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

CRIMINAL APPEAL NO. AAU 66 of 2023
[In the High Court at Lautoka Case No. HAC 08 of 2019]

BETWEEN	:	**ROBERT WILLIAM STOMAN**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	**Prematilaka, RJA**
Counsel	:	**Mr. S. Haritage for the Appellant**
	:	**Mr. J. Nasa for the Respondent**
Date of Hearing	:	**02 August 2024**
Date of Ruling	:	**05 August 2024**

RULING

[1] The appellant had been charged with three counts of rap, one count of indecent assault under the Crimes Act 2009 and another count under Section 62A (1) (b) of the Juveniles Act (as amended by the Juvenile (Amendment) Act No. 29 of 1997) in the High Court at Lautoka. The charges were as follows:

COUNT 1

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, *between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, penetrated the vulva of* ***MMD****, a child under the age of 13 years, with his tongue.*

COUNT 2

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN, *between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, touched the vagina of* ***MMD****, a child under the age of 13 years, with his fingers.*

COUNT 3

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN , *between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, unlawfully and indecently assaulted* ***MMD*** *by touching her buttocks.*

COUNT 4

Statement of Offence (a)

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

Particulars of Offence (b)

ROBERT WILLIAM STOMAN , *between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, penetrated the vagina of* ***MMD****, a child under the age of 13 years, with his finger.*

COUNT 5

Statement of Offence (a)

PORNOGRAPHIC ACTIVITIES INVOLVING JUVENILES*: Contrary to Section 62A (1) (b) of the Juveniles Act Chapter 56.*

Particulars of Offence (b)

ROBERT WILLIAM STOMAN , *between the 1st day of June 2018 to 9th day of January 2019, at Nadi, in the Western Division, took photographs and made video recordings of pornographic activities of* ***MMD****, a juvenile, on his mobile phones*

[2] At the end of the prosecution case, the High Court judge decided that there was no relevant or admissible evidence to establish that the appellant had committed the offence in count 3 and accordingly, he was found not guilty and acquitted of the said charge. At the end of the trial, the judge convicted the appellant of counts 1, 2, 4 and 5. On 11 August 2023, the appellant was sentenced to concurrent sentences of 15 years imprisonment with a non-parole period of 8 years' imprisonment (effective period being 13 years and 11 months after the remand period being discounted with a non-parole period of 13 years and 03 months with a non-parole period of 06 years' and 03 months imprisonment).

[3] The appellant's appeal against conviction and sentence is timely. However, the appellant had tendered a Form 3 (Rule 39) seeking to abandon his sentence appeal and at the

hearing into leave to appeal on 02 August 2024 this court made relevant inquiries from the appellant in keeping with ***Masirewa*** guidelines (**Masirewa v State** [2010] FJSC 5; CAV 14 of 2008 (17 August 2010) and allowed his application to abandon his sentence appeal and proceeded only with his conviction appeal.

[4] In terms of section 21(1) (b) of the Court of Appeal Act, the appellant could appeal against conviction only with leave of court. For a timely appeal, the test for leave to appeal against conviction 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] The trial judge had referred to the prosecution and defense evidence at length in his judgment and summarized the proven facts in the sentencing order as follows.

> *'**[6]** It was proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you penetrated the vulva of the complainant with your tongue, and at the time the complainant was a child under the age of 13 years.*
> ***[7]** It was further proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you touched the vagina of the complainant with your fingers, and at the time the complainant was a child under the age of 13 years.*
> ***[8]** It was also proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, you penetrated the vagina of the complainant with your finger, and at the time the complainant was a child under the age of 13 years.*
> ***[9]** And finally it was proved during the trial that, between the 1 June 2018 and the 9 January 2019, at Nadi, either in public or in private, directly or indirectly, you took photographs and made video recordings of pornographic activities involving the complainant and at the time the complainant was a juvenile.*

[6] The grounds of appeal urged by the appellant are as follows.

> '***Conviction***
>
> ***Ground 1***
> ***THAT** the Learned Trial Judge erred in law and in fact in not conducting a 'competence inquiry' required by section 10(1) of the Juvenile Act before a child*

can give evidence to ascertain whether the child could give sworn evidence and if not unsworn evidence. In the appellant's case the complainant was juvenile and as such failure to do so caused a substantial miscarriage of justice.

