

IN THE COURT OF APPEAL
[On Appeal From The High Court]

CRIMINAL APPEAL NO: AAU0030 OF 2012
(High Court Case No: HAC 191 of 2010)

BETWEEN : CLAUDIUS PRANEEL KUMAR

Appellant

AND : THE STATE

Respondent

Coram : Goundar JA

**Counsel : Ms N. Nawasaitoga for the Appellant
Mr. Y. Prasad for the Respondent**

Date of Hearing : 13 May 2014

Date of Ruling : 2 June 2014

RULING

[1] Following a trial in the High Court, the appellant was convicted of rape and sentenced to 10 years' imprisonment.

[2] This is an appeal against conviction on the following grounds:

1. The Learned Trial Judge erred in law and in fact when his direction at paragraph 7 of his summing up was inadequate.
2. The Learned Trial Judge erred in law and in fact when he allowed the prosecution through the complainant and the complainant's mother to give hearsay evidence.
3. The Learned Trial Judge erred in law and in fact when he failed to properly direct the assessors on how to weigh the opinion evidence of the doctor.

Ground 1 – Directions on social media coverage

- [3] This ground alleges that the trial judge's directions to the assessors at paragraph 7 of the summing up were inadequate. Paragraph 7 reads:

“.....You must disregard anything you might have heard, about this case, outside of the Courtroom”.

- [4] The appellant submits that the trial judge should have also directed the assessors to disregard anything they might have seen and heard about the case on social media. This submission is clearly taken out of context. Before the trial judge directed the assessors to disregard anything they might have heard about the case from outside sources, the trial judge also directed the assessors to base their decisions solely and exclusively upon the evidence which they heard in court and nothing else. Secondly, there was no evidence this case attracted publicity on social media. In any event, the trial judge's direction was sufficient to exclude all sources of outside information on the case. This ground is not arguable.

Ground 2 – Hearsay complaint evidence

- [5] This ground relates to complaint evidence. The appellant submits that the complaint evidence should not have been allowed because it was hearsay. The victim's mother gave evidence that she learnt about the alleged incident from one Uraia. Uraia was not called to give evidence. If Uraia was not called to give evidence, then it is arguable that what he said to the victim's mother was hearsay and should not have been led in evidence. However, counsel for the appellant took no objection to this evidence at trial. The evidence albeit was hearsay had no bearing on the conviction. The appellant was convicted on the victim's evidence led at the trial. The hearsay evidence only explained how the victim's mother initially came to know about the alleged incident. This ground is not arguable.

Ground 3 – Medical evidence

- [6] This ground relates to directions on the medical opinion evidence. The trial judge's directions on the medical opinion are contained at paragraphs [21-22] of the summing up:

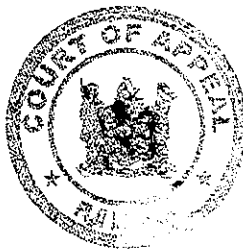
"The last witness for the prosecution was Dr. James Fong, the consultant gynecologist attached to the CWM hospital. His expertise as a medical doctor was not challenged by the defence and therefore his opinion is admissible. The medical report of the victim which was compiled by Dr. Temalesi McCaig was produced in evidence. According to the medical report, when the victim [S] was examined on the 11th of August 2010, the hymen had not been intact. Penetration had occurred according to the Professional opinion of the doctor who examined her and the witness Doctor said, that he agrees with the opinion based on the medical findings and the history given. Answering the question posed by the defence counsel he said, that columns D12 and D14 of the medical report where medical findings and the professional opinion are stated, does not say that the hymen was not intact due to the actions of the accused.


In re-examination he said that the history related is very important to give the professional opinion. Further he said that it is very uncommon for a 12 year old to lose the hymen by horse riding and cycling."

- [7] The medical evidence was of limited relevance. It confirmed the victim's evidence of penetration, but the medical evidence did not implicate the appellant. In my judgment, the trial judge gave fair and balanced directions on medical opinion evidence. This ground is not arguable.

Result

- [8] Leave to appeal is refused. I am further satisfied that the appeal cannot possibly succeed and is frivolous.
- [9] The appeal is dismissed under section 35(2) of the Court of Appeal Act.





 Hon. Justice D. Goundar
JUSTICE OF APPEAL