

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

**CRIMINAL APPEAL NO.AAU 002 of 2021**  
**[In the High Court at Suva Case No. HAC 066 of 2020]**

**BETWEEN** : **MOALA BATI**  
*Appellant*

**AND** : **THE STATE**  
*Respondent*

**Coram** : **Prematilaka, RJA**

**Counsel** : **Mr. V. Rokodreu for the Appellant**  
: **Dr. A. R. Jack for the Respondent**

**Date of Hearing** : **22 August 2023**

**Date of Ruling** : **23 August 2023**

**RULING**

[1] The appellant aged 35 had been charged with one count of sexual assault, five counts of attempted rape and six counts of anal rape under the Crimes Act, 2009 at Suva High Court. The female victims were children between 08-12 years of age and the appellant's nieces. The charges were as follows:

***“Count 1***

***Statement of Offence***

***RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.***

***Particulars of Offence***

***MOALA BATI, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.***

***Count 2***

***Statement of Offence***

**ATTEMPTED RAPE:** *Contrary to Section 208 of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.

***Count 3***

***Statement of Offence***

**ATTEMPTED RAPE:** *Contrary to Section 208 of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.

***Count 4***

***Statement of Offence***

**RAPE:** *Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.

***Count 5***

***Statement of Offence***

**RAPE:** *Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of RGM, a child under the age of 13 years, with his penis.

**Count 6**

***Statement of Offence***

**ATTEMPTED RAPE:** *Contrary to Section 208 of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of August, 2019 and the 31<sup>st</sup> day of August, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of RGM, a child under the age of 13 years, with his penis.

**Count 7**

***Statement of Offence***

**RAPE:** *Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 31<sup>st</sup> day of January, 2019 and the 31<sup>st</sup> day of January, 2020 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the anus of EGV, a child under the age of 13 years, with his penis.

**Count 8**

***Statement of Offence***

**ATTEMPTED RAPE:** *Contrary to Section 208 of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, between the 31<sup>st</sup> day of January, 2019 and the 31<sup>st</sup> day of January, 2020 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of EGV, a child under the age of 13 years, with his penis.

**Count 10**

***Statement of Offence***

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

***Particulars of Offence***

***MOALA BATI***, between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern

*Division, penetrated the vulva of SD, a child under the age of 13 years, with his tongue.*

**Count 11**

***Statement of Offence***

**ATTEMPTED RAPE:** *Contrary to Section 208 of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, *between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, attempted to penetrate the anus of SD, a child under the age of 13 years, with his penis.*

**Count 12**

***Statement of Offence***

**RAPE:** *Contrary to Section 207 (1) and (2) (a) and (3) of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, *between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, penetrated the vulva of SD, a child under the age of 13 years, with his penis.*

**Count 13**

***Statement of Offence***

**SEXUAL ASSAULT:** *Contrary to Section 210 (1) (a) of Crimes Act 2009.*

***Particulars of Offence***

***MOALA BATI***, *between the 1<sup>st</sup> day of October, 2019 and the 31<sup>st</sup> day of October, 2019 at Sinuda, Nabalolo Settlement, Levuka, in the Eastern Division, unlawfully and indecently assaulted one SD, a child under the age of 13 years, by rubbing his penis between her thighs.”*

- [2] The assessors had unanimously opined that the appellant was guilty. The learned High Court judge also found the appellant guilty as charged of rape and he was convicted accordingly. On 11 December 2020 the appellant was given life imprisonment on rape counts, 06 years of imprisonment on attempted rape counts

and 06 years of imprisonment on sexual assault; all sentences to run concurrently with a non-parole period of 16 years.

[3] The High Court judge had summarised the facts in the sentencing order as follows.

