

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

**CRIMINAL APPEAL NO. AAU 157 of 2016**  
**[In the High Court at Lautoka Case No. HAC 184 of 2013]**

**BETWEEN** : **FUATIA MONISE**

**AND** : **STATE**

*Appellant*

*Respondent*

**Coram** : **Prematilaka, RJA**  
**Bandara, JA**  
**Kulatunga, JA**

**Counsel** : **Appellant in person**  
**Mr. S. Babitu, Mr. T. Tuenuku and Mrs. P. Lata for the**  
**Respondent**

**Date of Hearing** : **10 February 2023**

**Date of Judgment** : **24 February 2023**

**JUDGMENT**

**Prematilaka, RJA**

[1] I have read in draft the judgment of Bandara, JA and agree that the appeal should be dismissed.

**Bandara, JA**

- [2] The appellant stood trial in the High Court at Lautoka, on three counts of Indecent Assault and a single count of Rape contrary to section 212 (1) and section 207 (1) and (2) (a) of the Crimes Act 2009 respectively.
- [3] Following trial, on the 21<sup>st</sup> March 2019 the assessors returned with a unanimous guilty opinion on all counts against him.
- [4] The Learned High Court Judge concurred with the unanimous opinion of the assessors and convicted the Appellant accordingly on all counts on the 20<sup>th</sup> September 2016.
- [5] On the 6<sup>th</sup> October 2016 the Appellant was sentenced to a period of 10 years and 10 months for the Rape count, and 4 years for the Indecent Assault counts.
- [6] The information against the Appellant read as follows:

**“Count 1**

**Statement of Offence**

**INDECENT ASSAULT:** *Contrary to Section 212 (1) of the Crimes Decree, 2009.*

**Particulars of Offence**

***FUATIA MONISE, on the 22<sup>nd</sup> day of October 2010, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the breasts of OLIVIA DRAUNA.***

**Count 2**

**Statement of Offence**

**INDECENT ASSAULT:** *Contrary to Section 212 (1) of the Crimes Decree, 2009.*

**Particulars of Offence**

*FUATIA MONISE, on the 22<sup>nd</sup> day of October 2010, at Lautoka in the Western Division, unlawfully and indecently used his hand to touch the vagina of OLIVIA DRAUNA.*

**Count 3**

**Statement of Offence**

**INDECENT ASSAULT:** *Contrary to Section 212 (1) of the Crimes Decree, 2009.*

**Particulars of Offence**

*FUATIA MONISE, on the 02<sup>nd</sup> day of January 2012 and the 31<sup>st</sup> day of January 2012, at Nadi in the Western Division, unlawfully and indecently assaulted OLIVIA DRAUNA.*

**Count 4**

**Statement of Offence**

**RAPE:** *Contrary to Section 207 (1) and (2) (a) of the Crimes Decree, 2009.*

**Particulars of Offence**

*FUATIA MONISE, on the 01<sup>st</sup> day of February 2012 and the 28<sup>th</sup> day of February 2012 at Lautoka in the Western Division, inserted his penis into the vagina of OLIVIA DRAUNA, without her consent.”*

- [7] The conviction against the Appellant arose from the following factual context.
- [8] The complainant had been living in Simla, Lautoka along with her mother and brother in a small house consisting of just one room. Complainant’s mother worked at Sofitel, Denarau.
- [9] The Appellant was in a de-facto relationship with the mother of the complainant. The first incident of sexual assault occurred in 2010. She was 15 years old at the time and attending Natabua High School. At that time the Appellant was not living with them.