Ground 2
THAT *the Learned Trial Judge erred in law and in fact in not adequately directing himself that the prosecution evidence before the court proved beyond reasonable doubts that there were serious doubts in the prosecution case and as such the benefit of doubt ought to have been given to the appellant.*

Ground 3
THAT *the Learned Trial Judge erred in law and in fact in not adequately directing/misdirecting the previous inconsistent and/or conflicting statements/evidence made by the complainant and the prosecution witness and as such there has been a substantial miscarriage of justice.*

Ground 4
THAT *the Learned Trial Judge erred in law and in fact in not directing himself adequately to refer to any possible defence on evidence and as such by his failure there was a substantial miscarriage of justice.*

Ground 5
THAT *the Learned Trial Judge erred in law and in fact in misdirecting and/or not properly and/or sufficiently directing himself specifically on the prosecution/defence evidence.*

Ground 6
THAT *the Learned Trial Judge's failure to give adequate reasons on evidence as to the basis of finding the appellant not guilty on the charge of Indecent Assault but guilty on the charges of rape on the same complainant and as such there was 'inconsistent verdict'.*

Ground 7
THAT *the Learned Trial Judge erred in law and in fact in misdirecting himself on the definition of pornographic activities in Juveniles in Count 5 and as such there has been a substantial miscarriage of justice.*

Ground 1

[7] The appellant's entire argument is based on the Supreme Court decision in **Kumar v State** Criminal Petition No.CAV0024 of 2016: 27 October 2016 [2016] FJSC 44 where the child victim had given sworn evidence, arguing that the trial judge should have conducted a competence inquiry and the absence of which had led to a miscarriage of justice.

[8] It is not clear from the judgment whether the trial judge had gone through a competency inquiry or not. The two appellate counsel were not at the trial and were unable to confirm

or deny such an exercise. Similarly, the judgment has no indication that the appellant's trial counsel had raised any concern before the judge regarding taking the sworn evidence of the 10 year old child victim (she was just 06 years at the time of the commission of the offence) without a competence inquiry. It is inconceivable that Mr. I. Khan, the senior and experienced lawyer that he was as the defense counsel, would have failed to do so if he had any doubt whether the victim could give sworn evidence or she understood the need to tell the truth or the meaning of the oath or the trial judge failed to tell the child that he or she must tell the truth. Thus, this seems to have been raised for the first time as an appeal point which diminishes its value and should and could have been canvassed before the trial judge.

[9] Be that as it may, the Court of Appeal in **Alfaaz v State** [2018] FJCA 19; AAU0030.2014 (8 March 2018) examined in detail the law relating to competence inquiries and the evidence of underage victims and said as follows

> *[19] In terms of section 129 of the Crimes Decree 2009 (now Crimes Act 2009) no corroboration of the complainant's evidence, irrespective of the age, is necessary for the accused to be convicted and no warning to the assessors is also required to be given relating to the absence of corroboration. However, in terms of section 10(1) of the Juveniles Act, if any child of tender years called as a witness, in the opinion of the court, does not understand the nature of the oath his or her evidence could still be taken if in the opinion of the court he or she is possessed of sufficient intelligence to justify the reception of such evidence and to understand the duty of speaking the truth. According to the proviso to section 10(1) when the evidence of a child is so taken on behalf of the prosecution the accused is not liable to be convicted unless such evidence is corroborated.*
>
> *[20] The Supreme Court in **Kumar v State** Criminal Petition No.CAV0024 of 2016: 27 October 2016 [2016] FJSC 44 where the child victim had given sworn evidence, had partly concurred and partly disagreed with the conclusions arrived at on section 10(1) of the Juvenile Act in **State v AV** Criminal Case No.HAC192 of 2008: 02 February 2009 [2009] FJHC 18 and similar views expressed in the majority decision in **Kumar v State** Criminal Appeal No.AAU0049 of 2012: 04 March 2015[2015] FJCA 32.*
>
> *[25] Thus, in the light of the decision in **Kumar** (SC) the current legal position, in my view, could be stated as follows.*
>
> > *(i) There is no longer any legal requirement for the unsworn evidence of a child to be corroborated to secure a conviction.*
> >
> > *(ii) Although there should no longer be any legal requirement on trial judges to give a warning of the danger of convicting a defendant on the*

uncorroborated evidence of a child, they may do so if they think that it is appropriate in a particular case.

(iii) The Trial Judge should conduct a 'competence inquiry' required by section 10(1) of the Juvenile Act before a child can give evidence to ascertain whether the child could give sworn evidence and if not unsworn evidence. However, ***failure to do so would not per se be fatal to a conviction*** *but it is a good practice for a judge to tell the child that he or she must tell the truth.*

[10] In the circumstances, I do not see any reasonable prospect of success in this ground of appeal.

