

**IN THE SUPREME COURT OF FIJI**  
**AT SUVA**  
**APPELLATE CRIMINAL JURISDICTION**

Petition for Special Leave to Appeal  
No. CAV0003 of 2014.

**IN THE MATTER OF AN APPEAL**  
from the decision of the Court of Appeal  
No. AAU0038/10 on appeal from  
High Court Case No. HAC9/2010.

**BETWEEN:** ANAND ABHAY RAJ

**Petitioner**

**AND:** THE STATE

**Respondent**

**Coram:** The Hon. Chief Justice Anthony Gates,  
President of the Supreme Court  
The Hon. Mr. Justice Sathya Hettige PC,  
Judge of the Supreme Court  
The Hon. Madam Justice Chandra Ekanayake,  
Judge of the Supreme Court

**Counsel:** Mr. S. Sharma, Director, Legal Aid Commission, for the Petitioner  
Ms P. Madanavosa for the Respondent

**Date of Hearing:** 5 August 2014

**Date of Judgment:** 20 August 2014

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**JUDGMENT**

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**Chief Justice Anthony Gates:**

- [1] The Petitioner's amended petition of appeal was filed on 28<sup>th</sup> July 2014. This raises two grounds of appeal, one concerning a failure to direct on recent complaint evidence and one against excessive sentence. The original signed petition which was hand

written had been filed within time on 31<sup>st</sup> March 2014. The Court of Appeal's decision which is now challenged had been delivered on 5<sup>th</sup> March 2014.

- [2] All of the grounds raised in the original petition, when the Petitioner was not represented, according to Mr. Sharma, counsel for the petitioner, are now abandoned in favour of the two new grounds.
- [3] On 7<sup>th</sup> June 2010 the Petitioner was convicted before the Suva High Court of 4 counts of rape contrary to sections 149 and 150 of the Penal Code and one count of indecent assault contrary to section 154(1) of the Penal Code. All of the counts in the information were said to be representative of the total wrongdoing. The three assessors tendered unanimous opinions that the Petitioner was guilty on all 5 counts. The judge accepted those opinions and convicted the Petitioner on all 5 counts.
- [4] On 10<sup>th</sup> June 2010 the Petitioner was sentenced to terms of 16 years imprisonment concurrent on the rape charges with a minimum non-parole period fixed of 12 years. He was sentenced to a concurrent term of 3 years imprisonment on the indecent assault charge.

#### **The Evidence in the High Court**

- [5] The victim, a female child, was aged 10 years when her 37 year old de facto step-father, the Petitioner, first committed an act of rape upon her. The unlawful conduct was said to have been going on for a little more than a year, between January 2008 – January 2009 at the Petitioner's home in Muanikoso. The Petitioner denied any form of sexual contact with the victim. However at trial he chose to remain silent. In doing so he exercised a right which was properly open to him without attracting adverse inference, and this the learned judge made clear to the assessors.
- [6] The victim's mother had to go out to work at times when the Petitioner was at home alone with the victim.
- [7] In the Court of Appeal judgment the nub of the case was summarised [at para [4]:



*"The complainant said in her evidence that he would touch her all over the body and in Court using a body chart she pointed to genitals saying that he would insert his penis into her vagina and then threaten her that if she told anyone he would kill her. Once when she wanted to tell her mother he hit her on the mouth causing her to bleed. Her mother asked her what had happened and she said nothing because the accused was present watching and she was scared. She told of repeated acts of rape in 2008 and 2009 and said she didn't like it and didn't want him to do it. She eventually told her cousin in Navua who told her own mother and the offences were thus revealed."*

- [8] In her evidence the complainant gave explicit evidence of penile penetration by the Petitioner. She also referred to the threats to kill her if she told anyone. It used to happen when the Petitioner did not go to work. She did not tell her mother about it but instead eventually told her cousin sister who lived in Navua. She did not tell her mother she said because "my stepfather beat me up" [Record p180]. She was hit on the mouth and was injured. He threatened to beat her up "if she told her mother."
  
- [9] She mentioned the occasion when the Petitioner had been sitting outside with two neighbours. He had then come into her bedroom and touched her breasts. She pushed him away. This was seen by the two men she said, one of whom came to give evidence which supported what she had said had happened to her in full view of those two. Her mother was in the bathroom whilst this was going on. This was the incident that formed the indecent assault charge.
  