- [10] On the day the assault took place the complainant was alone at home since her mother had gone to work. Appellant came in the night to visit her when she was lying on the top of the bunk bed where she used to sleep. The Appellant came to her touched her breast and private area and asked '*if she could enter her.*' When the complainant said no the Appellant just walked away.
- [11] The next incident had happened on the 22<sup>nd</sup> October 2011, on the wedding night of her namesake/cousin. On this particular night the complainant was alone at home since her mother had gone to attend the wedding in Votaualevu.
- [12] She was sleeping in her top bunk bed when the Appellant came and stood on the bottom bunk and touched her breasts and private area. Thereafter, the Appellant again asked her if he could '*enter her*'. The complainant told him to think about his children, since he had children younger than her. Thereupon, Appellant stopped and did not proceed to do anything further.
- [13] Though the complainant felt insecure and unsafe in her own house, she did not proceed to tell anyone about the incidents since she was in a stressful situation. Her dad had passed away in 2010 after which her mother was undergoing depression. She was also worried about the resultant negative social perception that would arise consequent to a complain of this nature.
- [14] The next incident of sexual assault took place in January 2012 when the complainant was staying at a hotel in Namaka Nadi, along with her mother and the Appellant.
- [15] At the time the complainant was at their room upstairs the mother was in the pool in a drunken condition. Appellant came to the room where she was sleeping and woke her up. He then again proceeded to touch her breast, and private area and asked if he could '*enter her*'. When she yelled at him he stopped and went back and brought her mother to the room since she was drunk.

- [16] The mother having entered the room had gone to the bathroom when the Appellant asked her if he could '*enter her quickly*'. Her mother peeped out of the bathroom and saw the Appellant indulging in the act of touching her private area.
- [17] Mother was angry with both the Appellant and the complainant for the incident. She thought that the complainant too was at fault. The Appellant had apologised to the mother for the incident and the matter had ended there. When the incident happened the time had been around 4 p.m. When the complainant had told the mother about the previous incidents she had just '*brushed it off*' and got angry with her, saying it was her fault.
- [18] The next was the incident of Rape that occurred in February 2012. The complainant's mother had gone to work and she was alone at home when the Appellant came to the bunk bed she was sleeping. The Appellant then holding her hand held her down, and knelt to hold her thighs apart. Thereafter, having pulled her underwear down had inserted his penis into her vagina.
- [19] When the complainant tried to scream he had punched her thigh and told her to think about her mother, and her condition of depression, and had asked if she wanted her mother to be happy.
- [20] Whilst they were in the process of having sexual intercourse her mother had arrived. When the mother called for the complainant she had pretended to be asleep, since she did not want to face her. She had not wanted to confide the incident to her mother in view of the situation that arose after the incident at the hotel.
- [21] When the complainant went to the toilet she had seen blood stains on her underwear. The complainant did not inform anyone about this incident until she confided it with her sister-in-law Asena Drauna in May 2012. Even though Asena Drauna advised her to report the matter to the authorities, the complainant was unwilling since the Appellant was still living with them.

- [22] Thereafter, the complainant shared the incident with her cousin (namesake) Olivia Tavakai who encouraged her to report the matter to the police. However, the complainant begged Olivia not to report since she was still in the High School and further worried how people would look at her. The other worrying factor was that the Appellant was staying with her mother and the latter was still angry with her for what had happened. However, eventually she decided to report the matter to the police in July 2013.
- [23] At the trial the Appellant conducted the defence himself. In response to the questions raised in the cross-examination the complainant had categorically denied the suggestion made, that the impugned incidents occurred (from first to the last) with her consent.
- [24] Witness Olivia Tavakai had corroborated the complaint to the extent that the latter had shared with her the impugned incidents of sexual assault and rape. The witness had testified in detail as to what the complainant had informed about the incidents.
- [25] The witness explained to the complainant that it was all right for her to report the matter and that there was nothing wrong with it as it was a harm done to her. However, the complainant had cried begging her not to say anything to anyone since she was more worried about her mother who had just lost her husband.
- [26] When this was told to the witness she had asked her to stand up and go down to the police station but the complainant had kept on begging her not to report it since she was doing her exams (she was in year 6) and that she lived in her mother's house, with whom she was already having issues.
- [27] Though the witness returned to Nadi she kept on calling the complainant asking her what she was going to do about the matter. Subsequently on a day that the complainant came to the witness's dad's house sometime in 2013 where they discussed the matter again. Therein, the complainant eventually agreed to report the matter to the police. The witness accompanied the complainant to the police station where both of them made statements.

[28] At the conclusion of the prosecution case the Appellant was called on for his defence where he elected to testify on oath and stated:

*“The truth that I want to tell today and the truth what really happened is that everything that happened was all through her consent.”*

[29] Accordingly the Appellant had admitted the incidents, from the first to the last, and stated they occurred with the complainant’s consent. When the incidents had been so admitted, some discrepancies that had arisen as to the dates they occurred, do not carry any significant weight.

