

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

CRIMINAL APPEAL NO. AAU 0011 OF 2013
[High Court Criminal Case No. HAC068 of 2011]

BETWEEN : VILIKESA VOLAU *Appellant*

AND : THE STATE *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Mr. S. Waqainabete for the Appellant
Mr. Y. Prasad for the Respondent

Date of Hearing : 8 June 2015

Date of Ruling : 10 June 2015

RULING

- [1] This is a timely application for leave to appeal against conviction only.
- [2] The appellant was convicted of rape after trial in the High Court at Suva and sentenced to 10 years' imprisonment with a non-parole period of 8 years.
- [3] The grounds of appeal are as follows:-
1. The learned trial Judge erred in law when he did not properly and adequately address the weight that should be attached to the caution interview statement and particularly whether the confession was in fact made by the Appellant and that the confession was true.
 2. The learned trial Judge erred in law and in fact when he did not put the case of the Appellant to the assessors in a fair, balanced and objective manner.
 3. The learned trial Judge erred in law and in fact when he did not properly consider the medical doctor's evidence against the complainant evidence in considering the credibility of both the Appellant and the complainant.

- [4] I am grateful to both parties for their written submissions. The test for leave is whether the ground of appeal is arguable.
- [5] In respect to ground one, the trial judge directed the assessors to consider the voluntariness of the appellant's confession instead of its truth or weight. There is an arguable misdirection on the appellant's confession.
- [6] When summarizing the circumstances surrounding the obtaining of the appellant's confession, the trial judge posed the following question to the assessors:
- “Do you think, the accused, given his built and demeanor would easily be frighten (sic) by Corporal Bowers words? I think not.
- [7] While the trial judge is entitled to express an opinion on the evidence, he must do so in a balanced and fair manner. The manner in which the trial judge posed the question to the assessors and then gave his own opinion arguably had the effect of diminishing the appellant's credibility. Ground two is arguable.
- [8] There was no evidence that the complainant had sustained injuries as a result of being dragged by the appellant. The medical report did not affect the veracity of the complainant's evidence. Ground three is not arguable.

Result

- [9] Leave to appeal against conviction is allowed on grounds one and two.



D. Goundar

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Hon. Mr. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

Office of the Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State