Ground 2 and 4

[11] The argument seems to be that the trial judge had not adequately detected himself on a possible defense of a sinister motive which is that the victim's father had brought prostitutes home with the knowledge of the appellant who was living with their family and when confronted by the victim's mother, the appellant had admitted to have known that but failed to inform her. Over this, the victim's father had fallen out with the appellant for betraying him and set the victim up to make the allegations of sexual abuse against him. Although, a suggestion seems to have been put to the father to this effect, the judgment does not show that such a proposition had been even put to the child. Thus, the credibility of the alleged motive is called into question.

[12] In my view, the fact that some photographs of semi nudity of the victim were retrieved from the appellant's phone which were produced at the trial in support of the last count negates this proposition of 'strong motive' for fabricating false allegations using the child by her father. It shows that his denial of having nothing to do with the child abuse allegations is incredible. In the light of seemingly credible evidence of the child, this alleged motive pales into insignificance.

Ground 3 (and 5)

[13] All the inconsistencies highlighted by the appellant are really omissions in the victim's police statement and they only go to details of each of the incidents and not the incidents *per se*. The omissions are 'during the first incident the accused took of her pants and undergarments', 'during the first incident she had warned the accused to stop what he was doing', 'during the second incident the accused took of her pants and undergarments'

and ‘during the third incident the accused took of her undergarments in the swimming pool’. The child while admitting to the omissions had explained that she only answered what the police had questioned her on implying that those details were not asked for by the police. The police officer Barbara who had recorded her statement had said that she recorded everything what the child said. There is no contradiction between these two versions. The child had provided answers to the questions the police had asked for and the police officer had recorded those answers. The omission seems to be really with police officer Barbara rather than the child, who had not got the child to talk of details of each incident for which the child cannot be blamed. In the circumstances, it is no surprise that the trial judge had not considered those omissions material to the credibility of the child’s evidence on the core issue.

Ground 5 (and 3)

[14] The appellant has also submitted that it is inconceivable that the father would have asked her to tell him if the appellant would do it again in response to the child’s complaint to him regarding the first incident. However, the father had not admitted this position. The child had said that she told the father twice about the incidents. The father had told in his evidence that his daughter had told him that the appellant had licked both her vagina and anus but the child had not spoken to licking of anus in her evidence.

[15] I note that the appellant was acquitted of the 03rd count of indecent assault by touching the buttocks for lack of evidence. There would have been some reference to such an act in her police statement for the DPP to prefer that charge. There may not have been any such reference to licking of her anus in her own police statement. It is clear that the child victim of 06 years had not been preciously aware of or been able to describe all acts of sexual abuse with mathematical accuracy. This is no surprise as the Court of Appeal on more than one occasion highlighted the inability of child victims to describe abuses and intrusions involving their sexual organs with precision for lack of maturity to understand their own body.[1]

[1] Volau v State **[2017] FJCA 51; AAU0011.2013 (26 May 2017);** Naduva v State **[2021] FJCA 98; AAU0125.2015 (27 May 2021);** Palani v The State **[2024] FJCA 130; AAU111.2020 (26 July 2024)**

[16] The inability of child victims to describe abuses and intrusions involving their sexual organs with precision is a significant concern in legal contexts. Several factors contribute to this difficulty:

> *1. **Developmental Stage**: Children may not have the vocabulary or understanding to describe what happened to them accurately. Their cognitive and linguistic development may limit their ability to articulate their experiences.*
> *2. **Trauma Impact**: The trauma of abuse can cause confusion, memory fragmentation, and difficulty in recounting events coherently. The emotional and psychological impact of the abuse can inhibit a child's ability to speak about it.*
> *3. **Fear and Shame**: Children often feel fear, shame, and guilt about the abuse, which can make them reluctant to talk about it. They may fear repercussions from the abuser or feel embarrassed discussing private parts of their body.*
> *4. **Influence of Authority Figures**: The way adults, including parents, police officers, and lawyers, question children can affect their responses. Leading questions or intimidating environments can further inhibit a child's ability to describe the abuse accurately.*
> *5. **Understanding of Consequences**: Younger children might not understand the legal significance of their descriptions and may either downplay or exaggerate details without realizing the impact.*

[17] The following legal and procedural responses are already or could be employed to overcome these issues involving child victims.