- [10] She said she had told her grandmother and cousin sister about this incident. The cousin was told a few days later in Navua when she went on a visit. She did not tell them of the insertions, only of the touching, and that the Petitioner had said he wanted "to make a baby like my sister's daughter." She said she did not tell the full story because she was scared.
  
- [11] She went with the grandmother after this conversation and they visited the Social Welfare. She was not taken to the police then, only after she had been injured by the Petitioner. In court the complainant moved out from behind the screen and identified the Petitioner as the perpetrator.
  
- [12] The complainant said it was the first time she had experienced such a thing.

- [13] In cross-examination, she said she had not told one of her sisters who was living with her because "I was scared that if I tell her she will reveal everything to mom and she will get beaten by the Accused." She conceded she never liked the Accused, who was very strict with her, telling her she must go to school.
- [14] One of the cousin sisters was younger than the complainant. She was 8 years old when she gave evidence. She said the complainant told her the Petitioner was touching her body and her breasts, "and if I want I can tell my mother about it." She did, and her mother was the next witness.
- [15] The mother spoke to the complainant. She said the complainant was crying and afraid. But she repeated the allegation against the Petitioner. This information was passed on to the grandmother, who next gave evidence of the complaint and of taking the granddaughter to the Social Welfare.
- [16] The 5<sup>th</sup> prosecution witness Prani Pradeep Singh was the next door neighbour. He was married with a 3 year old child. He said he had seen the Petitioner touching the complainant's private parts and breasts. They had been drinking beer with the Petitioner. He had been helping the Petitioner the whole day repairing a vehicle. This witness and a man called Danny were in the porch and could see inside the house to the bedroom.
- [17] The complainant was lying on the bed. Prani saw the Petitioner put his hands underneath the dress of the complainant. He saw him touching her private parts and her breasts. The girl's reaction he said was "very scared and helpless." He saw her trying to push him away. The Petitioner was in the room for approximately 7 minutes. He confronted the Petitioner when he returned to the porch. The Petitioner said he was just cuddling the girl "so I told him that I saw what he was doing to the girl. He didn't speak further. That was the last beer we had. I went home." [Record p202].



[18] He conceded in cross-examination that he witnessed the incident whilst "standing and leaning against the car" not from the sitting room. The last part of the cross-examination went as follows [Record p205]:

"Q: I put it to you, you do this because you have a grudge against Anand for confronting you on the battery?

A: No why I am doing this today because I have a 3 year old daughter too.

Q: Even though you have a 3 year old daughter in 2009 June you didn't report to Police?

A: I thought it would be suitable for my wife to talk to Anand's wife about this."

[19] The witness was not shaken in cross-examination.

[20] Dr. Reapi Mataika, a Paediatric Registrar, had a Diploma in Child Health and was studying for her Masters in Child Medicine. The complainant was taken to the doctor by her grandmother. In her report the doctor observed and noted that the child was "quite distressed when asked to recount incidents, crying." The medical report was read out in the course of the witness' evidence and exhibited. Upon her examination the doctor noted that there was no evidence of an hymen. She explained that the hymen could be lost through sexual intercourse or if there were a blood trauma. Sometimes physical activity such as horse riding could also cause the loss.

[21] The doctor was of the opinion that the loss as described by the complainant was consistent with what was found upon examination. The Petitioner's behaviour towards the child was sufficient to cause the loss.

[22] The doctor said the history and examination were undertaken when the complainant was alone with her. The grandmother was asked to be outside, which is the normal procedure in such cases.

[23] The Petitioner was interviewed by the police and these allegations put to him. He denied them completely, as also in his charge statement.

- [24] As I have said earlier, the Petitioner declined to give evidence himself. He called no witnesses.

### The Court of Appeal and the Raising of a Fresh Ground

- [25] Apart from one ground, the alleged severity of the sentence, the appeal to the Court of Appeal against conviction was made on grounds not carried forward to this court. The appeal against conviction is now made on an entirely fresh ground, which I set out below:

#### Ground One

The Learned Appellate Judges of Appeal erred in law and in fact when they failed to realize that the summing up of the Learned Trial Judge lacks directions to the assessors on the use of recent complaint evidence to assess the credibility of the complainant resulting in substantial miscarriage of justice.

