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

CRIMINAL APPEAL NO. AAU 0041 of 2022
[Suva High Court Case No: HAC 258 of 2020]

BETWEEN : **ILAITIA RAVITIKULA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Mataitoga, P**

Counsel : **Ratidara L, for the Appellant**
: **Nasa J, for the Respondent**

Date of Hearing : **11 March, 2025**

Date of Ruling : **10 April, 2025**

RULING

[1] The appellant [Ilaitia Ravitikula] was charged with two representative counts of sexual assault (counts 1-2), four representative counts of digital rape (counts 3-6) and one count of penile rape (count 7).

[2] The charges cover a period of three and half years from 1 January 2017 to 8 August 2020.

[3] On counts one and two, the prosecution alleges that the appellant on at least two occasions procured the complainant to commit an act of gross indecency by forcing her to touch his penis. The prosecution says that on the occasion alleged on count one, the complainant was under the age of 13 years.

[4] On counts three and four, the prosecution alleges that the appellant on at least two occasions penetrated the complainant's vagina with his finger, without her consent. The prosecution says that on the occasion alleged on count three, the complainant was under the age of 13 years.

[5] On counts five and six, the prosecution alleges that the appellant on at least two occasions penetrated the complainant's mouth with his penis, without her consent. The prosecution that on that occasion alleged on count five, the complainant was under the age of 13 years.

[6] On count seven, the prosecution alleges that on 8 August 2020 the appellant penetrated the complainant's vagina with his penis, without her consent.

[7] Following the trial in the High Court at Suva, the appellant was found guilty of all the charges and convicted on 13 April 2022. He was sentenced on 13 April 2022 to a total effective sentence of 18 years imprisonment, after taking the remand period of the appellant while awaiting trial of 7 months, the remaining sentence to be served is 17 years 5 months imprisonment with a non-parole period of 14 years. A permanent DVRP with standard no contact and non-molestation conditions were issues against the appellant.

[8] The appellant had 30 days to appeal the High Court judgement.

The Appeal

[9] In a letter dated 1 June 2022 signed by the appellant, which was received in the Court of Appeal Registry on 2 June 2022, Notice was given to appeal against conviction and

sentence. The Notice of appeal was 31 days late. The letter stated the grounds of appeal as follows:

Conviction Appeal

The trial judge erred in law and fact by not adequately considering the inconsistencies in the complainant's evidence.

Sentence Appeal

The sentence was harsh and excessive.

Enlargement of Time Application

[10] Whether enlargement of time is granted by the court, the guideline factors outlined in **Rasaku v State [2013] FJSC 4 (CAV009/2009)** will be used to assess submissions of the appellant in support of his application. The guideline factors are:

i) Reasons for the failure to file on time;
ii) Length of the delay;
iii) Whether there is any ground of merit justifying the appellate court's consideration;
iv) Where the delay is substantial, is there any ground of appeal that will probably succeed;
v) Will the Respondent be prejudiced if time in enlarged.

Delay and Reasons for it

[11] The delay is 31 days, taking the date of the judgement in the High Court as the reference point.

[12] The approach the court will take in this case will be the same stated in **Nawalu v State [2013] FJSC 11 (CAV 0012/2012) as:**

> *"[8] In The Queen v Brown (1963) SASR 190 at p.191 it was said:*
>
> > *"The practice is that, if any reasonable explanation is forthcoming, and if the delay is, relatively, slight, say for a few days or even a week or two, the Court will readily extend the time, provided that there is a question which justifies serious consideration."*

In Julien Miller v The State AAU0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave. The appellant in that case was 11½ months late and leave was refused. For an incarcerated unrepresented Appellant up to 3 months might persuade a court to consider granting leave if other factors are in the Appellant's favour.

[9] The delay in making the appeal here was very lengthy, and one not normally to be overlooked. Finality is important in all litigation. There must therefore be compelling grounds of appeal to allow an appeal as late as this to go forward."

[13] If the grounds advance by the appellant in his submission has merit, the delay may be excused because it is not substantial.

