IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Criminal Misc. Case No: HAM173 of 2012 [Ltk]

BETWEEN	**:**	**ISAAC NAVUNIGASAU** ***Applicant***
AND	**:**	**THE STATE** ***Respondent***
BEFORE	**:**	**HON. MR. JUSTICE PAUL MADIGAN**
Counsel	:	Mr. S. Waqainabete (L.A.C.) for Applicant Mr. S. Babitu for State
Dates of hearing	:	26th March 2013
Date of judgment	:	10th April 2013

JUDGMENT

[1] The applicant applies for leave to appeal out of time his conviction for an offence of rape in the Rakiraki Magistrates' Court on 20th October 2011. The appeal was filed in the High Court in Lautoka on 21st May 2012 some 6 months out of time.

[2] The applicant, having shown by affidavit that his timely appeal was lost in the prison system and not filed as he had requested, is granted leave to appeal out of time.

[3] The original appeal was against conviction and sentence but I am advised by counsel for the appellant that he abandons his appeal against sentence.

[4] The appeal was quite properly first heard in the Lautoka High Court but transferred to Suva on the appellant's own application as he is being kept in custody in Naboro.

[5] The appellant was tried in the Magistrates' Court at Rakiraki on the following charge:

Statement of Offence

Rape: Contrary to sections 149 and 150 of the Penal Code, Cap. 17.

Particulars of Offence

Isaac Navunigasau on the 16th day of November 2006 at Bucalevu, Rakiraki in the Western Division, had unlawful carnal knowledge of Arieta Naisogobuli without her consent.

[6] He entered a plea of not guilty to the charge and it proceeded to trial before the learned Resident Magistrate at Rakiraki on divers dates from 2nd June 2010 to 9th December 2010. Judgment was delivered on 20th October 2011 when he was convicted.

[7] The appellant has filed home made grounds of appeal which can be distilled into the following two grounds:

1) That the evidence of the complainant in Court was inconsistent with recent complaints she made to others at the time.

2) The medical report does not support the allegation.

[8] The second ground of appeal can be dealt with in short measure. There being no need for corroboration of an allegation of rape since the Court of Appeal decision in ***Seremaia Balelala*** *[2004] FJCA 49*, a medical report becomes but an aide-memoire for the medical officer who examined the complainant after the alleged incident. The examination was conducted on the 29th November 2006 with the rape being said to have been committed between 16th and 23rd November. It is understandable that there would not be exhibited signs of abuse or forced entry to the vagina. The medical evidence cannot be evidence of anything: it is unhelpful to either the State or the accused, nor is medical evidence necessary to support the allegation. This ground of appeal fails.

[9] The complainant gave *viva voce* evidence that on a day in November 2006 the accused, her "uncle" (he was actually the cousin of her father) had offered her employment. She and her father agreed and she presented herself therefore at the accused's office. He told her that any ladies who came to his office "had to be checked." If she was found to have an illness, he would write it in his book and send it overseas. He made her undress and lay on a bed. He put hospital gloves on and spectacles and spreading her legs he touched her genitals, opening her vagina. When he had finished "checking", she dressed and went outside. He later told her to come back in, to undress and to lay again on the bed. He then undressed himself, lay on top of her and raped her. He threatened her and told her not to tell anybody. She dressed and walked home. When she got home she told Salome and Talica what had happened.

[10] On the 9th February she was at home with her parents when the accused came. He took her and her father to another uncle's house when she was made to sign "a paper." (The paper was later seen to be a withdrawal of the complaint of rape). She did not read the paper and

didn't know what she was signing. She affirmed in Court that at that time she had no intention of withdrawing the charge.

[11] The accused gave alibi evidence that he was in Suva at all relevant times and that the complainant was lying about the rape.

[12] The appellant submits that the complainant had made contradictory and inconsistent statements about what had happened in the accused's office; sometimes saying that she had been "examined", sometimes saying that she had been raped. In particularly they pray that the girl's father had made a statement that he was only told of the examination, as were Salome and Talica. He submits that these inconsistencies make the Magistrate's finding of guilty unsafe.

Analysis

[13] It is trite law that the only evidence that is of any value is the evidence voiced in Court. The complainant gave a very clear and consistent account of what had happened in her uncle's office and the Magistrate chose to believe it.

[14] Although the father gave evidence, it was never put to him by defence counsel that his daughter had only told him of the sexual examination and not of the rape. He gave evidence that he had "heard stories" and that his daughter had told him that the accused had "touched" her. He said that the accused approached him one evening in February 2009 and asked to sign a "paper". He did not read it, but only signed it.

[15] Neither Salome nor Talica gave evidence, and to that extent any inconsistencies claimed from their statements are both irrelevant and inadmissible.

[16] Even if it could be shown to the satisfaction of the Court that the evidence of recent complaint was not complete, in that the complainant had related only the "examination" incident and not the rape, then that would not be fatal to the conviction. This exact scenario was dealt with by the English Court of Appeal in ***Spooner v R*** *[2004] EWCA Crim. 1320*. Thomas L.J in discussing the doctrine of recent complaint said this:

> *"it is not in our judgment necessary that the complaint discloses the ingredients of the offence: it will, however, usually be necessary that the complaint discloses evidence of material and relevant unlawful sexual conduct on the part of the defendant which could support the credibility of the complainant. It is not therefore usually necessary that the complaint describes the full extent of the unlawful sexual conduct alleged by the complainant in the witness box, provided it is capable of supporting the credibility of the complainant's evidence given at trial. Differences may be accounted for by a variety of matters, but it is for the Jury to assess these. For example in cases of alleged abuse (such as this) by stepfather or other family members, it would be for the Jury to consider whether the differences arises because, as is known to happen on some occasions, the complainant cannot bring herself to disclose the full extent of the conduct alleged against the defendant at the time of the contemporaneous complaint."*

[17] These words are extremely apposite to the present case. The lady has told part of her story to others as a recent complaint but not the full story. She has made enough of a recent complaint to add credibility and consistency to her evidence (and nothing more by way of corroboration or validation is necessary in law). Her evidence in chief becomes the authoritative evidence and the Magistrate has accepted it and relied on it. It would be very rare for an appellate Court to go behind the factual findings of a court of first instance which has heard the evidence of a complainant first hand and has been able to evaluate his/her demeanour.

[18] This ground of appeal is not made out.

[19] The appeal against conviction is dismissed.

Paul K. Madigan
JUDGE

At Suva
10th April 1013