- [26] It must be remembered that when the decision of the Court of Appeal is not itself impugned, but that an entirely fresh ground is sought to be argued in the Apex Court, the task of the Petitioner in achieving the grant of special leave is that much more arduous.
- [27] In *Dip Chand v The State* CAV0014/2012, 9<sup>th</sup> May 2012 this Court [at paragraph 34] held that:

*"Given that the criteria set out in section 7(2) of the Supreme Court Act No. 14 of 1998 are extremely stringent, and special leave to appeal is not granted as a matter of course, the fact that the majority of the grounds relied upon by the petitioner for special leave to appeal have not been raised in the Court of Appeal makes the task of the petitioner of crossing the threshold requirements for special leave even more difficult."*

- [28] The Court continued at paragraph 36:

*"The Supreme Court has been even more stringent in considering the applications for special leave to appeal on the basis of grounds of appeal not taken up or argued in the Court of Appeal. In Josateki Solinakoroi -v- The State Criminal Appeal No. CAV 0005 of 2005 the Supreme Court of Fiji in an exceptional case took into consideration the principles developed by (the) Privy Council in similar situations and in particular relied on the following observation in Kwaku Mensah -v- The King (1946) AC 83:*



*"Where a substantial and grave injustice might otherwise occur the Privy Council would allow a new point to be taken which had not been raised below even when it was not raised in the petitioner's printed case."*

- [29] The same line was taken in Akuila Dromudole v. The State CAV0013/2013, 19<sup>th</sup> August 2014, a decision delivered in these very same sittings. In Charles v. The State [2000] 1 WLR 384 the Board observed that matters should be raised first with the trial judge [which it was] and then with the Court of Appeal [which it was not]. The matters there involved delay, re-trial and abuse of process. Lord Slynn of Hadley at page 387H said:

*"Their Lordships would generally be reluctant to allow the issue to be raised for the first time before them. Here, the issue was raised squarely before the judge even though it was not raised before the Court of Appeal. In the circumstances their Lordships accept that since the matter was raised before the trial judge the defendants are entitled to raise the issue before them on this appeal."*

- [30] In the instant case, counsel for the Petitioner was asked by the trial judge whether he sought any re-directions at the end of the summing up. Counsel agreed with prosecuting counsel there was nothing else to direct on [Record p208]. This omission is in itself usually sufficient to disregard a ground such as is raised here: Segran Murti v. The State Crim. App. No. CAV0016/2008S 12<sup>th</sup> February 2009 paragraphs 11, 15, 21-23; Truong v. The Queen [2004] HCA 10; 2004 ALJR 473.
- [31] The position might have been different if the charge laid was incapable of being proved, such as where evidence led had been given at a Royal Commission which evidence had by statute been specifically made inadmissible in criminal proceedings: Gianarelli v. The Queen (1983) 154 CLR 212. Such a set of circumstances was truly exceptional, and this is the threshold to be applied.

#### Evidence of Recent Complaint

- [32] Fiji courts are no longer concerned with corroboration of a complainant's evidence in a trial for an offence of a sexual nature. Section 129 of the Criminal Procedure Decree

2009 governed the evidentiary conduct of the trial, though the events related pre-dated the imposition of that section. It read:

S.129 "*Where any person is tried for an offence of a sexual nature, no corroboration of the complainant's evidence shall be necessary for that person to be convicted; and in any such case the judge or magistrate shall not be required to give any warning to the assessors relating to the absence of corroboration.*"

[33] In any case evidence of recent complaint was never capable of corroborating the complainant's account: R v. Whitehead (1929) 1 KB 99. At most it was relevant to the question of consistency, or inconsistency, in the complainant's conduct, and as such was a matter going to her credibility and reliability as a witness: Basant Singh & Others v. The State Crim. App. 12 of 1989; Jones v. The Queen (1997) 191 CLR 439; Vasu v. The State Crim. App. AAU0011/2006S, 24<sup>th</sup> November 2006.

[34] At trial, defence counsel could have raised with the judge the proper direction to the assessors. In Abdul Khair Mohammad Islam [1997] 1 Cr. App. R. 22 Buxton LJ said:

*"We are told that before speeches, and very usefully and properly, in accordance with the practice repeatedly urged by this Court, counsel discussed with the judge any particular directions that he should give to the jury. It was apparently agreed that he should remind the jury of the particular, and limited, nature and effect of the complaint evidence. In the event, however, no such direction was given. At the end of the summing-up neither counsel reminded the judge of that omission."*

[35] The raising of direction matters in this way is a useful trial function and in following it, counsel assist in achieving a fair trial. In doing so they act in their client's interest. The appellate courts will not look favourably on cases where counsel have held their seats, hoping for an appeal point, when issues in directions should have been raised with the judge. We do not believe this was intended in this case.