2. *The brief facts of the case were as follows. Between 31 January 2019 and 31 January 2020, you were 35 years old. The first complainant (PW4) was 9 years old at the time; the second complainant (PW1) was 8 years old and the third complainant (PW3) was 10 years old. All the child female complainants were related to you. In fact, you were their uncle. You and the complainants' residences were next to each other in the village settlement, and they often come to your house to play with your two young daughters, every now and then. You were well known to them, and prior to the incidents, the three complainants trusted you.*
3. *It was behind that background of family trust and familiarity that you began to exploit their vulnerability and childhood naivety. You began to systematically prey on them sexually, without the knowledge of their parents and relatives, in the settlement. On six separate occasions, between 01 to 31 August 2019, you secretly enticed the first complainant (PW4) to you cassava plantation in the bush. Your modus operandi was similar on all occasions. You would tell the first complainant (PW4) to lie on a sack you had previously spread on the ground. You would tell her to lie facing down. You would take off her clothes and then your clothes. You would then lubricate your penis and the top of her anus with your saliva. Then you would attempt to penetrate her anus with your penis. On three occasions, you slightly penetrated her anus with your penis (count nos. 1 to 6).*
4. *For the second complainant (PW1), she came to your house to play with your young daughters, sometimes between 31 January 2019 and 31 January 2020. You knew your daughters were not in your house, but you nevertheless called PW1 into your house. Once she was in your house, you closed the door and forcefully carried her in your arms to your bedroom. You then laid her on a mattress, which was on the floor. She was lying face down. You then undressed her and took off your trousers. You then lubricated your penis and the top of her anus with your saliva, and then attempted to penetrate her anus with your penis. Thereafter, you slightly penetrated her anus with your penis (count nos. 7 and 8)*
5. *As for the third complainant (PW3), between 1 and 31 October 2019, you abused her sexually on four separate occasions. The first was when she was returning a coconut scrapper to your house. When she entered your house, you forcefully carried her to your bedroom, laid her on a mattress, and licked her vulva. As a result, your tongue penetrated her vulva, thereby committing rape (count no. 10). On another occasion, while picking mangoes in the bush, you tried to insert your erect penis into her anus, thereby committing the offence of attempted rape (count no. 11). On the third occasion, while*

*catching crabs near the sea shore, you took her to a secluded spot, undressed her, and inserted your penis into her vulva (count no. 12). Lastly while sleeping at your house, on one occasion, with your daughters, you secretly went to her, laid over her, poured oil on her thighs and rubbed your erect penis on the same, until you ejaculated (count no. 13). You had been tried and convicted in the High Court on all the above offences.*

- [4] 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. For a timely appeal, the test for leave to appeal against conviction and sentence is ‘reasonable prospect of success’ [see Caucau v State [2018] FJCA 171; AAU0029 of 2016 (04 October 2018), Navuki v State [2018] FJCA 172; AAU0038 of 2016 (04 October 2018) and State v Vakarau [2018] FJCA 173; AAU0052 of 2017 (04 October 2018), Sadrugu v The State [2019] FJCA 87; AAU 0057 of 2015 (06 June 2019) and Waqasaqa v State [2019] FJCA 144; AAU83 of 2015 (12 July 2019) that will 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 (15 July 2014) and Naisua v State [2013] FJSC 14; CAV 10 of 2013 (20 November 2013)] from non-arguable grounds [see Nasila v State [2019] FJCA 84; AAU0004 of 2011 (06 June 2019)].
- [5] Further guidelines to be followed when a sentence is challenged in appeal are whether the sentencing judge (i) acted upon a wrong principle; (ii) allowed extraneous or irrelevant matters to guide or affect him (iii) mistook the facts and (iv) failed to take into account some relevant considerations [vide Naisua v State [2013] FJSC 14; CAV0010 of 2013 (20 November 2013); House v The King [1936] HCA 40; (1936) 55 CLR 499, Kim Nam Bae v The State Criminal Appeal No.AAU0015].
- [6] The grounds of appeal urged by the appellant are as follows.

**Conviction:**

**Ground 1**

*THAT the learned trial Judge erred in fact and in law in failing to direct the assessors on the Applicant’s constitutional right to a fair trial during His Lordship’s summing up, considering that the evidence against the appellant were adduced by three every young children who were 8, 9 and 10 years old respectively at the time of the alleged offence and who had all complained of*

*repetitive alleged rapes, attempted rapes and sexual assaults against the appellant, thus making the appellant's conviction unsafe, unsatisfactory and a miscarriage of justice.*

**Ground 2**

*THAT the learned trial Judge erred in fact and law in failing to direct the assessors of the failure by the three complainants to report the alleged repetitive rapes, attempted rapes and sexual assaults to adults within their respective households after the respective first incidents, during His Lordship's summing up, considering that the evidence adduced by the complainants claimed pain being suffered on those respective incidents thus making the appellant's conviction unsafe, unsatisfactory and a miscarriage of justice.*