[30] It is an agreed fact that:

*“3. Between the 1<sup>st</sup> of January 2012 and the 31<sup>st</sup> of January 2012, the defendant together with the complainant and her mother were at Grand Melanesian Hotel in Nadi.”*

[31] The following remarks made by the Learned High Court Judge in relation to the demeanour and the department of both the Appellant and the complainant are noteworthy, since the original court judges have the precious advantage of observing them, which the appellate court judges lack.

*“[18] I watched Complainant giving evidence in court. She was straightforward and not evasive. Her demeanor is consistent with her honesty.*

*[19] Accused failed to maintain consistency in his evidence. He contradicted himself when he was asked about his visits to Complainant’s house before he moved to her place. Accused was evasive and not straightforward. Version of Defence failed to establish a reasonable doubt in the prosecution case.”*

## **The Appellate Procedure**

[32] The grounds of appeal urged by the Appellant before the Single Judge of this Court against the conviction is as follows:

**“Ground One:**

*The Learned Trial Judge erred in law and fact in delivering a verdict that is unreasonable and not supported by the totality of evidence.*

**Ground Two:**

*The Learned trial Judge erred in law and in fact when he failed to adequately elaborate on the issue of the delay of the complaint which is unfair to the Appellant’s case and gives rise to a miscarriage of justice.”*

[33] The Single Judge by his Ruling dated 14<sup>th</sup> July 2020 had refused to grant leave to appeal on both the above grounds.

[34] Before the Full Court the Appellant advanced the following five grounds of appeal:

**“Ground One:**

*That the Learned Trial Judge erred in law and fact in delivering a verdict that is unreasonable and not supported by the totality of evidence.*

**Ground Two:**

*That the Learned trial Judge erred in law and in fact when he failed to adequately elaborate on the issue of the delay of the complaint which is unfair to the Appellant’s case and gives rise to a miscarriage of justice.*

**Ground Three:**

*That the Learned Trial Judge erred in law and fact when he failed to directed the assessors adequately as how they should be evaluation the totality of the evidence to decide on the question of consent.*

**Ground Four:**

*That the Learned Trial Judge erred in law and in fact when he failed to consider his judgement and inconsistent evidence of the complainant, apart from the evidence of the complainant. There was no other independent/significant material evidence, adduced at the trial to prove and to determining any force sexual*



*intercourse, deciding on the issue of consent resulting in a substantial miscarriage of justice.*

**Ground Five:**

*That the Learned Trial Judge erred in law in not outlining all possible evidence of defence which was unfair, unbalance and one-side causing a miscarriage of justice.”*

**Consideration of 1<sup>st</sup> Ground of Appeal**

*“THAT the Learned Trial Judge erred in law and fact in delivering a verdict that is unreasonable and not supported by the totality of evidence.”*

[35] This ground as elaborated by the Appellant in his written submissions focuses on the careless drafting of the 3<sup>rd</sup> and the 4<sup>th</sup> counts on the information which the Appellant argued that the dates mentioned therein did not coincide with the evidence led at the trial.

[36] However, the Appellant had not submitted as to how he got misled by the said errors on the said two charges, or how any miscarriage of justice had occurred.

[37] In the course of his testimony the Appellant did not deny his involvement in the impugned incidents. It was his stance that the incidents mentioned in the information occurred, with the consent of the complainant.

[38] In such a situation the contention that the dates did not coincide with the evidence does not carry much weight. Moreover, it is an agreed fact that:

*““3. Between the 1<sup>st</sup> of January 2012 and the 31<sup>st</sup> of January 2012, the defendant together with the complainant and her mother were at Grand Melanesian Hotel in Nadi.”*

The foregoing admission involves the subject matter pertaining to count 3.

[39] The Appellant had not sought any re-directions at the conclusion of the Learned Trial Judge's Summing Up.