[36] In the case before us the judge referred in his directions to the complaints to the other witnesses in these terms [Record p41]:



*"The prosecution case rests substantially on the evidence of the victim Shayal. Prosecution says that her evidence is reliable, that it is strengthened by her informing it to the cousin sister, grandmother and the Doctor."*

- [37] Procedurally for the evidence of recent complaint to be admissible, both the complainant and the witness complained to, must testify as to the terms of the complaint: Kory White v. The Queen [1999] 1 AC 210 at p215H. This was done here.
- [38] The complaint is not evidence of facts complained of, nor is it corroboration. It goes to the consistency of the conduct of the complainant with her evidence given at the trial. It goes to support and enhance the credibility of the complainant.
- [39] The complaint need not disclose all of the ingredients of the offence. But it must disclose evidence of material and relevant unlawful sexual conduct on the part of the Accused. It is not necessary for the complainant to describe the full extent of the unlawful sexual conduct, provided it is capable of supporting the credibility of the complainant's evidence. The judge should point out inconsistencies. These he referred to in an earlier paragraph.
- [40] The Petitioner's argument is that the complainant did not go so far as to complain to the witnesses about rape. The cousin sister said the complainant told her that the Petitioner was touching her body and breasts. The same story was related by the aunt, the mother of the cousin sister, and by the grandmother.
- [41] However when alone with the doctor, the complainant told a fuller story. She recorded the complainant as saying "Her stepdad Anand usually touches her breasts and at times would remove her panties and insert his fingers into her. He also sucks her breasts and twice he put his 'susu' into her 'susu'."
- [42] In The State v. Waisea Volavola Cr. App. HAA 106/2002S in dealing with recent complaint and the issue of the complaint being "recent" Shameem J said at p13:

*"However, her silence could easily have been consistent with her shame at the incident, connected with cultural taboos in relation to discussing sexual matters with elders. To say that an absence of recent complaint confirms*

*consent is an error of both fact and law. On the facts of this case, there was nothing to suggest that her silence meant consent to the sexual intercourse."*

- [43] This might explain the lack of explicit forthrightness by the complainant on the extent of the molestation when speaking to her relatives, as against the opportunity to put the story to the doctor when she was not overshadowed by those taboos. Certainly it was open to regard the report to the doctor as a recent complaint in view of the fear with which she was observed preventing her from telling the full story, and the fear of which she testified. Strict dicta to the contrary in Peniasi Senikarawa v. The State *Crim. App. AAU0005/2004S* 24<sup>th</sup> March 2006 may have been setting too inflexible a rule. A complainant's explanation as to why a report was not made immediately, or in its fullest detail, is to be expected. The real question is whether the witness was consistent and credible in her conduct and in her explanation of it.
- [44] There were of course several difficulties with the recent complaint evidence in Senikarawa. The mother's evidence did not tally well with that of the complainant daughter. But one must bear in mind as was said in Spooner v. R [2004] *EWCA Crim. 1320 Eng. Court of Appeal* it is not necessary for the complainant to describe "the full extent of the unlawful sexual conduct." It is enough here, besides the evidence of touching the body all over, the touching the breasts, touching of private parts, and the inserting of fingers into the vagina. Molested traumatised children are not to be expected to provide answers with confident all-encompassing and anatomical precision as if to a Board of Examining Surgeons.
- [45] In White *supra* at p220C, the Privy Council held that since the case turned entirely upon the complainant's credibility, it was not possible to apply the proviso and the appeal had to be allowed and the conviction set aside. In that case the persons to whom she complained were not called to give evidence, and so there was no supportive evidence of her consistency and credibility.
- [46] In the instant case, the judge's recounting of the prosecutor's closing arguments may have been infelicitous. It was after all the credibility and consistency of the complainant that was supported, if accepted, by the evidence of recent complaints, not the complainant's 'evidence' that was strengthened. The distinction in the purpose of



the evidence has been done away with in England by the passing of the Criminal Justice Act 2003 which makes the previous statements admissible if certain conditions are met [s.120 (4) (7) and (8)].

