

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

CRIMINAL APPEAL NO. AAU 0116 OF 2023
[Suva High Court: HAC 169 of 2021]

BETWEEN : **ULAIASI KANACUVA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Appellant in Person**
Naibe, S. for the Respondent

Date of Hearing : **6 December, 2024**

Date of Ruling : **4 March, 2025**

RULING

[1] The appellant [Ulaiasi Kanacuva] was charged with 2 counts of Rape, contrary to section 207(1) and 2 (a)(b) of the Crimes Act and 1 count of sexual Assault, contrary to section 210(1) of the Crimes Act. After a trial in the High Court at Suva, the appellant was found guilty as charged on 1 August 2023. He was sentenced on 11 August 2023.

[2] The appellant was sentenced to an aggregate term of 12 years imprisonment for the 2 counts of Rape and 1 count of Sexual Assault. The appellant was in remand custody for approximately 2 years, while awaiting his trial, so the final sentence was adjusted to reduce the sentence to 10 years imprisonment with a non-parole period of 7 years.

The Appeal

[3] On 28 August 2023, the appellant submitted an application for leave to appeal against conviction. This was a timely appeal.

[4] The Notice for Leave to Appeal was submitted with 7 grounds of appeal involving mixed questions of law and facts.

Relevant Law

[5] Section 21(1)b) of the Court of Appeal Act requires leave for grounds of appeal involving mixed questions of law and facts.

[6] For a timely appeal like this one, the test for 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**.

[7] On that basis each of the grounds of appeal will now be assessed.

Grounds of Appeal

[8] Ground 1 – that there was no proper defence for the appellant during the trial.

[9] The appellant did not give evidence at the trial, nor did he call any witness for his defence. His position at the trial was total denial that the rape and sexual assault did not take place. On the evidence before the trial, which was accepted by the trial judge as credible and truthful, it was open to him to find the appellant guilty as charged.

- [10] There is no merit to this ground.
- [11] Ground 2 – the mother and daughter conspired to delude and defame the appellant.
- [12] This ground is frivolous. There is no evidence adduced at the trial to support this claim. This was the imagination of the appellant himself. There is no merit to this ground.
- [13] Ground 3 – the Chronology of the victim’s evidence showed fabrication and doubts.
- [14] Another frivolous ground advanced by the appellant. This claim as never raised at the trial, no was there any evidence adduce at the trial that would support this ground. The appellant referred to the chronology of events surround the complainant’s complaint and the other sexual relations he alleged the complainant was involved in. Since he did not give evidence himself, he was unable to show any evidence to support his claim to fabrication etc.
- [15] This ground has no merit.
- [16] Ground 4 and Additional Ground 1 – That the doctor’s evidence on September 12 looks doubtful when the victim went and drank liquor with some youths.
- [17] Like the other grounds above, this ground also lacks specific identification of what is nature of the error of law and or facts the trial judge made. The appellant is suggesting without any evidence that since she was examined on 12 September 2021 by Dr Lorima Laganikoro and some injuries and bruising was found in the vaginal opening of the complainant that it may have been caused by one of the youths who the complainant was drinking with on that day.
- [18] At paragraph 31 and 32 of the judgement, the trial judge observed: **State v Kanacuva [2023] FJHC 539 (HAC 169 of 2021).**

“[32] I warn myself of the dangers associated with mistaken identification but I am convinced that the complainant’s identification of the accused

is correct and is reliable. There was no other adult male inside the house at the time of the incident. The complainant recognized the accused because he is her stepfather and they lived in the same house. She reported the incident and on the same day she was medically examined. The doctor found fresh vaginal injuries consistent with blunt force trauma. I believe the complainant's account of sexual assault and digital rape on 12 September 2021.

[33] On count two, I feel sure that the accused assaulted the complainant by touching her breast. I feel sure that this act would be considered indecent by the ordinary standards of respectable people in our community. I feel sure that the accused did not have a lawful excuse for what he did. I feel sure that the complainant did not consent and that the accused knew that the complainant did not consent to the touching of her breast. The prosecution has proved count two beyond a reasonable doubt.

[19] On that analysis of the evidence, this ground of appeal is mere speculation on what might have happened. It has no merit.

[20] **Grounds 5 & 6** – The testimonies of the complainant were never cross-examined.

[21] This is a claim of incompetent counsel. It was never raised at the trial and not pursued according to guideline set out by the Court of Appeal in **Nilesh Chand v State [2019] FJCA 254; Baleiono v State [2024] FJCA 49**

[22] It cannot be entertained in this leave to appeal hearing.

[23] **Ground 7 & Additional Ground 3** – Trial judge was not astute during trial by convicting the appellant guilty of the crimes.

[24] This ground of appeal raises issues which is confusing. It seem to be claiming that certain witnesses like the village chief should have been called. It may be so, but the relevance if any evidence they may give is not made clear. In addition, it is not the trial Judge's responsibility to decide which witnesses should be called at the trial. The appellant himself have the right to call witnesses, such as the village chief, to support his claim and he did not do that.

[25] Another confused and misconceived submission with no merit.

[26] Additional **Grounds 2 and 4** raises issues not raised at the trial and border on the scandalous. It has no merit.

[27] **Additional ground 6** claim that the victim never mentioned in court if her lover came regularly to visit her.

[28] It is not made clear from the evidence that the complainant's lover came regularly to visit her. Even if it is true, how relevant it is to the appellant's case is made not clear. Another frivolous ground with no merit.

[29] In summary none of the grounds of appeal against conviction submitted by the appellant, have any reasonable prospect of success in the full court.

ORDER:

1. Appellant's application for Leave to Appeal against conviction is refused



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