

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

CRIMINAL APPEAL NO. AAU 0081 OF 2021
[Suva High Court: HAC 281 of 2020]

BETWEEN : **ILIESA SAMULALA**

Appellant

AND : **THE STATE**

Respondent

Coram : Mataitoga, P

Counsel : Appellant in Person
Lal U., for the Respondent [ODPP]

Date of Hearing : 5 December, 2024

Date of Ruling : 18 February, 2025

RULING

1. The appellant [Iliesa Samulala] was charged with the following offences:
 - i) Count 1 – Unlawful Wounding, contrary to section 261 of the Crimes Act 2009;
 - ii) Count 2 – Rape, contrary to section 207(1) and (2)(a) of the Crimes Act 2009.
2. The appellant pleaded not guilty to the charges and the trial at the High Court in Suva was held over 3 days.

3. The appellant was found guilty of both counts and convicted on 29 October 2021.
4. On 8 December 2021, the appellant was sentenced to 8 years and 9 months imprisonment with a non-parole period of 6 years and 9 months imprisonment.

The Appeal

5. The appellant submitted a letter dated 8 December 2021, which was received in court on 17 December 2021 notifying his appeal against conviction and sentence. There were 4 grounds of appeal, which on analysis covers only 2 grounds: namely, inconsistencies in the complainant evidence and credibility evidence against the complainant. Against sentence there was only 1 ground advanced, namely, that the sentence was harsh and excessive
6. In another application dated 22 January 2022, the appellant informs the court that his application is for leave to appeal **against conviction only**. This application is supported by 1 ground namely, that the trial judge erred in law in allowing a dock identification without giving proper Turnbull directions according to the law and procedures of identification.
7. The appeal is timely. There is no need to Enlarge Time to Seek Leave to appeal.
8. Following the change of solicitors, the new solicitor file 6 new grounds of appeal against conviction on the appellant's behalf.

Grounds of Appeal

9. The grounds of appeal against conviction are:
 - i) Trial judge erred in law and fact when he failed to advise the assessors that another option for them to consider was when the accused did not have sex with the complainant at all, the defence advanced by the appellant at the trial;

- ii) The trial judge erred in law and fact when he failed to consider the relevant facts of the case in that the appellant and the complainant's relationship is not steady and that the appellant had been facing continuous verbal abuse from the complainant since their relationship started in 2015 and through those verbal abuse, the appellant retaliated at that time of the incident;
- iii) The trial judge erred in law and in fact when he failed to establish the elements of the offense of rape to find the appellant guilty as charged;
- iv) The trial judge erred in law and fact when he did not independently assess all the evidence adduced during the trial and in not doing so resulted in the conviction being unsafe and resulting in miscarriage of justice;
- v) The trial judge erred in law and facts when he failed to consider the circumstances surrounding the appellant's family background in that he is the sole bread winner of the family and all this time, he had been looking after his three young children who are all attending primary school whilst sentencing him without regards to their well-being;
- vi) The trial judge erred in law and fact when he disregards the fact that in the complainant facts, that she is not their real mother of the appellant's children, and that she in and out of their relationship, therefore does not care about the wellbeing of the appellant children, leaving them vulnerable situation whilst the appellant is in custody.

Relevant law

- 10. The ground of appeal submitted by the appellant involves questions of law and fact. Section 21 (1)(b) of the Court of Appeal Act 2009 requires leave of the court to be granted before appeal may proceed further.
- 11. For a timely appeal, which this is, the test for leave to appeal against conviction is 'reasonable prospect of success' see: **Caucau v State [2018] FJCA 171; Navuki v State [2018] FJCA 172** and **State v Vakarau [2018] FJCA 173;** and **Sadrugu v The State [2019] FJCA 87.**

Assessment of the grounds of appeal

12. The grounds of appeal are those set out in paragraph 9 (i) to (vi) above.
13. Ground 9 (i) is misconceived. The trial was held without assessors so the error of law and fact alleged that the trial failed to advise the assessors of another option for them to consider; that the appellant did not have sex with the complainant was baseless.
14. This ground has no merit.
15. Ground 9(ii) - the supporting submissions provided by the appellant does not specify the issue of law and fact that was violated by the trial judge during the trial. The discussion with reference to the use of the Facebook by the complainant and the appellant's objection to that use does not give rise to the claim which form the basis of this ground of appeal
16. This ground is frivolous and has no merit.
17. Ground 9 (iii) alleged that the trial judge erred in law and fact in not establishing the elements of the offence of Rape before he finds the appellant guilty. In reviewing the judgement to assess this ground, paragraphs 15, 16, 17, 18 and 19 set out clearly the elements of the offence of rape. In those paragraphs, the trial judge provided clear explanation of the evidence that he considered proved the element of the offence of rape. I agree with his analysis.
18. At the trial the only issue that was contended by the appellant was consent. The trial judge at paragraphs 20 to 22 discussed the exact requirement of consent in a rape charge. At paragraph 27 (xi) and (xii) the evidence of the rape of the complainant is set out clearly in Q&A format from the evidence she gave in court and which she maintained under cross-examination.
19. Furthermore, the claim by the complainant that the rape was without her consent and that it was forceful, is supported by the evidence of the Dr Burua, the Medical Doctor

- that examined the complainant on 21 September 2020, set out in paragraph 28 (vi) to (xi).
20. The trial judge at paragraph 53 to 60 set out clearly the basis on which he analyzed the evidence and how it has satisfied the element of the offence of Rape against the appellant.
21. This ground has no merit.
22. Ground 9 (iv) is unhelpful because the appellant gave no specific reference to the trial judge's analysis of the evidence with regard to the two counts of charges against the appellant, which showed that he was biased in his assessment of the evidence. To illustrate the trial judge's, his consideration of the evidence for the charges against the appellant, at paragraphs 40 to 45 the trial judge, refers to the charge of Unlawful Wounding which he held on the evidence adduced did not support such a charge, instead he substituted it for Assault Causing Actual Bodily Harm after considering the medical evidence.
23. The above review of the evidence shows clearly that the trial judge was independent in his analysis of the evidence and he was balance in his assessment as well.
24. This ground has no merit.
25. Grounds 9 (v) and (vi) submitted by the appellant is relevant to an appeal against sentence, which this was not. These grounds are frivolous and has no merit.

ORDER:

1. Appellant's appeal against conviction is refused.





Hon. Justice Isikeli U. Maitoga
PRESIDENT, COURT OF APPEAL