[15] In fact, it is the experience of this court that at least some trial judges do give directions similar to the ones set out under paragraph [44] (iv), (v) and (vi) of **Prasad** particularly in cases where the defence adduces evidence, I think, more out of abundance of caution than as a*

mandatory rule but needless to state that not every case would demand such directions. There is nothing wrong with such a direction and I would rather welcome it in appropriate situations. Similarly, the gist of ***Liberato*** *guidelines i.e. ". . . even if the jury does not positively believe the defence witness and prefers the evidence of the prosecution witness, they should not convict unless satisfied that the prosecution has proved the defendant's guilt beyond reasonable doubt" is given by trial judges in 'word against word' situations. Therefore, observations in both* ***Gounder*** *(which cited* ***Liberato)*** *and* ***Prasad*** *have to be understood in the factual contexts of those cases and on a perusal of the entirety of the two judgments it is not difficult to understand why the Court of Appeal arrived at the decisions it came to in the end.*

[16] In ***Johnson v Western Australia*** *(2008) 186 A Crim R 531 at 535 [14]-[15] Wheeler JA identified one possible shortcoming in using Brennan J's statement in* ***Liberato*** *as a template for the direction: a jury may completely reject the accused's evidence and thus find it confusing to be told that they cannot find an issue against the accused if his or her evidence gives rise to a "reasonable doubt" on that issue.*

[17] For that reason, it was held in ***Anderson*** *(2001) 127 A Crim R 116 at 121 [26] that it is preferable that a* ***Liberato*** *direction be framed along the following lines* ***(i)*** *if you believe the accused's evidence (if you believe the accused's account in his or her interview with the police) you must acquit;* ***(ii)*** *if you do not accept that evidence (account) but you consider that it might be true, you must acquit; and* ***(iii)*** *if you do not believe the accused's evidence (if you do not believe the accused's account in his or her interview with the police) you should put that evidence (account) to one side. The question will remain: has the prosecution, on the basis of evidence that you do accept, proved the guilt of the accused beyond reasonable doubt?* ***Prasad*** *guidelines seem to be closely aligned with modified* ***Liberato*** *directions given in* ***Anderson.***

[18] In any event in the subsequent decision in ***De Silva v The Queen [2019]*** *HCA 48 (decided 13 December 2019) the majority in the High Court took up the position that a "Liberato direction" is used to clarify and reinforce directions on the onus and standard of proof in cases in which there is a risk that the jury may be left with the impression that ". . . the evidence upon which the accused relies will only give rise to a reasonable doubt if they believe it to be truthful, or that a preference for the evidence of the complainant suffices to establish guilt." As a result, it was held that a "Liberato direction" need only be given in cases where the trial judge perceives a real risk that the jury might view their role in this way, regardless of whether the accused's version of events is on oath or in the form of answers given in a record of police interview.*

[19] As stated in ***De Silva*** *whether a Liberato direction is required will depend upon the issues and the conduct of the trial.*

*[20] In **Murray v The Queen** (2002) 211 CLR 193 at 213 [57] Gummow and Hayne JJ, in the High Court of Australia made it clear that it is never appropriate for a trial judge to frame the issue for the jury's determination as involving a choice between conflicting prosecution and defence evidence: in a criminal trial the issue is always whether the prosecution has proved the elements of the offence beyond reasonable doubt. Therefore it was said in **De Silva** that in light of **Murray**, the occasions on which a jury will be invited to approach their task as involving a choice between prosecution and defence evidence should be few.*

*[21] Coming back to the summing-up, it appears that the statement at paragraph 60 that 'It is up to you to decide which version is to believe ……' could have been avoided by the trial judge. However, the statement 'If you accept the version of the Defence you must find the accused not guilty. Even if you reject the version of the Defence, still the Prosecution should prove their case beyond reasonable doubt.' is in line with modified Liberato directions under (i) and (iii) expressed in **Anderson.** What is missing is a verbatim statement under modified Liberato direction (ii) stated in **Anderson.***

*[22] However, in my view the trial judge's directions 'Remember, the burden to prove the accused's guilt on each count lies with the Prosecution throughout the trial, and never shifts to the Defence' and 'But if you do not believe the complainant's evidence regarding the alleged offences, or if you have a reasonable doubt about the guilt of the accused, then you must find the accused not guilty' in paragraph 60 and 61 respectively is adequate to cover modified Liberato direction (ii) as Wheeler JA observed in **Johnson**, the expression "reasonable doubt" is apt to convey that a juror who is left in a state of uncertainty as to the evidence should not convict.*

[31] I think the observations I made at paragraph [21] and [22] of **Bebe v State** (supra) are exactly to the point regarding paragraphs 89 and 93 of the summing-up of the trial judge who had said in paragraphs 93 and 94 as follows:

'[93] If you accept the version of the defence you must find the accused not guilty. Even if you reject the version of the defence still the prosecution must prove this case beyond reasonable doubt. Remember, the burden to prove the accused's guilt beyond reasonable doubt lies with the prosecution throughout the trial and it never shifts to the accused at any stage of the trial.'

'[94] The accused is not required to prove his innocence or prove anything at all. He is presumed innocent until proven guilty.'

[32] Therefore, the trial judge's directions on conflicting versions are quite adequate. This is particularly so in the light of strong supportive and corroborative medical evidence which strongly militates against the appellant's version of denial of digital rape and credible recent complaint evidence of the mother of the victim.