- [47] Here though there were repeated complaints, they did at least provide evidence of the complainant's consistent conduct: R v. O [2006] 2 Cr. App. R. 27.
- [48] The judge went on to refer to the other evidence which provided supportive evidence of the complaint. First there was the doctor's evidence. There was no other suggestion as to how the hymen was missing. Of course the doctor's evidence did not link the Petitioner in the crime. That identity was provided by the complainant whom the assessors and judge upon their observations at trial were to decide whether she had been truthful and credible in making such accusations.
- [49] The other powerful evidence was that of the neighbour who saw the molestation in the bedroom from the porch. That was direct evidence, supporting the complainant's evidence, contradicting the defence case of total denial of any impropriety and tending to confirm the complainant was a witness of truth. This was clearly cogent and convincing evidence. There was no such independent evidence in White.
- [50] The inadequacy of the direction would not therefore have affected the result.
- [51] Special leave is not to be granted on an issue not raised in the two lower courts, for no exceptional grounds have been raised. If such had been found, the proviso would have been applied since there was available other convincing evidence of guilt disregarding the credibility evidence of recent complaints. A substantial and grave injustice will not occur from a refusal of special leave on this ground and on the appeal against conviction [section 7 (2) (c) Supreme Court Act]. The threshold requirements for leave have not been reached.

### Against Sentence

[52] The Petitioner through his counsel files a single ground of appeal against sentence stating that the learned trial judge "erred in principle and also erred in exercising his sentencing discretion to the extent –

- (a) That he took a high starting point of 12 years imprisonment.
- (b) Adding 7 years as aggravating factors to the already high starting point."

[53] As has been said often by this court, the challenge in the Supreme Court must be to the error of the court below in its judgment, that is of the Court of Appeal, not that of the High Court. The appeal by petition is brought by virtue of this court's jurisdiction [section 98 (3) Constitution of 2013].

[54] Counsel referred us to Simeli Bili Naisua v. The State Crim. App. No. CAV 0010 of 2003. At paragraphs 19, 20 Goundar JA in the Supreme Court set out the correct approach to sentencing appeals. It is worth repeating those clear directions:

*"[19] It is clear that the Court of Appeal will approach an appeal against sentencing using the principles set out in House v The King (1936) 55 CLR 499 and adopted in Kim Nam Bae v The State Criminal Appeal No. AAU0015 at [2]. Appellate courts will interfere with a sentence if it is demonstrated that the trial judge made one of the following errors:*

- (i) Acted upon a wrong principle;*
- (ii) Allowed extraneous or irrelevant matters to guide or affect him;*
- (iii) Mistook the facts;*
- (iv) Failed to take into account some relevant consideration.*

*[20] When considering the grounds of appeal against sentence, the above principles serve as an important yardstick to arrive at a conclusion whether the ground is arguable. This point is well supported by a decision on leave to appeal against sentence in Chirk King Yam v The State Criminal Appeal No. AAU0095 of 2011 at [18]-[9]. In the present case, the learned judge's conclusion that the appellant had not shown his sentence was wrong in law was made in error. The test for leave is not whether the sentence is wrong in law. The test is whether the grounds of appeal against sentence are arguable points under the four principles of Kim Bam Bae's case."*



[55] I therefore asked the Petitioner's counsel under which of these permissible appellate headings he sought to bring this sentencing appeal. He indicated it was on (i) that is that the judge acted upon a wrong principle. However as was clear during the course of counsel's argument, and in the written submissions, the complaint dealt with quantum of sentence rather than principle. Indeed the nature of the principle offended was not identified. Quantum can rarely be a ground for the intervention of the Supreme Court.

[56] In the High Court the Accused was sentenced as follows:

Count 1.	[Rape]	16 years imprisonment
2.	[Rape]	"
3.	[Rape]	"
4.	[Rape]	"
5.	[Indecent Assault]	3 years imprisonment

All sentences were ordered to be served concurrently. The total sentence therefore was 16 years. The judge ordered a non-parole period or minimum term to be served of 12 years imprisonment.

[57] The learned judge referred to State v. AV [2009] FJHC 24; HAC 192.2008, 21<sup>st</sup> February 2009 where it had been said:

*"Rape is the most serious form of sexual assault .... Society cannot condone any form of sexual assaults on children ... Sexual offenders must be deterred from committing this kind of offences."*

[58] The judge correctly identified the tariff for rape of a child as being between 10-16 years imprisonment (Mutch v. State Cr. App. AAU 0060/99, Mani v. State Cr. App. No. HAA 0053/021, State v. Saitava Cr. Case No. HAC 10/07, State v. Tony Cr. App. No. HAA 003/08).

[59] His Lordship took his starting point as 12 years and added 7 years for the aggravating factors. No criticism can be made of the starting point selected. It was within the tariff.

