

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

**CRIMINAL APPEAL NO. AAU0033 OF 2014**  
**(High Court Criminal Case No. HAC063 of 2012)**

**BETWEEN** : **KITIONE KAMIKAMICA** *Appellant*

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

**Before** : The Hon. Justice Daniel Goundar

**Counsel** : Ms T. Rigsby for the Appellant  
Mr. Y. Prasad for the Respondent

**Date of Hearing** : 5 July 2016

**Date of Ruling** : 15 July 2016

**RULING**

- [1] This is a timely application for leave to appeal against conviction only. The test for leave is whether the grounds are arguable (*Naisua v State* unreported Cr App No CAV0010/13; 20 November 2013).
- [2] The appellant was convicted of rape after a trial in the High Court at Suva. He was sentenced to 13 years imprisonment with a non-parole period of 11 years.
- [3] The appellant advances the following grounds of appeal:
- 1) The Learned Trial Judge erred in law and in fact when he failed to direct the assessors on the use of recent complaint evidence to assess the credibility of the Complainant.
  - 2) The Learned Trial Judge erred in law and in fact when he did not direct and/or guide the Assessors on the cross examination of the victim by the Appellant resulting in a substantial miscarriage of justice.

- 3) The Learned Trial Judge erred in law and in fact by misdirecting himself in holding/finding that the evidence of the complainant is independently corroborated by her cousin Tarusila and her mother whom the Complainant told about the incident almost one year later.
- 4) The Learned Trial Judge erred in law and in fact in not taking into consideration the evidence of the Medical Practitioner who stated in court that upon examination the Doctor did not find any of the following:
  - a. No injuries of the vagina
  - b. No injuries on the anus.
- 5) The Learned Trial Judge did not take into consideration the evidence of the Medical Practitioner that there could be a possibility that since no injuries were found during the Complainant's examination, there is a possibility that no injury was caused to her by the Appellant.
- 6) The Learned Trial Judge erred in law and in fact in not adequately directing/misdirecting himself that the Prosecution evidence before the Court proved beyond reasonable doubt that there were serious doubts in the Prosecution case and as such the benefit of doubt ought to have been given to the Appellant.  
[Full particulars will be given upon receipt of the Court Record]
- 7) That the Learned Trial Judge erred in law and in fact in commenting on the evidence raising a new theory on the facts, uncanvassed during the course of the trial whereby the defence has had no opportunity of commenting upon it.  
[Full particulars will be given upon receipt of the Court Record]
- 8) That the Learned Trial Judge erred in law and in fact in not directing himself to refer any Summing Up the possible defense on evidence and in failing to do so, there was a substantial miscarriage of Justice.  
[Full particulars will be given upon receipt of the Court Record]
- 9) That the Learned Trial Judge erred in law and in fact in not adequately/sufficiently/referring/directing/putting/considering himself the Appellant's case to the Prosecution and Defence evidence.  
[Full particulars will be given upon receipt of the Court Record]

**Ground 1 – Recent complaint**

[4] In cases of sexual offence, recent complaint evidence is led to show consistency in the conduct of the complainant and to negative consent (*White v R* [1999] AC 210). In this case, the victim was a 9-year old child when the alleged rape was committed on the first term of 2012. Consent or lack of it was not an issue. The victim did not report the alleged incident until January 2013 when she told her cousin. Clearly, there was no recent complaint evidence requiring a special direction. Ground 1 is unarguable.

**Ground 2 - Failure to direct on cross-examination of victim**

[5] There is no special direction required on the cross-examination of a victim. What is required is a fair summary of the evidence as it relates to the trial issues. In paragraphs 9-10 of the summing-up, the trial judge fairly summarised the victim's evidence. This ground is unarguable.

**Ground 3 - Misdirection on Tarusila's evidence**

[6] In paragraph [4] of his judgment, the trial judge said that the victim's evidence was corroborated by her cousin Tarusila and her mother. This is rather unfortunate comment by the trial judge for two reasons. Firstly, the trial judge was not required by the law to look for corroboration in sexual cases. Secondly, the trial judge misdirected by saying complaint evidence corroborated the victim's evidence (*Senikarawa v State* unreported Cr App No AAU0005/04S; 24 March 2006). Ground 3 is arguable.

**Grounds 4 -5 – Medical evidence**

[7] The victim was medically examined almost 1 year after the alleged rape. Of course, there would be no injuries in the genitals by that time. But the doctor did find that the victim's hymen was broken. That was the only relevance of the medical evidence. The trial judge was not required to give special directions on medical evidence. These grounds are unarguable.

**Grounds 6-9**

[8] Counsel for the appellant made no submissions on these grounds saying full particulars will be given upon receipt of the court record. Full particulars of the

alleged error is required when the grounds are framed, and not upon receipt of the court record (*Vulaca & Ors v State* unreported Cr App No AAU0038/08; unreported 29 August 2011, [15]). For that reason, these grounds are unarguable.

**Result**

[9] Leave granted on ground 3 only.



A handwritten signature in blue ink, appearing to read "D Goundar".

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Hon. Mr. Justice Daniel Goundar  
**JUSTICE OF APPEAL**

**Solicitors:**

Messrs Rigsby Law for Appellant  
Office of the Director of Public Prosecutions for State