[33] ***De Silva*** [35] and [36] also observed:

> *'……. Nor did defence counsel seek a Liberato direction. The failure of counsel to seek a direction is not determinative against successful challenge in a case in which the direction was required to avoid a perceptible risk of the miscarriage of justice. The absence of an application for a direction may, however, tend against finding that that risk was present.'*
>
> *'The summing-up made clear the necessity that the jury be satisfied beyond reasonable doubt of the complainant's reliability and credibility. The Court of Appeal did not err in concluding that, when the summing-up is read as a whole, the trial did not miscarry by reason of the omission of a Liberato direction.'*

[34] In addition, the appellant's complaint has to be considered in the light of the legal position in Fiji, that 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). This unique legal position in Fiji clearly provides an additional layer of safeguard particularly to the accused. Therefore, any perceived deficiency in the summing-up does not carry the same weight or have the same effect on the outcome of the trial in Fiji as in other jurisdictions where jurors or assessors are the sole judges of facts and the directions in the summing-up become so critical as far as the final outcome is concerned.

[35] In any event, as stated by Calanchini P in ***Gounder***, assuming that there was any lack of directions in the summing up as complained by the appellant it had been rectified by the substantive judgment by the trial judge setting out the evidence and independently analysing the appellant's denial before entering a conviction against the appellant.

[36] Therefore, there is no reasonable prospect of success of the second ground of appeal.

Sentence

01st ground of appeal

[37] The appellant contests the sentence on the basis that the aggravating factors considered by the trial judge may have already been included in the starting point thus amounting to double counting.

[38] The trial judge had correctly identified the sentencing tariff as 11-20 years of imprisonment as set in **Aicheson v State** (SC) [2018] FJSC 29; CAV0012.2018 (02 November 2018). He had cited **Raj v State** (CA) [2014] FJCA 18; AAU0038.2010 (05 March 2014) and **Raj v State** (SC) [2014] FJSC 12; CAV0003.2014 (20 August 2014)] too and picked 12 years as the starting point and added 07 years for aggravating factors to make it 19 years. One year had been deducted for the appellant's good character (being a first offender) and 04 months for the period of remand.

[39] In **Senilolokula v State** [2018] FJSC 5; CAV0017.2017 (26 April 2018) the Supreme Court has raised a few concerns regarding selecting the 'starting point' in the two-tiered approach to sentencing in the face of criticisms of 'double counting' and stated that sentencing is an art, not a science, and doing it in that way the judge risks losing sight of the wood for the trees.

[40] The Supreme Court said in **Kumar v State** [2018] FJSC 30; CAV0017.2018 (2 November 2018) that if judges take as their starting point somewhere within the range, they will have factored into the exercise at least *some* of the aggravating features of the case. The ultimate sentence will then have reflected any *other* aggravating features of the case as well as the mitigating features. On the other hand, if judges take as their starting point the lower end of the range, they will not have factored into the exercise *any* of the aggravating factors, and they will then have to factor into the exercise *all* the aggravating features of the case as well as the mitigating features.

[41] Some judges following **Koroivuki v State** [2013] FJCA 15; AAU0018 of 2010 (05 March 2013) (supra) pick the starting point from the lower or middle range of the tariff whereas other judges start with the lower end of the sentencing range as the starting point.

[42] This concern on double counting was echoed once again by the Supreme Court in **Nadan v State** [2019] FJSC 29; CAV0007.2019 (31 October 2019) and stated that the difficulty is that the appellate courts do not know whether all or any of the aggravating factors had already been taken into account when the trial judge selected as his starting point a term towards the middle of the tariff. If the judge did, he would have fallen into the trap of double-counting.

[43] This court is faced with exactly the same dilemma in this appeal. It is not clear what other factors the trial judge had considered under 'objective seriousness' of the crime in selecting the starting point other than the aggravating factors indicated. The concern is whether any one or more of the aggravating factors namely (a) breach of trust, (b) planning, (c) age difference and (d) injuries caused to the victim, had influenced the starting point. If so, 07 year increase on account of those factors might have caused double counting.

[44] On the other hand, the facts in the instant case cannot be compared equally to those shocking aggravating circumstances in ***Aicheson*** and ***Raj.*** Similarly, the sentence of 17 years and 08 months would seem disproportionate in the scale of sentences meted out to accused with more aggravating features in child rape cases.

[45] 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).

[46] The fact that the ultimate sentence is within the tariff does not necessarily make it appropriate to the gravity of the crime. Therefore, I think that it is in the best interest of justice to leave it to the full court to look at the propriety of the sentence. In the circumstances, I am inclined to grant leave to appeal on the ground of appeal raised by the appellant against sentence.

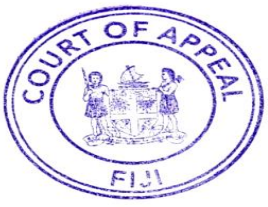
[47] In **Chand v State** [2021] FJCA 5; AAU0070.2019 (13 January 2021), another case of child digital rape, the state submitted that there could have been an error in the ultimate sentence of 17 years, 05 months and 16 days in more or less similar facts and circumstances to this case. Since I have dealt with this issue in detail at paragraphs 38-63 in ***Chand***, I do not wish to repeat the same here but the state is advised to consider its own stand in ***Chand*** in relation to this appeal which also persuaded me to grant leave to appeal against sentence in this appeal.

Prejudice to the respondent

[48] While an extension of time would not prejudice the state as far as conviction is concerned, it would cause immense mental trauma to the victim who is still a child to relive her experience in court once again if there is to be a fresh litigation. However, it would not apply to the mater of sentence.

Orders

1. 01st ground of appeal against conviction is dismissed in terms of section 35(2) of the Court of Appeal Act.
2. Leave to appeal against conviction is refused on the 02nd ground of appeal.
3. Leave to appeal against sentence is allowed.



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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL