

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

**CRIMINAL APPEAL NO. AAU 0008 OF 2023**  
**[High Court: HAC 185 of 2019]**

**BETWEEN** : **VILIAME EREINADI** *Appellant*

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

**Coram** : Mataitoga, P

**Counsel** : Appellant in Person  
Kumar R., for the Respondent [ODPP]

**Date of Hearing** : 3 December, 2024

**Date of Ruling** : 3 February, 2025

**RULING**

1. The appellant [Viliame Ereinadi] was charged with 1 count of Rape by the DPP pursuant to an Information filed in the High Court at Lautoka as follows:

**Count One**

*Statement of Offence*

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

### *Particulars of Offence*

**VILIAME ERANADI**, between the 1<sup>st</sup> day of October 2017 and the 31<sup>st</sup> day of October 2017, at Sigatoka, in the Western Division, penetrated the vagina of **KN**, with his penis, without her consent.

2. The appellant pleaded not guilty to the charge and the ensuing trial was held over 3 days. Thereafter, the Learned Counsel for the State and Defence made their closing submissions.
3. The trial judge found the charge proven beyond reasonable doubt and found the appellant guilty and convicted him accordingly on 27 July 2022.
4. On 30 September 2022, the appellant was sentence to 12 years and 10 months imprisonment with a non-parole period of 8 years and 10 months imprisonment. He had 30 days to appeal.

### The Appeal

5. The appellant filed a Notice of Appeal **against conviction** by letter dated 26 October 2022, but was received in the court registry on 9 December 2022. The court take the date of 26 October 2022 as the date of the appeal, thus making this appeal timely.
6. In that initial letter of 26 October 2022, the appellant submitted the grounds 1 and 2 below. On 9 May 2024, the appellant filed Additional Grounds of appeal, itemised as 3 to 8 below:
  - i) That the trial judge erred in law when he failed to consider the lessor offence of defilement on the fact that the complainant was pregnant and between the ages of 13 to 16 years.
  - ii) The verdict of guilty was not supported by having regard to improbabilities, inconsistencies, contradiction and irregularities of the evidence of the state.
  - iii) The trial judge erred in law when he failed to adequately consider the absence of recent complaint, distress evidence and the medical evidence to test the veracity of the complainant's evidence.

- iv) The trial judge erred in law when he failed to direct himself on the burden and standard of proof.
  - v) Trial erred in law when he did not direct himself that the prosecution must prove the case beyond reasonable doubt.
  - vi) Trial judge failed to make an independent assessment of the entirety of the evidence before finding a guilty verdict against the appellant.
  - vii) The verdict was unsafe and unsatisfactory having regard to the evidence.
  - viii) Trial judge erred in law and fact by failing to give in depth weighted consideration and direction to the correctness of complainant's omissions to the court statements and to the correctness of the allegations narrated.
7. The assessment of the above grounds will first consider and amalgamate those grounds raising similar issues.

#### Relevant Law

8. 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.
9. For a timely appeal, the test for leave to appeal against conviction is 'reasonable prospect of success' see: Caucu 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

10. **Ground 1:** States the trial judge erred in law and fact when he failed to consider the lesser offence of defilement of a young person between 13 and 16 years of age.
11. This ground raises the legal basis on which a trial judge may find an accused person guilty of lesser kindred offence where the lesser offence was not charge in the alternative. In this case the charge before the court was Rape, with no alternative

charge of Defilement. The appellant is claiming the trial judge erred in law and fact in not considering the lesser offence of Defilement.

12. This claim is based on a misunderstanding of the power of a trial judge as in this case to consider a lesser offence defilement.

13. The Court of Appeal in **Ali v State [2008] FJCA 30 (AAU 014 of 2008) stated:**

*“[9] The power to convict of a kindred offence on a charge of rape is expressly provided by section 176 of the [Criminal Procedure Code](#). Section 176 states:*

*Conviction of kindred offence on charge of rape.*

*When a person is charged with rape and the court is of opinion that he is not guilty of that offence but that he is guilty of an offence under one of the sections 154(1), 155, 156, 158 and 178 of the [Penal Code](#), he may be convicted of that offence although he was not charged with it.*

*[10] We take that ‘the court’ as referred in section 176 to mean ‘the trial court’. In this case the trial court was the magistrate’s court.”*

14. This was a case where the ingredients of the charge of Rape against the appellant were proven beyond reasonable doubt and conviction entered by the trial judge. The issue of consent despite the issues raised by the appellant was insufficient to negate the evidence which the court accepted.

