

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

CRIMINAL APPEAL NO: AAU0049 of 2012
(High Court Case No: HAC 74 of 2011 Ltk)

BETWEEN : RAHUL RAVINESH KUMAR
Appellant

AND : THE STATE
Respondent

Coram : Goundar JA

Counsel : Mr K. Tunidau for the Appellant
Ms P. Madanaivosa for the Respondent

Date of Hearing : 2 April 2014

Date of Ruling : 6 June 2014

RULING

[1] Following a trial in the High Court at Lautoka, the appellant was convicted of rape of a child and sentenced to 10 years' imprisonment with a non-parole period of 8 years. The appellant seeks leave to appeal against his conviction on the following grounds:

Ground 1: The trial Judge erred in law by failing to consider whether generality of section 129 of the Criminal Procedure Decree 2009 overrides section 10(1) of the Juveniles Act, and section 15(1) of the Constitution of the Republic of Fiji 2013 on the issue of corroboration of the evidence of children of tender years.

Ground 2: The trial Judge erred in law and in fact by expressing comment at paragraph 40 of the summing up on the question of Parwati's memory due to her age and as an interested witness, where such comment can lead the assessors to think that he was directing them that they must find the facts in the way he indicated.

Ground 3: The Trial Judge erred in law and in fact in not sufficiently putting the defence case to the assessors.

[2] The appeal is governed by section 21(1) of the Court of Appeal Act. Leave is not required on a ground which involves a question of law alone. The appeal may proceed as of right on a ground of law alone, provided the ground is not frivolous (*Naisua v State Criminal Appeal No. CAV0010 of 2013*). Leave is required on any ground which involves a question of mixed law and fact, or fact alone. The test for leave is whether the ground is arguable before the Full Court (*Naisua's case*).

Ground 1

[3] Ground one raises the question whether children's evidence require corroboration before the court can act on that evidence. In this case, the appellant was convicted on the evidence of a child of a tender age. The evidence was not corroborated. Whether the law in Fiji required corroboration is a question of law alone. In my judgment, the proposed question of law is not frivolous. The appellant can proceed with this ground as of right under section 21(1)(a) of the Court of Appeal Act.

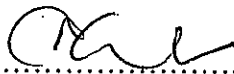
Grounds 2 and 3

[4] Grounds 2 & 3 allege misdirection on the evidence of a defence witness, namely, Parwati. The trial judge directed the assessors to consider the witness's age and whether she was an interested witness when considering her evidence. The appellant submits that the said direction was misdirection and prejudicial to the appellant's defence. The State concedes that Parwati was not an interested witness and the trial judge's direction was arguably a misdirection. In my judgment, the appellant has satisfied that grounds two and three are arguable.

Result

[5] Leave to appeal against conviction is granted.




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Hon. Justice D. Goundar
JUSTICE OF APPEAL