Merit of the Appeal

[14] The appellant submit that *the trial judge did not adequately consider the inconsistencies in the complainant's evidence* and that this was an error of law and fact. In making this submission the appellant relied on **Senibua v State [2022] FJCA 61**, with regard to the nature of inconsistent evidence that may arise in a trial. At paragraph 24 it states:

"[24] It is settled law that inconsistencies in evidence can take the form of a contradiction or an omission and that such contradiction or omission can be between a previous sworn statement and evidence at the trial or between a previous unsworn statement and the evidence given at the trial. Inconsistencies may be manifest in the testimony of a witness perse or interse the testimony of several witnesses.

*[25] If such contradiction or omission is to be treated as an inconsistency, it is imperative that such position is put to the witness during cross examination. It is only then that the witness is afforded the opportunity of explaining the reasons for such contradiction or omission and the assessors and the trial judge are in turn able to consider as to whether the explanation is acceptable. These aspects were dealt with in the cases of **Gyan Singh v R** (1963) 9 FLR p105 and **Jagdishwar Singh and another v R** (1962) 8 FLR p159."*

[15] The trial judge addressed the issue of consistency and credibility of the complainant evidence in his analysis of the series of incidents of rape and sexual assault by the appellant on the complainant at paragraphs 42 to 54 of the judgement: **State v Ravitikula [2022] FJHC 160 (HAC 258 0f 2020)**

> *"[42] The prosecution case is substantially dependent upon the complainant's evidence. I approach her evidence without sympathy or prejudice. If her account of the alleged incidents are true, then the accused is guilty of the charges. However, if her account is false or may be false then the accused is not guilty.*
>
> *[43] The complainant's account of the accused touching her for the first time that made her to get out of the bed and go to her mother in 2017 is an uncharged act. This incident is relied upon by the prosecution to make the circumstances of the particular offences charged more intelligible. The incident is not relied upon to establish a tendency on the part of the accused to commit offences of the type charged, and therefore, the incident cannot be used as an element in the chain of the offences charged. The. The only use I make of this incident if I accept it to be true is to place the charged acts into a realistic context.*
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> *[44] Apart from the alleged incident on 8 August 2020 subject of count seven, all other alleged incidents are representative charges.*
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> *[45] The complainant's account is that the first set of alleged incidents occurred in 2017 when she was living in Namadi Heights. In 2017 she was eleven years old and was in Year 6. Her account is that the accused invited her to his bedroom and took off her pants. He inserted his finger into her vagina (count 3), got her to masturbate him (count 1) and suck his penis (count 5).*
>
> *[46] The complainant's account is that similar incidents were repeated when they moved to Cunningham in 2019. Her account of the incident at Cunningham is that the accused invited her in his bedroom, took off her clothes, made her to masturbate him (count 2) and suck his penis (count 6). He also inserted his finger into her vagina (count 4).*
>
> *[47] The complainant's account of the last incident before the matter was reported to police is that the accused was drunk and forced her to have sexual intercourse with him inside their house at Cunningham.*
>
> *[48] I find there is consistency in the complainant's account despite her reporting the incidents late to police. I find her explanation for the delay in reporting the incidents reasonable. She came from a poor family background. Her mother worked as a housemaid for living. She was of a tender age at the time of the first incident. After her*

biological father had passed away, her mother entered into a live-in relationship with accused.

[49] The complainant had witnessed the accused asserting his authority over her mother and her siblings. She was the youngest of the siblings. She was a girl. The gap between her and the accused was vast.

[50] The complainant struck me as an honest witness. I believe her evidence that the accused threatened to kill her if she complained that she was scared to complain to her mother, neighbours and teachers.

[51] The complainant's account of the incident on 8 August 2020 is consistent with the account of the incident by witnesses Liliviwa and Kitiana. Liliviwa's account is more descriptive than Kitiana's account, the reason being that they were taking turns to peep into the bedroom through a small hole made of nail on the corrugated iron wall.

[52] These two witnesses did not see the accused having sexual intercourse with the complainant but Liliviwa saw the accused and the complainant naked on the bed and the accused was touching the complainant's lower part of the body and the complainant was crying and the accused was threatening her. The hole on the wall may have been tiny but the duration of the observation was long and not fleeting. The observation was made during daylight in the afternoon and the witnesses' accounts are that they fled the scene when the accused banged the wall and swore at them.