> *1. **Specialized Interview Techniques**: Using child-friendly and trauma-informed interview techniques can help elicit more accurate information. Professionals trained in these methods can create a supportive environment that encourages children to speak freely.*
> *2. **Use of Experts**: Expert witnesses, such as child psychologists or forensic interviewers, can provide context for a child's testimony, explaining how developmental and psychological factors might influence their descriptions.*
> *3. **Corroborative Evidence**: Recognizing the limitations of a child's testimony, courts often look for corroborative evidence, such as medical reports, forensic evidence, or witness statements, to support the child's account.*
> *4. **Legislative Protections**: Many jurisdictions have specific laws and protocols to protect child victims during the legal process. This can include the use of video testimonies, closed courtrooms, and support persons during testimony.*
> *5. **Judicial Training**: Training judges and legal professionals to understand the nuances of child testimony and the impact of trauma can lead to more informed decision-making in such cases.*

[18] Courts have often grappled with these issues, leading to various precedents on how to handle child testimony. For instance, the case of **R v Mclucas** (1981) 147 CLR 624 in Australia highlighted the importance of considering the child's developmental stage and the context of their testimony. Similarly, **Coy v. Iowa** (1988) 487 U.S. 1012 in the United States emphasized the need to balance the defendant's right to confront witnesses with

the need to protect child victims from further trauma. While the inability of child victims to describe sexual abuse with precision poses challenges, a combination of specialized techniques, corroborative evidence, and protective measures can help ensure that their voices are heard and justice is served.

[19] However, the fact that the child had not implicated the appellant of licking her anus shows that she was not fabricating anything against the appellant but only telling the truth as far as she could remember. On the question whether the father asked her to come back to him if the appellant would do it again, if true, goes to his lackadaisical attitude rather than the child's credibility, for he seems not to have been a faithful husband allegedly bringing prostitutes home.

[20] In any event, is the alleged conflicting evidence pointed out by the appellant so material as to affect the credibility of the victim? The test for evaluation of any alleged omissions, contradictions and inconsistences is whether they go to the root of the prosecution case as to discredit the complainant; whether it shakes the very foundation of the prosecution case [see **Nadim v State** [2015] FJCA 130; AAU0080.2011 (2 October 2015), **Turogo v State** [2016] FJCA 117; AAU.0008.2013 (30 September 2016) & **Bharwada Bhoginbhai Hirjibhai v State of Gujarat** [1983] AIR 753, 1983 SCR (3) 280].

[21] The Supreme Court in **Lulu v State** Criminal Petition No. CAV0035 of 2016: 21 July 2017 [2017] FJSC 19 said referring to ***Bharwada*** in the context of apparent discrepancies (which do not shake the basic version) in an adult rape victim's recollection *'Their evidence is not a video recording of events.'*

[22] The Court of Appeal usefully analyzed the issue of memory and recollection of events by child and adult victims of sexual abuse cases in **Alfaaz v State** [2018] FJCA 19; AAU0030.2014 (8 March 2018) and said

> *'[35]……. Therefore, one would not expect perfectly logically arranged evidence in the case of a child witness particularly when the child is the victim of the crime and probably carries both physical and psychological scares with her.'*

[23] The following remarks of the Supreme Court of India regarding an adult victim of rape in **Bharwada Bhoginbhai Hirjibhai v State of Gujarat** [1983] AIR 753, 1983 SCR (3) 280) is applicable with greater force to a child or juvenile.

'(1)By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen; ..... (3) The powers of observation differ from person to person. What one may notice, another may not. ..... It is unrealistic to expect a witness to be a human tape recorder;....."

Ground 6

[24] The appellant submits that since he was acquitted of the third count of indecent assault no conviction should have been entered against him for other counts based on the evidence of the child victim. This argument is based on the proposition of inconsistent verdicts.

[25] When an appellant seeks to persuade this court as his ground of appeal that the jury had returned a repugnant or inconsistent verdict, the burden in plainly upon him. He must satisfy the court that the two verdicts cannot stand together, meaning thereby that no reasonable jury who had applied their mind properly to the facts in the case could have arrived at the conclusion, and once one assumes that they were an unreasonable jury, or they could not have reasonably come to the conclusion, then the conviction cannot stand. But the burden is upon the defence to establish that.[2] The same principle is true of a trial by a judge alone and should be adopted *mutatis mutandis*.

[26] I do not see any inconsistency between the acquittal of the appellant of count 3 and his conviction for other counts based on the evidence of the child victim. The acquittal was not based on the credibility but on lack of evidence to support the very act mentioned in the 03rd count.

