

IN THE COURT OF APPEAL, FIJI
[ON APPEAL FROM THE HIGH COURT]

Criminal Appeal No. AAU 056 of 2015
(High Court Case No. 162 of 2013)

BETWEEN : **KANEA NAUA**

Appellant

AND : **THE STATE**

Respondent

Coram : **Gamalath, JA**

Counsel : **Mr. S. Waqainabete for the Appellant**
Mr. S. Babitu for the Respondent

Date of Hearing : **15 May 2019**

Date of Ruling : **6 June 2019**

RULING

Gamalath, JA

- [1] The Appellant faced trial in the High Court on two counts; one count of sexual assault and another count of rape contrary to Sections 210(1) (a) and 207(1) and (2) (b) and (3) of the Crimes Act (Decree) 44 of 2009, respectively.

- [2] He was convicted as charged on 20 February 2015 and sentenced on 25 February 2015 to 5 years' imprisonment for sexual assault and 12 years and 8 months imprisonment for rape; both sentences were to run concurrently with a non-parole period of 10 years imprisonment.
- [3] By way of a letter addressed to the Court of Appeal Registry, the appellant himself sought to invoke the appellate jurisdiction against both the conviction and the sentence; however as can be seen, the letter has been written on 27 April 2015, and thus it was out of time by one month and a few days.
- [4] At the outset, the counsel for the State informed the Court that they have no objection to the consideration of the almost insignificantly delayed application for leave to appeal against the conviction and the sentence.
- [5] The Court accepted the position of the State. On examining the merits of the proposed grounds of appeal, this Court is required to focus the attention on the availability of any arguable grounds as reflected through the application for leave. **Dip Chand v The State** [2008] FJCA 53; AAU0035.2007 (19 September 2008).
- [6] The first ground of appeal relates to the issue of the denial of the right to a fair trial, in which the appellant claims that;
- (1) the learned trial judge erred in law and in fact when he did not properly consider that the record of the caution interview of the appellant was fabricated by the Police during the interview and he did not understand the process given that he understood very little language thus amount to being subject to an oppressive circumstances which should not have been admitted into evidence. [sic].

[7] The other two grounds of appeal are as follows;

Ground (2) that the learned Trial Judge erred in law and in fact when he did not properly consider the denial of the appellant in the trial which was consistent and credible.

Ground (3) that the learned trial Judge erred in law and in fact when he did not give direction to the assessors relating to the consequences of a complain that was not recent which goes to the consistency of the evidence of the complainant and nothing else.

[8] As for the first ground above, the appellant is a Kiribati, whose knowledge of the English language is said to be very poor. He had been provided with the assistance of a translator at the High Court trial; however insofar as the recording of his caution interview was concerned there had been no assistance of a translator and hence the objection to the voluntariness and the credibility of the statement for which his signature is said to have been taken without explaining to him its contents.

[9] However, during the voir dire proceedings the appellant seemed to have given no evidence in support of his contention. The trial Judge had dealt with the aspect of the non-availability of an interpreter extensively and had directed the assessors on this issue adequately.

[10] Right to interpret is an unqualified right and the State is duty bound to do so for the preservation of the spirit of fair trial. *Archibald* – 2019; para 16 – 126, page 2122.

[11] However, in the light of the fact that the appellant seemed to have remained silent at the voir-dire inquiry on this particularly significant issue and at the same time that the learned Trial Judge had adverted his mind to the issue adequately in the summing up, it

leaves much to be desired as far as the strength of this ground is concerned. Therefore, I hold that the ground is not arguable.

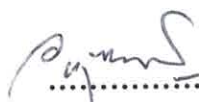
- [12] Insofar as the 2 grounds of appeal is concerned, its contents is obscure and unsupportable having regard to any particular material.
- [13] The case against the appellant was that he sexually abused a girl, who was merely 7 years old at the time of the commission of the offences. She had testified at the trial and the learned Trial Judge had adequately and dispassionately dealt with the entirety of the available evidence.
- [14] In the light of these facts, I am unable to find any merits in this ground of appeal and hence it does not offer an arguable ground.
- [15] The 3rd ground of appeal relates to the inadequacy in directing the assessors on the issue of the consequences of a complaint that was not recent.
- [16] I find that this ground is also not arguable. The learned Trial Judge, in the summing Up had stated as follows:-

“18. Ladies and Gentleman, there is no rule of law that says the victim of rape or sexual assault must tell somebody else and must tell somebody else soon after the assault. The fact that she did and the circumstances that she did you will take into account and give them whatever weight you might think fit. Even if she never told anybody at any time, you are still entitled to judge this case on the evidence of Doreen alone”.

[17] In the light of the above mentioned reasons, I am unable to grant leave to appeal against conviction and thereby to quash the sentence.

[18] The application for leave to appeal is refused.




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Hon. Justice S. Gamalath
JUSTICE OF APPEAL