**Ground 3**

*THAT the learned trial Judge erred in fact and in law in failing to direct the assessors of the three complainants' respective continuing and voluntary encounters with the appellant and without fear of him being facts which could raise an inference that the incidents alleged by the complainants were untrue and manufactured thus making the appellant's conviction unsafe, unsatisfactory and a miscarriage of justice.*

**Ground 4**

*THAT the applicant was not given the opportunity to adduce evidence during the trial, although the applicant wanted to do so, which was an error of fact and law resulting in the applicant's conviction.*

**Sentence**

**Ground 5**

*THAT the applicant sentences were manifestly erroneous and manifestly excessive under all the circumstances of the applicant's case.*

***01<sup>st</sup> ground of appeal***

- [7] There is no need of a separate direction to the assessors that the appellant was entitled to a fair trial. It goes without saying that every accused is entitled to a fair trial. The trial judge had directed the assessors on all essential requirements in a summing-up such as the burden and standard of proof, essential elements of the offences, the assessors' task at hand etc. The trial judge had also reminded them of the prosecution (child victims, medical and police evidence etc.) and defence evidence (appellant's niece). These are the essential ingredients of a well-balanced, fair and objective summing-up designed to ensure a fair trial.

## *02<sup>nd</sup> ground of appeal*

- [8] The essence of the complaint is delay in reporting. The failure of complainants to disclose their defilement without loss of time to persons close to them or to report the matter to the authorities does not perforce warrant the conclusion that they were not sexually molested and that their charges against the appellant were all baseless, untrue and fabricated. Delay in prosecuting the offense is not an indication of a fabricated charge. Many victims of rape never complain or file criminal charges against the rapists. They prefer to bear the ignominy and pain, rather than reveal their shame to the world or risk the offenders' making good their threats to kill or hurt their victims (see **People of the Philippines, Plaintiff-Appellant vs. Bernabe Pareja v Cruz, Accused-Appellant** G.R. No. 202122<sup>1</sup> quoted the following observations from **People v. Gecom**, 324 Phil. 297, 314-315 (1996)<sup>2</sup> (G.R. No. 182690 - May 30, 2011))
- [9] Judges are entitled to direct juries that due to shame and shock, victims of rape might not complain for some time, and that '*a late complaint does not necessarily mean it is a false complaint*' (see **R v D (JA)** [2008] EWCA Crim 2557; [2009] Crim LR 591).
- [10] In as much as a late complaint does not necessarily mean that it is a false complaint, it is nothing but fare to direct the jury or assessors that similarly an immediate complaint does not necessarily demonstrate a true complaint. Thus, a late complaint does not necessarily signify a false complaint, any more than an immediate complaint necessarily demonstrates a true complaint.
- [11] The Court of Appeal in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018) adopted the 'totality of circumstances' test to assess a complaint of belated reporting.

*'[24] The mere lapse of time occurring after the injury and the time of the complaint is not the test of the admissibility of evidence. The rule requires that the complaint should be made within a reasonable time. The surrounding circumstances should be taken into consideration in determining what would*

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<sup>1</sup> [https://lawphil.net/judjuris/juri2014/jan2014/gr\\_202122\\_2014.html](https://lawphil.net/judjuris/juri2014/jan2014/gr_202122_2014.html)

<sup>2</sup> [https://lawphil.net/judjuris/juri2011/may2011/gr\\_182690\\_2011.html#fnt65](https://lawphil.net/judjuris/juri2011/may2011/gr_182690_2011.html#fnt65)



*be a reasonable time in any particular case. By applying the totality of circumstances test, what should be examined is whether the complaint was made at the first suitable opportunity within a reasonable time or whether there was an explanation for the delay.”*

[12] In **Prasad v State** [2020] FJCA 231; AAU02.2018 (20 November 2020) it was held

*‘[21] The credibility of a witness is not diminished simply because his or her complaint is late until and unless he or she is impeached on the footing that either he or she has complained belatedly due to the sinister motive of implicating the accused falsely or the delay enabled fabricating false allegations, embellishments or afterthought as a result of deliberation and consultation. Delayed reporting should be a trial issue for the judge to address the assessors and himself on. It should not be simply taken up as an appeal point for the first time for want of any other legitimate grounds of appeal. If the delayed complaint is made a live issue at the trial it has to be assessed by using “the totality of circumstances test” as expressed in **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018) and appropriate directions should be given to assessors. If not, it has to be assumed that the defense has no issue with the complaints not made within a reasonable time and seeks no explanation for the delay.’*

[13] It does not appear from the summing-up or the judgment that the so called delay in reporting had been canvassed as a trial issue allowing the child victims to explain the reasons for withholding the sexual abuse by the appellant. However, it does appear that PW4 (first victim) had said that the appellant asked her not to tell anyone about what he did or he will kill her. PW1 (second victim) had said that the appellant told her not to tell anyone or he will not give her a gold chain. When it comes to child victims, given their immaturity and respect and even fear for elders, they may not reveal the sexual abuses in quick time. More often than not they come into the open accidentally.