[40] In **Saukelea v State** [2019] FJSC 24; CAV0030.2018 (30 August 2019) the Supreme Court held that:

*[36] The main consideration in situations similar to this where there is some infelicity or inaccuracy of drafting is whether the accused knew what charge or allegation he or she had to meet: **Koroivuki v The State** CAV 7 of 2017; [2017] FJSC 28. Secondly it was important that the accused and his counsel were not embarrassed or prejudiced in the way the defence case was to be conducted: **Skipper v Reginam** Cr. App. No. 70 of 1978 29<sup>th</sup> March 1979 [1979] FJCA 6....'*

[41] From the manner the Appellant conducted the defence on his own at the trial (as evinced by the trial proceedings) and his own admission that the offending incidents were consensual, it becomes evident that the Appellant fully understood the charges against him.

[42] This ground of appeal lacks merit.

### **2<sup>nd</sup> Ground of Appeal**

*"The Learned trial Judge erred in law and in fact when he failed to adequately elaborate on the issue of the delay of the complaint which is unfair to the Appellant's case and gives rise to a miscarriage of justice."*

[43] On the issue of how to deal with a delayed complaint the observations made in the following authorities are pertinent to note.

[44] **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018):

[24] *In law the test to be applied on the issue of the delay in making a complaint is described as “the totality of circumstances test”. In the case in the United States, in **Tuyford** 186, N.W. 2d at 548 it was decided that:-*

*‘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 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.’*

**Thulia Kali v State of Tamil Naidu**; 1973 AIR.501; 1972 SCR (3) 622:

*‘A prompt first information statement serves a purpose. Delay can lead to embellishment or after thought as a result of deliberation and consultation. Prosecution (not the prosecutor) must explain the delay satisfactorily. The court is bound to apply its mind to the explanation offered by the prosecution through its witnesses, circumstances, probabilities and common course of natural events, human conduct. Unexplained delay does not necessarily or automatically render the prosecution case doubtful. Whether the case becomes doubtful or not, depends on the facts and circumstances of the particular case. The remoteness of the scene of occurrence or the residence of the victim of the offence, physical and mental condition of persons expected to go to the Police Station, immediate availability or non-availability of a relative or friend or well-wisher who is prepared to go to the Police Station, seriousness of injuries sustained, number of victims, efforts made or required to be made to provide medical aid to the injured, availability of transport facilities, time and hour of the day or night, distance to the hospital, or to the Police Station, reluctance of people generally to visit a Police Station and other relevant circumstances are to be considered.’*

**State of Andhra Pradesh v M. Madhusudhan Rao** (2008) 15 SCC 582;

*“The delay in lodging a complaint more often than not results in embellishment and exaggeration which is a creature of an afterthought. That a delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of*

*coloured version, exaggerated account of the incident or a concocted story. As a result of deliberations and consultations, also creeps in issues casting a serious doubt in the veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. Resultantly when the substratum of the evidence given by the complainant is found to be unreliable, the prosecution's case has to be rejected in its entirety". (See: Sahib Singh v State of Haryana, AIR 1977 SC 3247; Shiv Rama Anr v State of U.P AIR 1998 SC 49; Munshi Prasad & Ors v State of Bihar, AIR 2001 SC 3031)."*

[45] Based on the rules set by the above authorities, in the instant case, the Learned High Court Judge had directed the assessors, in the following manner in paragraphs 45 and 56 of the Summing Up:

*"45. Complainant then shared this information with her cousin (namesake), Olivia Tavakai. Tavakai encouraged Complainant to report the matter to police. Complainant begged her not to report because she was still in high school and was worried about how people will look at her. She was also worried that Accused was staying with her mother and her mother was still angry with her for what had happened. She eventually reported the matter to police in July 2013.*

*56. Witness Tavakai testified of what her namesake (Complainant) had shared with her. Complainant had shared the information as to how she was sexually assaulted and raped by her mother's partner. Complainant informed these incidents when the witness visited her at her Simla house sometime in 2013. By that time, Complainant was in Form 6. Complainant informed the witness how her mother's partner would forcefully have sex with her on four occasions. He had tried 3 times to sexually assault her by trying to push himself over her and, in one incident, he punched her thighs trying to get her pants off. One incident had happened on her wedding day, on 22<sup>nd</sup> October 2011 when her mother had come over to attend the wedding."*

[46] Moreover, in relation to the said issue, the Learned High Court Judge in paragraphs 9 and 10 of his judgment states:

*"[9] Accused vigorously challenged the evidence of the Prosecution on the basis that Complainant had failed to complain any of the alleged incidents to anyone at the first available opportunity. Accused argues that the fact that Complainant did not report what had happened as soon as possible*

*makes it less likely that the complaint she eventually made to police was true.*

[10] *First alleged incident occurred in 2011 and the last alleged rape incident occurred in February 2013. These incidents had been reported to police on the 11<sup>th</sup> July 2013. It is true that the Complainant had failed to make a prompt complaint to police at the earliest opportunity. However, I am satisfied that Complainant had given acceptable and legitimate explanations for the failure.”*

[47] The above paragraphs demonstrate how the Learned High Court Judge had noted the complainant’s delay in the reporting and specifically pointed out the explanation of the victim and why she took so long to report the matter.

