

**IN THE COURT OF APPEAL, FIJI**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CRIMINAL APPEAL NO. AAU 105 of 2016**  
**(High Court HAC 37 of 2013)**

**BETWEEN** : **SAMISONI BAUKARI** *Appellant*

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

**Coram** : **Chandra RJA**

**Counsel** : **Mr. T Lee with Ms. N Mishra Appellant**  
**Mr. M D Korovou for the Respondent**

**Date of Hearing** : **12 June 2018**

**Date of Ruling** : **20 August 2018**

**RULING**

- [1] The Appellant was charged with one count of rape contrary to sections 207(1) and 207(2)(a) of the Crimes Decree 2009.
- [2] After trial the Assessors returned with a unanimous opinion of not guilty, but the learned trial Judge rejected the opinion of the Assessors and convicted the Appellant of rape.

- [3] On 11<sup>th</sup> July 2016 the Appellant was sentenced to eight years and six months imprisonment with a non-parole period of 7 years imprisonment.
- [4] The Appellant by an undated letter applied for leave to appeal his conviction and sentence and has been considered as a timely appeal.
- [5] By his amended petition of appeal dated 6<sup>th</sup> March 2016 the Appellant has set out the following grounds of appeal:
- [1] The learned trial Judge erred in law and caused the trial to miscarry in convicting the Appellant on insufficiency of evidence led by the prosecution.
- [2] The learned trial Judge caused the trial to miscarry to convict the Appellant on the unreliable and incredible evidence of the complainant.
- [3] The learned trial Judge erred in law in considering 10 years as the appropriate starting point.
- [6] To succeed in an application for leave to appeal, all that is required of the appellant is to demonstrate arguable grounds of appeal. (Dip Chand v State [2008] FJCA 53; AAU0035.2007 (19 September 2008).
- [7] At the trial the victim and two others had given evidence. The prosecution had also led the caution interview statement of the Appellant where he had admitted having had intercourse with the victim with her consent. The Appellant chose not to give evidence at the trial.
- [8] The learned trial Judge had in his judgment rejecting the opinion of the Assessors stated that he was not accepting the position taken up by the Appellant in his caution interview statement and concluded that the prosecution had proved its case beyond reasonable doubt.
- [9] The first two grounds of appeal which are against conviction is on the nature of the evidence led at the trial. It was submitted on behalf of the Appellant that the evidence


before Court was the evidence of the victim and two other witnesses to whom she had related the incident. That, in her evidence there were certain inconsistencies which the learned trial Judge did not consider as serious.

- [10] The full court will be in a better position to consider the entirety of the evidence, namely the evidence of the victim, the two prosecution witnesses and the statement of the Appellant in his caution interview statement when the full trial proceedings are made available to consider whether the evidence led by the prosecution was sufficient to prove its case.
- [11] In those circumstances, I would consider these two grounds of appeal advanced by the Appellant to be arguable.
- [12] The third ground of appeal is against sentence on the basis that the learned trial Judge had taken a high starting point in sentencing the Appellant.
- [13] The learned trial Judge had taken a starting point of 10 years by considering the seriousness of the offence and the level of harm and culpability.
- [14] In Koroivuki v State [2013] FJCA 15; AAU0018.20100 (5 March 2013) The Court of Appeal stated that the sentencing court should consider the objective seriousness of the offence and not the aggravating factors of the case before it when fixing a starting point.
- [15] The basis of choosing 10 years as a starting point by the learned trial Judge appears to have traversed the aggravating factors and therefore the appeal against sentence becomes arguable.
- [16] The grounds of appeal against conviction and sentence are therefore arguable and leave is granted.

**Orders of Court:**

*Leave to appeal against conviction and sentence is granted.*



  
Hon. Justice S. Chandra  
**RESIDENT JUSTICE OF APPEAL**