[60] A reduction of 2 years was allowed for the Petitioner's mitigating factors. The mitigation was identified as that he was 40 years old with a 5 year old son from a previous marriage and that he was looking after a 53 year old mother. In addition it was acknowledged that his business and properties had been taken over by his brother, "and that he was remorseful." In the circumstances, the allowance of 2 years was over-generous as was noted by the Court of Appeal. His responsibility for his 5 year old son and 53 year old mother was in reality of little mitigatory value.

[61] However the suggestion that he was remorseful could count for nothing. He had pleaded not guilty, which was his right. But in doing so, he had put the complainant through the misery, fear, and embarrassment of having to give evidence and be cross-examined. Then he gave no evidence. Such a combination has been considered to amount to no mitigation at all: Asesela Drotini v. The State *Crim. App. AAU0001/2005S* 24<sup>th</sup> March 2006. She gave evidence in court from behind a screen. Indeed in his appeal, and by his appeal against conviction, he has maintained his innocence. No value can be attached to such remorse.

[62] The high level of the sentence had its origin in the seriously aggravating factors which were identified by the judge in his sentencing remarks.

[63] They were:

- (i) The Petitioner was the complainant's stepfather who should have protected her. Instead he breached the trust expected of him, and the breach was gross.
- (ii) The rape offences took place continuously over a long period of time. Such an experience "will surely scar her for the rest of her life" [Record p24].
- (iii) She was a child of 10 years. It is not clear what factors the learned judge took into account when fixing the starting point on the tariff. The age of the child, if very young, could yet be an aggravating factor. In this case it is more likely and appropriate that it be put into consideration for arriving at the tariff only, and not added on later as an aggravating factor.



- (iv) The frequency of the crime against children in Fiji, and therefore the need for deterrence.
- (v) She had been subjected to threats to kill her, assaulted and injured by the Petitioner.
- (vi) She was observed to be in real fear of the Petitioner. Such threats besides causing fear and anxiety in the victim over a long period, had postponed the exposure of these offences.

[63] These aggravating factors made this a particularly bad case of child abuse and for the specific crime charged namely rape.

[64] The judge allowed a further 1 year discount on sentence for the period of time spent on remand [Record p25], bringing the sentence on each of the rape counts down to 16 years.

[65] It is not accurate to say, as was submitted in the written submissions, that "the victim was not physically harmed by any violence on her." She gave evidence of being assaulted and injured on the face, and of attempts at penetration with difficulty for which pain can be assumed. She lost her hymen at age 10 and was in constant fear of his threats to kill or of violence.

[66] The learned sentencing judge was correct in his approach. The Court of Appeal in its judgment at paragraph 18 said:

*"Rapes of juveniles (under the age of 18 years) must attract a sentence of at least 10 years and the accepted range of sentences is between 10 and 16 years. There can be no fault in the sentencing approach of the learned Judge referred to above (in para 13), save as to say we do not consider that allowance should have been made for family circumstances. To that extent the appellant was afforded leniency that he did not deserve."*

We indorse those remarks.

[67] The sentences in this case were at the high end for such sentences. But there was ample reasoning provided for the extent of those necessary and condign sentences. This child suffered greatly and the punishment must reflect society's abhorrence of such

prolonged ill treatment and abuse. The sentences reflected correctly the totality of the offending and were just, in accordance with the purpose expressed in section 4 (1) (a) of the Sentencing and Penalties Decree.

[68] No wrong principle has been demonstrated here, no miscarriage of sentencing discretion. Special leave cannot be granted on the petition against sentence.

### **Conclusion**

[69] In the result:

1. The petition for special leave against conviction and sentence is refused.
2. The decision of the Court of Appeal is affirmed.

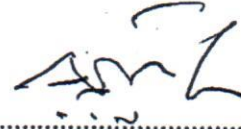
### **Hettige JA:**

I agree with the reasoning and the proposed orders of the Chief Justice.

### **Ekanayake JA:**

I agree with the reasoning and the proposed orders of the Chief Justice.





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Hon. Chief Justice Anthony Gates  
President of the Supreme Court



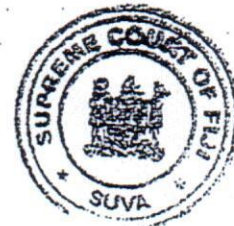
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Justice of the Supreme Court



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Hon. Madam Justice Ekanayake  
Justice of the Supreme Court

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Office of the Director of Public Prosecutions for State



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