### ***03<sup>rd</sup> ground of appeal***

[14] The appellant argues that the complainants’ continuing and voluntary encounters him without fear of him could raise an inference that the incidents alleged by them were untrue and manufactured.

[15] The evidence do not suggest that the complainants ‘voluntarily’ engaged with the appellant. The appellant had cunningly created opportunities for his sexually abusive behaviour towards them. He had either deceived or forced the child victims into where he wanted them and then abused them using more or less the same modus operandi. In any event, the willingness or consent on their part, if any, had no relevance for the appellant’s criminal liability, for the victims were children from 08-10 years old.

***04<sup>th</sup> ground of appeal***

[16] The appellant seems to suggest that his trial counsel prevented him from giving evidence. This allegation amounts to criticism of his trial counsel’s conduct of the case. If any appellant is to raise a ground of appeal involving his trial counsel’s handling of his defence he has to first follow the procedure laid down in **Chand v State** AAU 078 of 2013 ( 28 November 2019). The appellant has not done so and this ground of appeal cannot be even entertained at this stage.

[17] In any event it is very unlikely that the appellant’s trial counsel forced him not to testify against his wishes as the defence had called another witness to give evidence on his behalf. I do not see any flagrant incompetency on the part of the trial counsel.

***05<sup>th</sup> ground of appeal***

[18] The trial judge had given the following reasons for imposing the life sentence on the appellant outside the accepted tariff.

12. *As a judicial officer, I had presided over “rape” trials in the Magistrate Courts from 1994 to 2009, and again in the High Court from 2009 to 2020. At first, “rape” trials were held because of complaints from adult complainants. In recent years, I had witnessed and presided over numerous rape trials involving young children. Sexual attacks on children are in fact an attack on the future and wellbeing of this country. This is because the children are the future of this country. To protect the children of this country, the time has come to impose the maximum sentence available in law, as a deterrence to others. This is especially so in this case as it involved three child complainants below the age of 13 years old.*

[19] The trial judge was aware of the sentencing tariff for juvenile rape as 11-20 years (vide **Aitcheson v State** [2018] FJSC 29; CAV0012.2018 (2 November 2018)). He had set out aggravating factors as follows.

9. *The aggravating factors, in this case, were as follows:*

- (i) **Serious Breach of an Uncle's Trust.** *You were 35 years old at the time. The three female child complainants were 10 years, 9 years and 8 years old at the time. You were related to all of them by blood. You were their uncle. Their residences were next to yours in the village settlement. Prior to the incident, all three child complainants held you in high regards and trusted you. They often came to your house to play with your two young daughters. You were supposed to look after them, care for them and counsel them to become confident and useful citizens of Fiji in the future. However, unbeknown to their parents and village elders, you were abusing their trust by attempting to rape them, raping them and sexually assaulting one of them, on twelve separate occasions. This type of offending is becoming prevalent in our village communities, and the time has come for the courts to take a tough approach to provide a deterrence to would-be offenders.*
- (ii) **Rape of Children.** *Unfortunately, this problem is becoming prevalent in our society, despite the heavy prison sentence passed by the courts for the rape of children. The court had said in the past, and will keep on saying that it will not tolerate the abuse of children in our society. As it had done in the past, and is now doing and will continue to do, it will pass heavy prison sentences for the rape of children, as a warning to others.*
- (iii) *By offending against the three child complainants, you had no regards to their rights as children, no regards to their rights as human beings and no regards to their rights to live a happy and peaceful life.*
- (iv) *You have caused untold miseries to the three complainants' families.*

[20] One may argue that rape of children is anyway inbuilt into the above tariff and considering it as a separate aggravating factor amounts to double counting. On the other hand, though the trial judge had considered the appellant as a first time offender, he is not qualified to be one because of his repeated sexual abuse of not one but 03 female children of 08-10 years old.

