

IN THE SUPREME COURT OF FIJI
AT SUVA

CRIMINAL PETITION NO: CAV 0026 of 2019
Court of Appeal No. AAU 67 of 2013

BETWEEN: SEVANAIA SIGABANA

Petitioner

AND: THE STATE

Respondent

Coram: The Hon. Acting Chief Justice Salesi Temo
Acting President of the Supreme Court

The Hon. Mr. Justice Anthony Gates
Judge of the Supreme Court

The Hon. Mr. Justice Isikeli Maitaitoga
Judge of the Supreme Court

Counsel: Petitioner appeared in person
Mr R. Kumar (Office of the DPP) for the Respondent

Date of Hearing: 03 April, 2023

Date of Judgement: 27 April, 2023

JUDGEMENT

Temo, AP

[1] I agree entirely with Justice Maitaitoga's judgment, reasoning and conclusion.

Gates, J

[2] I agree with the reasons and conclusion of Mataitoga J's judgment.

Mataitoga, J

[3] The Petitioner filed his petition for special leave to appeal to the Supreme Court on 7 November 2019. There were 7 grounds of appeal articulated in the written submission that was filed. The Special Leave if granted would allow the petitioner to appeal against conviction.

High Court

[4] In the High Court the petitioner was charged with one count of rape contrary to section 207(1) and (2) (b) of the Crimes Decree No: 44 of 2009 and one count of indecent assault contrary to section 212(1) of the Crimes Decrees No: 44 of 2009. After 3 days of trial and following the assessors returning a unanimous verdict of guilt,

[5] The trial judge accepted the assessor's verdict, and convicted the petitioner. He was sentenced to 10 years imprisonment with non-parole period of 8 years for Rape and 3 years imprisonment for the indecent assault. The sentences are to be served concurrently.

[6] The Petitioner [appellant] appeals against conviction in the Court of Appeal and he submitted 3 grounds of appeal which was held to raise arguable issues of law by a Justice of Appeal sitting alone and the full appeal was allowed.

Court of Appeal

[7] The Petitioner [appellant] submitted 3 grounds of appeal against conviction to support his appeal. These are as follows:

- (i) The learned trial judge erred in law and fact when he had misdirected the assessors on the issue of recent complaint in light of the fact that the circumstances of the case do not contain a recent complaint, thereby causing prejudice to the appellant.

- (ii) The learned trial judge had erred in law and in fact when he misdirected the assessors by telling them to consider the evidence of the appellant looking into the washroom whilst the complainant was using the washroom when considering the charge of indecent assault
- (iii) The learned trial judge had erred in fact and law when he misstated the evidence for count 2 that the appellant had admitted ‘fondling’ the witness thereby causing prejudice to the appellant.’

[8] The Court of Appeal carefully assessed each of the grounds of appeal against the relevant case law and the relevant facts pertaining to each of the grounds of appeal. It concluded that all the grounds of appeal have no merit. The appeal was dismissed and the convictions in the High Court on count 1 [rape] and count 2 [indecent assault] affirmed.

Supreme Court

[9] The Petitioner had applied for special leave to appeal under the section 7(2) of the Supreme Court Act 2016.

[10] The petitioner’s ground of appeal is a rehashing of the three grounds that was submitted to the Court of Appeal.

[11] At the special leave petition hearing on 3 April 2023, the petitioner advised the court that he would like to withdraw his appeal against conviction and sentence. He further advised the court that he fully understood the consequences of his decision and that he made this decision voluntarily. The court specifically informed the petitioner that his request to withdraw if granted would mean that he will not be allowed to appeal this matter again. He confirmed that he understands that to be so.

[12] When the court asked the petitioner if there were other reasons behind his decisions to withdraw. The petitioner responded by saying that (i) he is due to be released in 2024 and,

(ii) he is engaged in one of the Prisoners Rehabilitation Program and he would like to dedicate most of his time before he is released on that.

[13] The Court having received clear confirmation that there is nothing untoward in the Petitioner's requests to withdraw his application for leave to appeal to the Supreme Court. The Counsel for the State having no further matter to submit supports the petitioner's application to withdraw his application for special leave.

Court Order

[14] In light of the assessment and considerations above, the Court makes the following orders:

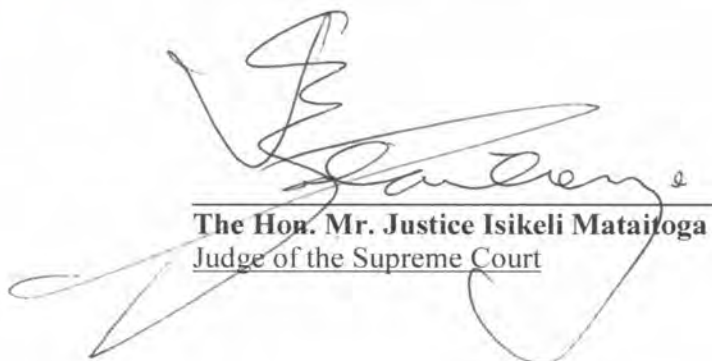
- (i) Application by the petitioner to withdraw the Petition for Special Leave is granted.
- (ii) Petition is forthwith dismissed.



The Hon. Acting Chief Justice Salesi Temo
Acting President of the Supreme Court



The Hon. Mr. Justice Anthony Gates
Judge of the Supreme Court



The Hon. Mr. Justice Isikeli Matailoga
Judge of the Supreme Court