### **3<sup>rd</sup> Ground of Appeal**

*“THAT the Learned Trial Judges erred in law and fact when he failed to direct the assessors adequately as how he should be evaluation the totality of the evidence to decide on the question of consent.”*

[48] In relation to this ground of appeal the Appellant had taken issue with paragraph 93 of the Learned High Court Judge’s Summing Up which is as follows:

*“The Prosecution based its case substantially on the evidence of the Complainant. Prosecution says that, on four occasions, the Accused unlawfully touched the Complainant’s breasts and private area. It also alleges on the 4<sup>th</sup> count that Accused penetrated the Complainant’s vagina with his penis without her consent. Accused does not deny that he was engaged in those conducts. He says that all those incidents took place with the consent of the Complainant. Accused further says that allegations were made up by the Complainant after he reconciled with his wife.”*

[49] Furthermore, in his written submissions the Appellant contends that:

*“The Learned Trial Judge has clearly taken away from the assessors the need to examine the totality of evidence in deciding whether there is a reasonable doubt that the act of having sex was without consent.”*

- [50] The complainant had categorically stated in her testimony that she did not give her consent to the incidents in issue.
- [51] The Appellant having admitted all the acts committed by him, reflected in the charges, said in defence, that they were done with the consent of the complainant
- [52] Appellant further said that it was when he patched up the issues he had with his wife, the complainant decided to report the matter.
- [53] As discussed previously, the complainant had amply explained the reasons for her belatedness to report the matter, including her concern about the perception of the community on her.
- [54] The main issue that had to be decided in the case was whether the complainant gave her consent to the acts of the Appellant, that constituted the charges on the information.
- [55] In paragraph 20 of the Judgment the Learned High Court Judge deals with the issues of consent in the following manner:

*“Complainant said that Accused touched (over the clothes) her breasts and private part on four occasions. Accused did not deny that he touched her breasts and private area although he was not sure about the exact dates. Touching of a girl’s private part and breasts constitutes an indecent assault. She also said that Accused having pulled her panty forcefully penetrated his penis into her vagina. He also punched on her thigh. I am satisfied that the sexual intercourse was not consensual.”*

- [56] The Summing Up of the Learned High Court Judge amply dealt with the totality of the evidence to decide on the question of consent.
- [57] This ground of appeal lacks merit.

#### **4<sup>th</sup> Ground of Appeal**

*“THAT the Learned Trial Judge erred in law and in fact when he failed to consider his judgement and inconsistent evidence of the complainant, apart from the evidence of the complainant. There was no other independent/significant material evidence, adduced at the trial to prove and to determining any force sexual intercourse, deciding on the issue of consent resulting in a substantial miscarriage of justice.”*

[58] In relation to this ground of appeal the Appellant focuses on paragraphs 41 and 42 of the Learned High Court Judge’s Summing Up which are as follows:

*“41. The next incident happened in February 2012. Complainant’s mother had gone to work. Complainant was alone at home in Simla. Accused came around 9 pm. up to the top bunk where she was sleeping and held her down. He held her hands and knelt on the bunk to hold her thighs apart. She was wearing a sulu vakatoga and a t-shirt. He pulled down her underwear and inserted his penis into her vagina. She tried to scream but he punched her thigh. Then he told her to think about her mother and her depression if she wanted her mother to be happy.*

*42. Whilst they were in the process of sexual intercourse, Accused heard a car on the road. He stopped and jumped down from the bunk. Her mother had arrived. When her mother came into the house she called the Complainant. But Complainant pretended to be asleep because she didn’t want to face her mother. She did not confide with her mother because she knew the way her mother had reacted to the previous incident in the hotel. Complainant was angry with her mother, so she kept quiet.”*

[59] In a case of rape, when there is a considerable delay in reporting the matter, it is difficult to find injuries on the private parts or reflecting any physical resistance by the complainant. No supporting evidence could be found from the clothes worn by the complainant in the form of stains et cetera.