Ground 7

[27] Section 62A (1) (b) of the Juveniles Act (as amended) states that any person whether in public or in private, who makes, participates in, uses, observes, publishes, solicits, advertises distributes, traffics in, lets on hire, buys, sells, offers to sell, media or records of *pornographic activity* directly or indirectly involving juveniles, or persons who look like juveniles whether they are or not; commits a felony and is liable on conviction. Section 62A (12) of the Juveniles Act states that: "records" includes film, audio-visual

[2]Mackenzie v R **(1996) 190 CLR 348;** Balemaira v State **[2013] FJSC 17, CAV0008 of 2013 (6 November, 2013);** Vulaca v State **[2012] FJSC 22; CAV0005.2011 (21 August 2012);** State v Khan **[2023] FJCA 141; AAU122.2015 (28 July 2023);** Ului v State **[2023] FJCA 111; AAU020.2018 (14 June 2023)**

work, microfilm, video, computer or software programme or game or interactive game, compact discs, E-Mail, internet, books, journals, photographs, or records on communication or telecommunication networks of whatever type, method or technology. Furthermore, Section 62A (12) provides that: *"pornographic activity"* includes activity which is either indecent or obscene, or in any way judged by the standards of the time, is of a sexual nature and offensive'.

[28] The appellant argues that the conviction on count 5 was wrong in that the evidence did not prove that the appellant made phonographic activity involving the child victim by *'taking photographs and making video recordings of pornographic activities of MMD'* as alleged because the two photographs used by the trial judge showed only a photograph of the child with a naked upper body and another where the child was bending over a chair with her garments and her back facing the camera. He argues that these two photographs do not come under the definition of pornographic activity.

[29] The trial judge had concluded that

> *'**[102]** This Court is satisfied that two of the photographs in the photo sheet containing relevant photos, which were tendered to Court as Prosecution Exhibit PE4 - namely Photo 1 in the said sheet which was marked as PE4 (a) - **the photo of the complainant showing her naked upper body** and Photo 5 which was marked as PE4 (c) – **the photo of the complainant kneeling forward on a plastic chair with her back facing the camera**, are photos which **are either indecent or obscene or is of a sexual nature and offensive**.*

[30] The question is whether *the two photos of the complainant showing her naked upper body* and *the complainant kneeling forward on a plastic chair with her back facing the camera**;***

(a) Could be construed as activities

(b) If so, whether both or one of them either indecent or obscene, or in any way judged by the standards of the time, is of a sexual nature and offensive

[31] One must remember that the words *'**includes** activity which are either indecent or obscene, or in any way judged by the standards of the time, is of a sexual nature and offensive'* in the definition of pornographic activity is not all inclusive or exhaustive but only descriptive. There can be other instances not specified but could be considered as pornographic activities.

[32] Both counsel concede that there are currently no judicial precedents in Fiji where these words have received an interpretation. Therefore, I shall try to embark on some discussion on this aspect. Relevant statutory provisions are:

1. ***Section 62A (1) (b)****:*
    - *Criminalizes various actions involving pornographic activity directly or indirectly involving juveniles.*
    - *The statute includes both public and private acts.*
2. ***Section 62A (12)****:*
    - *Provides a broad definition of "records" to include various forms of media.*
    - *Defines "pornographic activity" as activity that is indecent, obscene, of a sexual nature, and offensive by contemporary standards.*

[33] Key points from the trial judge's conclusion are:

1. ***Content of the Photographs****:*
    - *Photo 1: Shows the complainant's naked upper body.*
    - *Photo 5: Shows the complainant kneeling forward on a plastic chair with her back facing the camera.*
2. ***Legal Standards Applied****:*
    - *The judge found the photographs to be indecent, obscene, or of a sexual nature and offensive.*

[34] Analysis of the applicable provisions.

1. ***Indecency and Obscenity****:*
    - ***Indecent****: Generally refers to something inappropriate or offensive to public morals.*
    - ***Obscene****: Often requires the content to be offensive and lacking serious literary, artistic, political, or scientific value.*
2. ***Sexual Nature and Offensiveness****:*
    - ***Sexual Nature****: The judge determined that the photos had sexual connotations, considering the nudity in Photo 1 and the positioning in Photo 5.*
    - ***Offensiveness****: Contemporary community standards play a role here, and such images of a juvenile are likely to be considered offensive.*
3. ***Involvement of a Juvenile****:*
    - *Section 62A specifically criminalizes activities involving juveniles. The photos are of the complainant, who is a juvenile, fitting the statute's applicability.*

[35] Given the descriptions, showing a juvenile's naked upper body (Photo 1) and a compromising position (Photo 5) can reasonably be considered indecent and obscene under common legal standards. Based on the statutory provisions and the descriptions of the photos, in my view

- *The judge's application of the law seems correct in determining that the photographs are indecent, obscene, of a sexual nature, and offensive.*
- *The judge's conclusion aligns with the intent of Section 62A to protect juveniles from exploitation and to criminalize the creation and distribution of such material.*
- *Therefore, the judge appears to have correctly applied the legal standards to the facts presented, and the conclusion seems justified.*

Order

1. Leave to appeal against conviction is refused.

COURT OF APPEAL FIJI

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