[21] In **State v Vukici** [2018] FJHC 1193; HAC104.2017 (14 December 2018), the accused raped his biological daughter when she was ten years old, impregnated her when she was fourteen years old and continued to rape her when she was married and

six-month pregnant with a child from her husband. He then moved on to the second victim (his daughter and granddaughter) when she was ten years old and sexually abused her for 16 years with impunity using his authority as the patriarchal head of the family. Imposing a life imprisonment Gounder J said:

- [26] *Counsel for the State submits that the only fitting punishment for you is the maximum penalty prescribed for rape, that is, life imprisonment. In the event you are not sentenced to life imprisonment, the State recommends a head sentence of 41 years imprisonment to reflect your overall criminality.*
- [27] *As a general principle the statutory maximum sentence is reserved for the worst possible cases of its kind (Harrison (1909) 2 Cr App R 94, R v Amber Crim LR 266). The Parliament has prescribed life imprisonment for rape. However, life imprisonment has never been imposed for rape in Fiji.*
- [28] *Counsel for the State has helpfully referred to two cases where life imprisonment was imposed in cases of rape of daughters by their biological fathers. The first is an Irish case where a father pleaded guilty to sample charges of rape and sexual abuse of his four biological daughters that took place over a period of twenty years when they were aged between six and twelve. The trial judge took the view that the only sentence that would fit the criminality involved was life imprisonment. He sentenced the offender to life imprisonment in respect of each count of rape and to 5 years imprisonment for sexual assault, to be served concurrently. On appeal the Irish Court of Appeal upheld the sentence saying 'this must certainly be one of the worst cases of sexual abuse of young children by their father ever to come before the Court' (DPP v D [2004] IECCA 8(2) (21 May 2004)).*
- [29] *The second case is a South African case. In that case the accused pleaded guilty to rape of his 12-year old biological daughter and was sentenced to life imprisonment after the trial judge found no substantial and compelling circumstances existed to justify a sentence other than life imprisonment. On appeal the Supreme Court of Appeal of South Africa upheld the sentence of life imprisonment for rape. While this case demonstrates that a sentence of life imprisonment may be imposed for rape, I am mindful that the sentence was imposed under a different statutory sentencing regime.*
- [29] *In England, a life imprisonment for rape is justified in cases where the accused's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder, and where he is likely, if at large, to remain a danger to women for an indefinite time (R v Billam [1986] 8 Cr App R (S) 48).*
- [30] *However, I am not persuaded that the dangerous offender principle shackles the exercise of the sentencing discretion in rape cases in Fiji. The maximum sentence of life imprisonment for rape will not be inappropriate if the case is one of the worst cases of sexual abuse of a child by a biological father.*

[31] *This case presents a very disturbing criminal behaviour by a father towards his children. You raped your biological daughter when she was ten years old, impregnated her when she was fourteen years old and continued to rape her when she was married and six-month pregnant with a child from her husband. You moved on to the second victim (your daughter and granddaughter) when she was ten years old and sexually abused her for 16 years with impunity using your authority as the patriarchal head of the family.*

[32] *The physical and psychological harm that you have caused to the victims is severe, if not permanent. This is one of the worst cases of rape of children by their own biological father to come before the Court. A father who rapes his own child deserves very little mercy. Your crimes are so abhorrent that they must be denounced in the strongest terms with the maximum sentence that the court can impose.*

[33] *I sentence you to life in prison on each count of rape and to 5 years' imprisonment on each count of indecent assault, to be served concurrently. I decline to fix non-parole period. Your release from prison is in the hands of the Executive now.*

[22] It does not appear that the state counsel had called for the life imprisonment on the appellant. I do not find that the appellant's offending could be equated in terms of culpability and harm with that of *Vukici*.

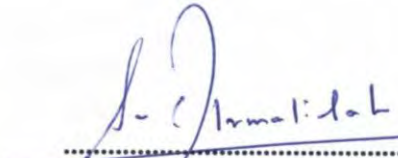
[23] Therefore, I think that in all the above circumstances it is best that the matter of sentence is left to the full court to revisit to see its propriety and assess whether it fits the gravity of the crime. Every convict should be punished adequately but not more than adequately. Otherwise, it might become either grossly inadequate or excessive and harsh.

[24] 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)]. The approach taken by the appellate court in an appeal against sentence 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)]; if outside the range, whether sufficient reasons have been adduced by the trial judge.

## Orders

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



  
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**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**