

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

CRIMINAL APPEAL NO. AAU 154 of 2019  
[In the Magistrates Court of Nausori Case No. 79 of 2015]

BETWEEN : RAMAN PRASAD  
*Appellant*

AND : STATE  
*Respondent*

Coram : Prematilaka, JA

Counsel : Appellant in person  
: Mr. R. Kumar for the Respondent

Date of Hearing : 29 July 2020

Date of Ruling : 30 July 2020

**RULING**

- [1] The appellant had been tried in the Magistrates Court of Nausori on one count of indictable offence of sexual assault (triable summarily in the High Court or the Magistrates Court at the election of the accused in terms of section 4(1)(b) of the Criminal Procedure Act) contrary to section 210 (1)(b)(i) and (2) of the Crimes Act, 2009 allegedly committed on 14 January 2015 at Waituri Irrigation Road, Nausori in the Central Division.
- [2] The information read as follows.

*Statement of Offence (a)*

*SEXUAL ASSAULT: Contrary to Section 210 (1) (b) (i) and (2) of the Crimes Decree No. 44 of 2009.*

**Particulars of Offence (b)**

*RAMAN PRASAD, on the 14<sup>th</sup> day of January 2015, in Waituri Irrigation Road, Nausori, in the Central Division, unlawfully and indecently assaulted MOHAMMED ZAHID ZIYYARD ALI by bringing his penis into contact with the mouth of the said MOHAMMED ZAHID ZIYYARD ALI.*

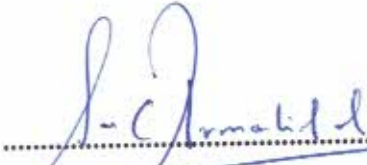
- [3] It is clear from the judge's notes in the High Court that the appellant had been arraigned in the High Court on 30 January 2015 but the appellant had elected to be tried in the Magistrates court on 03 March 2016 and accordingly, the case had been transferred to the Magistrates Court of Nausori.
- [4] After trial, on 07 June 2019 the learned Magistrate had found the appellant guilty and convicted him of sexual assault as charged. He had been sentenced on 30 September 2019 to 68 months (5 years and 08 months) of imprisonment with a non-parole period of 60 months (05 years).
- [5] The appellant being dissatisfied with the conviction and sentence had in person signed a timely notice of appeal against conviction and sentence on 22 October 2019 addressed to the High Court of Suva. The appeal to the High Court had been received on 29 October 2019 and registered under HAA 38 of 2019.
- [6] The High Court had forwarded the appellant's appeal to the Court of Appeal on 31 October 2019 on the erroneous premise that the Magistrates court had exercised extended jurisdiction and tried the appellant. This is how his appeal had found its way to the Court of Appeal registry which had registered it under AAU 154/19. The form and contents of the notice of appeal received by the CA registry from the High court makes it clear that it had been intended to be an appeal to be filed in the High Court.
- [7] However, in the meantime the High Court had heard the appellant's appeal and delivered the judgment on 17 July 2020 under the same appeal no. HAA 38 of 2019, [which is reported as **Prasad v State** [2020] FJHC 536; HAA38.2019 (17 July 2020)] dismissing his appeal and affirming the conviction and sentence.

- [8] When the appeal under AAU 0154 of 2019 was mentioned for the first time before me on 27 July 2020, it was found that the appellant's appeal should have been under section 22 (1) of the Court of Appeal Act as a second tier appeal on a question of law only.
- [9] However, the jurisdiction under section 22(1) of the Court of Appeal Act could be invoked only against a decision of the High Court. In other words, the existence of a decision of the High Court given in the exercise of its appellate jurisdiction is a condition precedent or a *sine qua non* to invoke and vest the Court of Appeal with jurisdiction under section 22(1) of the Court of Appeal Act.
- [10] Therefore, the appellant could have invoked the jurisdiction of the Court of Appeal under section 22(1) of the Court of Appeal Act only after the High Court decision on his appeal on 17 July 2020. Thus, the purported appeal registered under AAU0154 of 2019 is null and void *ab initio*. The Court of Appeal was devoid of jurisdiction and also suffered from patent lack of jurisdiction to entertain an appeal from the decision of the High Court under section 22(1) of the Court of Appeal Act until 17 July 2020. The said want of jurisdiction cannot be cured by filing any amended notice of appeal under the existing appeal AAU0154 of 2019 which is a nullity.
- [11] In the circumstances, the proceedings in AAU0154 of 2019 are hereby terminated and AAU0154 of 2019 is *pro forma* dismissed without prejudice to the appellant's rights under section 22(1) of the Court of Appeal Act to prefer an appeal to the Court of Appeal against the decision of the High Court dated 17 July 2020 on a question of law only, if he so desires.

### Order

1. Proceedings in AAU0154 of 2019 are terminated.
2. AAU0154 of 2019 is *pro forma* dismissed.



  
.....  
**Hon. Mr. Justice C. Prematilaka**  
**JUSTICE OF APPEAL**