[60] Moreover, when the complainant is belated, no support could be sought by way of a medical report.

[61] The evidence of the case amply demonstrates the reasons for the delay, such as the facts that the Appellant was living with them, the hostile attitude of the mother when the complainant confronted her with the appalling situation she was experiencing, and the perceptions of the social consequences that arise when reporting attacks of sexual nature.

[62] In relation to the issue of standard proof the Learned High Court Judge had given directions to the assessors in the following manner:

*“8. The standard of proof is that of proof beyond reasonable doubt. This means that before you can find the Accused guilty, you must be satisfied so that you are sure of his guilt. If you have any reasonable doubt as to his guilt, you must find him not guilty.*

*65. You are aware that the Accused elected to give evidence and call witnesses on his behalf. That is his right. Now I must tell you that the fact that Accused adduced evidence in his defence does not relieve the Prosecution of its burden to prove the case beyond reasonable doubt. Burden of proof remains with the Prosecution throughout.”*

[63] This ground of appeal lacks merit.

#### **5<sup>th</sup> Ground of Appeal**

*“THAT the Learned Trial Judges erred in law in not outlining all possible evidence of defence which was unfair, unbalance and one-sided causing a miscarriage of justice.”*

[64] By way of this ground of appeal the Appellant advances the contention that his defence was not considered by the Learned High Court Judge.

[65] Throughout the whole trial there was only one defence upon which the Appellant relied on; the consent of the complainant.



[66] In his Summing Up the Learned High Court Judge under the heading “*Case for Defence*”, had amply dealt with the defence case from paragraphs 66-91. Therein he had outlined the entire defence evidence including the evidence of the Appellant, Susana Monise the wife of the Appellant, and Selepa Monise the daughter of the Appellant.

[67] As regards to the evidence of the Appellant’s defence paragraphs 77 to 81 of the Summing Up are specifically noteworthy:

- ‘77. *Accused then admitted that, before the wedding day, 22nd October, 2011, he had already been living with the Complainant and her mother.*
- 78. *Accused admitted having touched Complainant’s breast and private area only once that is with her consent. He was not sure whether it happened on the wedding day or not.*
- 79. *Accused also admitted that, in January 2012, he touched Complainant’s breast and her private part with her consent when they were staying in a hotel in Nadi. He also admitted that he had a confrontation with Complainant’s mother when she saw him touching the Complainant.*
- 80. *Accused also admitted that, in February 2012, when Complainant’s mother was not home, he climbed up the bunk and inserted his penis into Complainant’s vagina. But he denied that he removed her sulu and panty and that he forcefully penetrated her.*
- 81. *Accused also admitted that, whilst putting his penis into her vagina, he heard a taxi and quickly came down from the bunk and checked outside. Accused, however, denied having punched the Complainant.’*

[68] This ground of appeal lacks merit.

[69] It is also worthy to note the following submission made by the State to the Full Court:

*“This was an appellant who used his position in the house to his sexual gratification. He took advantage of the situation that the complainant was in, which was the passing of her father, a depressed mother and a vulnerable young victim. The appellant had from the beginning told the complainant that he wanted to “enter her”. He had the intention of carrying out his intention. When he knew that the complainant was not complying to his wishes he took advantage of the*

*situation when the mother of the complainant was out of the house to rape the complainant. The State submits that the conviction was based on sufficient evidence against the appellant in this case.”*

[70] This ground of appeal lacks merit.


**Kulatunga, JA**


[71] I have perused the judgment in draft of Hon. Bandara, JA and is in agreement with his reasons and orders.


**Order of the Court:**

1. Appeal dismissed.



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

  
.....  
**Hon. Mr. Justice W. Bandara**  
**JUSTICE OF APPEAL**

  
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**Hon. Mr. Justice G. Kulatunga**  
**JUSTICE OF APPEAL**

**Solicitors:**

Appellant in person  
Office for the Director of Public Prosecutions for the Respondent