

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

CRIMINAL APPEAL NO. AAU 022 OF 2017
(High Court No. HAC 101 of 2016)

BETWEEN : **IANE RUPETI**

Appellant

AND : **THE STATE**

Respondent

Coram : **Prematilaka, RJA**
Gamalath, JA
Nawana, JA

Counsel : **Mr M. Fesaitu for the Appellant**
Ms R. Uqe for the Respondent

Date of Hearing : **08 November 2022**

Date of Judgment : **24 November 2022**

JUDGMENT

Prematilaka, RJA

[1] Having read in draft the judgment of Gamalath, JA I agree with the reasons and orders proposed.

Gamalath, JA

[2] The appellant was indicted in the Suva High Court on four counts and the details of the charges are as follows;

- (1) Rape of the complainant Elenoa Saumaibulu between 1st of June 2011 and 30th December 2011, contrary to section 207(1) and (2) of the Crimes Act 2009.
- (2) Rape of the same complainant on 31 December 2011.
- (3) Rape of the same complainant between 1st January 2015 and 15th March 2015.
- (4) Rape of the same complainant on 16th May 2015.

All four incidents had happened at Rotuma in the Easter Division.

[3] The assessors majority opinion was that the appellant is guilty of all four counts. The learned trial Judge, having agreed with the opinion of guilt of the first three counts convicted the appellant accordingly. However, he was at variance with the opinion on the fourth count and thus was the acquittal.

[4] Having considered the attendant circumstances of the case the learned trial Judge imposed a total sentence of 14 years imprisonment with a non-parole sentence of 10 years and 9 months. Deducting the period already in custody the head sentence was placed at 13 years and 9 months.

[5] Although the appellant originally sought to assail both the conviction and the sentence in his notice of appeal, subsequently, abandoning the ground against the sentence, he confined to two amended grounds of appeal against the conviction. The learned single Judge refused leave on both grounds.

[6] Making a renewal application presently, the appellant is now relying only on one ground of appeal in which it states that “The learned trial Judge’s verdict is unreasonable in that

- (1) there is serious doubt arising from the complainant’s evidence when cross-examined
- (2) there is serious doubt in the evidence of prosecution witnesses.”

The evidence

[7] The complainant Elenoa Samaibuli was 19 years old when she testified at the trial. According to her evidence she was living in Rotuma with her mother's sister, her namesake Elenoa Samaibuli and the appellant who was married to her aunt. They became her guardians since 2004, as she moved into their home to live with them. In 2011, while she was living in Tuai Juju Rotuma, her aunt had moved to Flagstaff for her second childbirth, leaving her in the house with the appellant. When she was still 13 years old, on some unspecified Wednesday in 2011 while sleeping in the night around 7.00p.m. she felt cold as she got up and found the appellant licking her vagina. The degree of visibility was enough to recognize the appellant whose imposing personality had frightened her to do anything to resist what was going on. She asked the appellant what he was doing and the appellant in response told her to make no noise and inserted his penis into her vagina. Describing the ordeal the complainant said that she felt the shame on what was happening and as her life was being ruined, thoughts of committing suicide had crossed her mind. Afterwards the appellant had asked her to take a shower and under the shower she was bleeding from her vagina. Her underwear was soaked in blood and she was in a state of anguish. As the appellant was having intercourse, at one time he said he was about to ejaculate and having withdrawn, wiped his ejaculate with his sulu. The appellant threatened her not to inform the police as that would disintegrate the family. The appellant wanted to know whether the complainant was happy over what had happened. In evidence describing her thoughts, the complainant said she felt angry and unhappy over what he did to her.

[8] Three days later on Saturday the complainant wanted to visit a neighbor to watch movies in the night. When she asked the appellant for permission to go in the night he had told her that the permission would be granted only if she consented to having sex with him. Disregarding this the complainant had visited the place where she watched the movies and returned home in the night around 10.00 p.m. She woke up the appellant to inform him that she was back, and at that time he had ordered her to fetch his sulu from the verandah. Initially the complainant refused to do what he wanted her to do but after insistence she picked up the sulu which the appellant spreaded over his pillow, masturbated for a while

and inserted his penis into her vagina. Again he did not want to ejaculate in the vagina, so that he retrieved and ejaculated.

[9] The third occasion was when he did the same thing on the 31st December 2011. The complainant who went out with her friends to celebrate *Fara*, a village festival. Afterwards she went looking for the appellant who then was socializing with a friend of his. Thereafter both have returned home and having come home the appellant had sexual intercourse with the complainant. When she resisted he was angry. When asked why he was doing this to her the appellant had told her he was training her to treat her prospective husband once married.

[10] Again on a day in May 2015 the same incident of having sex took place. By this time the complainant was 17 years of age, the complainant was still schooling. She couldn't remember the details of the incident, however, her evidence was that the appellant was pleading with her to allow him to have sex with her. Apparently the way he was pleading for sex had moved her and finally she had given in. However, in her evidence in chief the complainant reiterated that in the dark, alone in the house with the appellant alone, seized with fear of him the complainant had been left with no other option than caving into the demand for sex by the appellant. Complainant's evidence was that whilst the sexual intercourse was in progress she had cried. After the sexual intercourse was finished the appellant wanted to know whether she was satisfied. That was the last time the appellant had sexual intercourse with the complainant. The evidence is clear that every time the alleged sexual aggressions took place the only persons at home were the appellant and herself. The appellant's family had been in Suva, leaving the two of them at home.

