

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

CRIMINAL APPEAL NO. AAU 0019 OF 2014
[High Court Criminal Case No. HAC004 of 2013]

BETWEEN : **THE STATE** *Appellant*

AND : **LEPANI LIKUNITOGA** *Respondent*

Coram : Hon. Mr. Justice Daniel Goundar

Counsel : Mr. M. Delaney for the Appellant
Mr. J. Savou for the Respondent

Date of Hearing : 10 June 2015

Date of Ruling : 12 June 2015

RULING

[1] The State seeks leave to appeal against the acquittal of the respondent. The State's right of appeal is governed by section 21(2) of the Court of Appeal Act, Cap 12. The grounds of appeal are:

1. The Trial Judge erred by not giving any, or any sufficiently cogent reasons for his reversal of the assessors' opinion.
2. The Trial Judge erred in fact and law in finding that the assessors' opinion seemed to be perverse.
3. The Trial Judge misdirected himself and or erred in fact and law when he found that the Victim's (V) evidence corroborated the "version" of the Defendant. (D).

4. The Trial Judge erred in principle by purporting to make a finding that there was corroboration of the D's case ("version").
5. In the event that such a finding of "corroboration" is not an error of principle, then the Trial Judge erred in making the finding which was not supported by the evidence.
6. The Trial Judge did not direct himself (or the Assessors) in regard to recent complaint or evidence of distress.
7. The Trial Judge did not direct himself (or the Assessors) fully or at all in regard to the issue of consent or alternatively has been inconsistent in his approach to the said issue, whereas in complete contrast in the Judgment, the Trial Judge makes a specific finding that V did consent.
8. The Trial Judge misdirected himself (and the assessors) by failing to consider that consent can vary in range from whole hearted enthusiasm through to reluctant acquiescence to unwilling submission.


[2] The respondent was tried on a charge of rape. The prosecution led evidence from the complainant that the respondent raped her. At trial, the respondent did not dispute sexual intercourse. His defence was that the complainant consented to sex. The prosecution relied upon evidence of distress and recent complaint to show consistency in the conduct of the complainant. The three assessors believed her evidence and expressed unanimous opinion that the respondent was guilty of rape.

[3] The trial judge did not accept the assessors' opinion. In his judgment, the trial judge disbelieved the complainant on the issue of consent. Apparently, there was some evidence that the complainant had asked for bus fare from the respondent after the alleged incident.

[4] The trial judge concluded that the conversation regarding money corroborated the respondent's evidence that the complainant had consented to sex. The circumstances of the conversation regarding money are not clear at this stage. But if there was a conversation, then clearly it did not amount to corroboration and the trial judge was arguably wrong to even look for corroboration in a rape case.

- [5] Furthermore, it is arguable that the trial judge's reasons for not accepting the unanimous opinion of the assessors are not cogent.
- [6] The trial judge made no reference to the distress and recent complaint evidence in his judgment when he rejected the complainant's evidence on the lack of consent.
- [7] I am satisfied the grounds of appeal are arguable and I grant the State leave to appeal against the respondent's acquittal.




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Hon. Mr. Justice D. Goundar
JUSTICE OF APPEAL

Solicitors:

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