15. This ground has no merit.

16. **Ground, 2, 6 and 7** [Paragraph 6 above] refers to the appellant’s claim of inconsistencies, contradiction, irregularities in the complainant’s evidence is such as to make the guilty verdict unsafe and unsatisfactory

17. The evidence which the trial judge relied on are set out in paragraph 22 of the judgement. It was the complainant’s evidence. It was subjected to cross-examination by counsel for the appellant, but it was limited to the issue of consent. None of the issues now raised as the subject matter of these grounds, were by raised by counsel

for the appellant at the trial<sup>1</sup>. They are grounds that came as an afterthought after the trial in the High Court.

18. The evidence of the complainant was forthright and was not impeached in cross-examination. In his assessment of the evidence, the trial judge stated as follows in the judgment:

*“[38] In any event, the complainant has clearly testified as why she did not complain about the incident promptly. She said that she did not do so as the accused had repeatedly threatened her not to tell anyone about it or else he will do something to her. I am satisfied with the complainant’s explanation for the delay in reporting the matter.*

*[39] Furthermore, I see no reason why the complainant should falsely implicate the accused, who is her own cousin, and as admitted by the accused, with whom her family and his family were always on good terms, before he was taken in for questioning for this case. It is my opinion that the only reason why the complainant implicated the accused was because the incident had actually taken place and because the accused had inserted his penis into her vagina, without her consent, on a day in the month of October 2017.*

*[40] For the aforesaid reasons, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.”*

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19. In light of the assessment of the evidence of the trial judge, these grounds of appeal have no merit.
20. **Grounds 3 and 4** raise the issue of recent complainant and sufficiency of evidence to prove charge against the appellant. In paragraph 38 of the Judgement the delay in making a complaint was adequately explained by the Judge. It has not been clarified by the appellant in his submission, how the medical evidence related to the issue of recent complainant.
21. At paragraphs 39 to 44 of the judgement, the trial judge states:

*“[39] Furthermore, I see no reason why the complainant should falsely implicate the accused, who is her own cousin, and as admitted by the accused, with whom her family and his family were always on good*

*terms, before he was taken in for questioning for this case. It is my opinion that the only reason why the complainant implicated the accused was because the incident had actually taken place and because the accused had inserted his penis into her vagina, without her consent, on a day in the month of October 2017.*

*[40] For the aforesaid reasons, it is my opinion, that the defence version cannot be accepted as truthful and reliable and I reject the defence version.*

*[41] Having analysed all the evidence in its totality, it is my considered opinion that the complainant's evidence, can be accepted as truthful, credible and reliable. The complainant withstood the rigorous cross examination by the Defence and remained consistent throughout her evidence, in relation to the material particulars of this case.*

*[42] It must also be mentioned that in terms of the provisions of Section 129 of the Criminal Procedure Act, "Where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted".*

*[43] Considering the nature of all the evidence before this Court, it is my considered opinion that the prosecution has proved its case beyond reasonable doubt by adducing truthful and reliable evidence satisfying all elements of the charge of Rape with which the accused has been charged.*

*[44] In the circumstances, I find the accused guilty of the charge of Rape."*

22. The trial judge's assessment of the evidence above, showed that he has considered the totality of the evidence and is satisfied beyond reasonable doubt, that the charge against the appellant is proven to required standard.


23. These grounds have no merit

24. **Ground 8** is misconceived and contradictory. First the appellant denied ever meeting the complainant on the date of the offence and denies any romantic relationship with the complainant. In his additional submissions he now claims that the complainant's evidence was forced by his parents and in violation of a secret pact between the appellant and the complainant, where they have been having secret sexual relations for some time.

25. This ground of appeal has no merit.

**ORDERS:**

Appellant application for leave to appeal on all grounds declined.



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**Hon. Justice Isikeli U. Maitaitoga**  
PRESIDENT, COURT OF APPEAL