[11] According to the evidence of the complainant, soon after the first incident she reported the matter to the sister of the appellant Mere, who advised her to have some patience and to watch what was going to happen.

[12] After the last episode the complainant reported the matter to Enriko, her distantly related grandfather. This was because she had come to the end of her tether with the appellant; she was experiencing bouts of depression and thought about committing suicide several times. The grandfather had suggested to report the matter to the police. On her request, the grandfather allowed her to stay with him.

[13] In the cross examination the complainant agreed that throughout the 12 year period of her stay in Rotuma, she was supported by her aunt and the appellant. Complainant agreed that she was dependent on the appellant for support on the education, food and lodging. The appellant had shown an interest in her studies and warned her for stealing money at times. Complainant agreed that the appellant used to supervise her household work and strict on her leaving the house in the night to visit friends. The complainant agreed that she once sneaked out of the house and left a monkey doll covered with her bed sheet to make it look like she was asleep. She agreed that the appellant used to touch her legs while she was asleep but disagreed that it was to check if she had sneaked out of the house in the night. Complainant said in answering the cross examination that she informed her school principal and the form teacher about the sexual harassment at the hands of the appellant. The last question in the cross-examination of the complainant was a compound question which must have obviously confused the complainant;

Q: I suggest to you because your hatred for Iane treating you as a slave making you work all the time , for being strict on you from leaving the house at nights when you want to you made up these allegations Iane Ruprti having sexual intercourse with you in 2011 and 2015,without your consent?

A: (taking time) Can you repeat

Q: Question repeat.

A: Yes.

Earlier on she said her first language is Rotuma. One cannot help wondering if she understood the word allegation when she answered the question. The complainant was still a school going village girl when she testified at the trial and much care should have been taken in questioning her, for her miscomprehension of the question could have made her give wrong answers. However, later in the reexamination she clarified her position when she stated what she meant was that the appellant was having sex with her without her consent. In the re-examination the complainant described the manner in which the appellant treated her. How he got her to work like a slave to clean his father's dirty mess on the bed; to go to the bush to do the man's work; literally, she had been at his command throughout the childhood. When the appellant came to know about the complaint that the complainant

was going to make at the police station, he had begged of the complainant not to do so. He knelt in front of her and begged for forgiveness. This evidence stands uncontroverted and convincing about the testimonial trustworthiness of the complainant.

[14] The second witness for the prosecution Eneriko Tupou, the relative, a distant grandfather to whom the complainant confided the harassment that the complainant underwent at the hands of the appellant admitted in cross-examination that although the complainant, in her initial narration of the incidents with the appellant did not speak about the sexual harassment, after she made her statement to the police she had told him that the appellant had been having sex with her without her consent. His evidence, taken as a whole strengthen the case for the prosecution.

[15] The appellant remained silent when the defense was called nor did he call any evidence on his behalf.

[16] In the light of the strong, convincing and uncontroverted evidence of the complainant I find that the grounds of appeal are based on unsubstantiated premise. The grounds are akin to that of scatter gun grounds and moreover they are referable to findings on facts by the learned trial Judge. As it is trite law the Court of Appeal will not disturb the findings of a trial judge “unless it is completely satisfied that the judge made a wrong assessment of the evidence before him or failed to apply the correct principle -always remembering that usually the trial judge has better opportunity of assessing the evidence than those enjoyed by an appellate tribunal”; **Rahiman v. Th State** FJSC, Crim. App. No. CAV 2of 2011.

In this case, having considered the evidence of the complainant, I find that she had withstood the rigorous and lengthy cross-examination of Mr. Fesaitu commendably, despite being a young person at the time of her testimony. Hers is a terrible story of a young girl who was entrapped in an island with no rescue for a long time until she went in search of some solace through an elder who has no direct relationship to her through the blood line although he was called a grandfather. According to her own description the appellant had enslaved her throughout both in terms of labor and in terms of sexual exploitation. As the evidence revealed the first sexual encounter at the hands of the appellant was when the complainant was merely 13 years of age. The agony has been continuing unabated for a long time and describing her feelings of anguish she said in

evidence that on several occasions she contemplated on committing suicide, for the appellant had ruined her life. Clearly the appellant has taken undue advantage of a teenager from the age of 13. The horrendous stories of sexual violence against women, particularly against the children are causing serious alarm and the victims need to be protected from these violence by the concerted efforts of all.

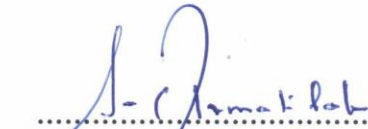
[17] There is no merit to this appeal and the appeal therefore stands dismissed.

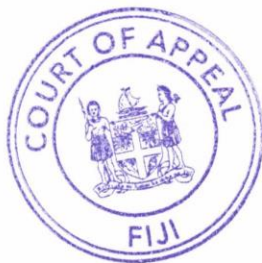
Nawana, JA


[18] I agree with the conclusions and reasons given by Gamalath J.

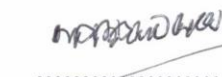
Orders of the Court

- (1) Appeal dismissed.
- (2) Conviction affirmed.


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Hon. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL




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Hon. Justice S. Gamalath
JUSTICE OF APPEAL


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Hon. Justice P. Nawana
JUSTICE OF APPEAL