[53] The accused's account is that he was so drunk that he could not remember anything. However, the defence accepts that self-induced intoxication is not a defence for rape.

[54] Shortly after this incident the next door neighbour of the complainant witnessed the complainant coming to her home in a distressed condition."

[16] In this case the trial judge addressed the issue of consistency in the witnesses [Liliviwa and Kitiana] evidence with the complainant's evidence in paragraph 29 which state:

"[29] When she entered his room, he told her to take off her clothes. She was scared of him because he was drunk. His eyes were all red. She started crying and told him that she wanted to go to her mum. When she started crying she heard her two friends who she was playing with, call out to her. She said that the accused insisted that she take off her clothes and lie on the bed. She complied. He forcefully pulled her legs apart and penetrated her vagina with his penis. While he

was penetrating her, she continuously cried and told him that she wanted to go to her mother. He did not listen.

[30] When he was done he told her to go and make tea for him. She left the room and waited until he fell asleep when she ran to her neighbour's house, crying. When she reached her neighbour's house she did not say anything but continued to cry. She remained at the neighbour's house until her mother returned home and took her to the police station.

[17] In reviewing the analysis of the trial judge of the evidence, I find that there is no inconsistency in the complainant's evidence when compared to the evidence of Liliviwa and Kitiana. They did not say that they witnessed the act of sexual intercourse but Liliviwa confirmed seeing both the complainant and the appellant naked and lying on the bed and the appellant was touching the complainant's lower part of her body and she was crying. The appellant was threatening her as the same time.

[18] At paragraph 32-34 of the judgement state:

"[32] Two other children gave evidence regarding the incident charged on count seven. Liliviwa and Kitiana told the court that in the afternoon of 8 August 2020 they were playing with the complainant outside her house in Cunningham when the accused came and told the complainant to go inside with him. When the complainant went inside the house with the accused, Liliviwa and Kitiana went at the back of the house and took turns to peep into the bedroom through a hole from a nail on corrugated iron wall. <u>They said nothing obstructed their view.</u>

[33] Kitiana told the court that she saw the complainant lying on the accused's bed and crying and the accused talking to her.

[34] Liliviwa gave a more detailed account of what she saw. She said that she saw the accused and the complainant lying on the bed and that he was kissing and touching her lower part of her body. She said that they were not wearing any clothes. She saw the complainant crying and resisting the accused and pleading with him not to do anything to her. She heard the accused threatening the complainant that he will cut her into pieces and throw her off the cliff. She said that when the accused realized he was being watched he punched the corrugated iron wall and swore at the girls. The girls got scared and ran away from there."

[19] I am satisfied that when the paragraph 34 is read in the context of the other evidence, it is clear that there is no inconsistency or if it exists, it is peripheral and it does not vitiate the clear evidence adduced in the trial.

Sentence Appeal

[20] This was a case where the appellant was convicted of 4 representative counts of digital rape and 1 count of penile Rape. The offences were spread over a period of 3 ½ years from 1 January 2017 to 8 August 2020. The appellant was 40 to 42 years old when he committed the offences; the complainant was 11-13 years old.

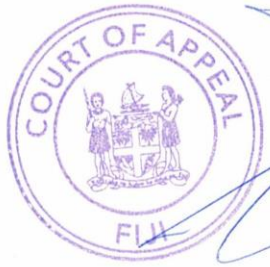
[21] The trial judge correctly referred to **Aitcheson v State [2018] FJSC 29 and Raj v State [2014] FJSC 12** as the cases to guide the sentencing of the appellant. The maximum sentence of the offences committed by the appellant is life imprisonment. The aggregate term 14 years of imprisonment for the five counts of rape in my view is favorable to the appellant, given the persistent breach of trust he showed in his repeated commission of the offences on a young person who depend on him for personal security and the big disparity in the age of the complainant and the appellant.

[22] The final sentence of 17 years 5 months imprisonment is hardly harsh and excessive. It is lenient for me. This ground has no merit.

[23] In conclusion, the application for enlargement of time to appeal is refused.

ORDER:

1. Appellant's application for Enlargement of Time to Appeal is refused.



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