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

CRIMINAL APPEAL NO.AAU 0004 of 2018
[In the High Court at Suva Case No. HAC 119 of 2009S]

BETWEEN	:	**RUSIATE VULAONO**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, JA**
Counsel	:	**Mr. M. Fesaitu for the Appellant**
	:	**Ms. J. Prasad for the Respondent**
Date of Hearing	:	**27 October 2020**
Date of Ruling	:	**28 October 2020**

RULING

[1] The appellant had been indicted in the High Court of Suva on three counts of rape contrary to Section 149 and 150 of the Penal Code, one count of unnatural offence contrary to Section 175 (a) of the Penal Code and one count of common assault contrary to Section 244 of the Penal Code committed at Suva in the Central Division.

[2] The information read as follows.

COUNT 1

Statement of Offence

RAPE: *Contrary to Section 149 and 150 of the Penal Code Cap. 17.*

Particulars of Offence

RUSIATE VULAONO *between 3rd July 2006 to 30th November 2006, at Suva in the Central Division had unlawful carnal knowledge of* ***S. T*** *without her consent.*

COUNT 2

Statement of Offence

RAPE: *Contrary to Section 149 and 150 of the Penal Code Cap. 17.*

Particulars of Offence

RUSIATE VULAONO *on the 22nd day of March 2007, at Suva in the Central Division had unlawful carnal knowledge of* ***S. T*** *without her consent.*

COUNT 3

Statement of Offence

UNNATURAL OFFENCE: *Contrary to Section 175 (a) of the Penal Code Cap. 17.*

Particulars of Offence

RUSIATE VULAONO *at an unknown date in the year 2008, at Suva in the Central Division had carnal knowledge of* ***S. T*** *against the order of nature.*

COUNT 4

Statement of Offence

RAPE: *Contrary to Section 149 and 150 of the Penal Code Cap. 17.*

Particulars of Offence

RUSIATE VULAONO *at an unknown date in September 2009, at Suva in the Central Division had unlawful carnal knowledge of* ***S. T*** *without her consent.*

COUNT 5

Statement of Offence

COMMON ASSAULT: *Contrary to Section 244 of the Penal Code Cap. 17.*

Particulars of Offence

RUSIATE VULAONO *on 17th day of September 2009, at Suva in the Central Division unlawfully assaulted* ***S. T*** *by punching her once.*

[3] At the conclusion of the summing-up on 10 June 2016 the assessors' opinion had been unanimous that the appellant was guilty of all counts against him. The learned trial judge had agreed with the assessors in his judgment delivered on the same day, convicted the appellant and on 17 June 2016 sentenced him to 13 years of imprisonment on each count of rape, 08 years of imprisonment on the charge of 'unnatural offence' and 06 months of imprisonment on 'common assault' count to run concurrently with a non-parole period of 12 years.

[4] The appellant's untimely notice of application for leave to appeal against conviction and sentence had been filed in person on 17 January 2018. The delay is 01 year and 06 months. Thereafter, the Legal Aid Commission had filed an amended notice of appeal against conviction and sentence on 18 August 2020 along with written submissions, appellant's affidavit and a motion seeking an extension of time. The state had tendered its written submissions on 17 September 2020.

[5] Presently, guidance for the determination of an application for extension of time within which an application for leave to appeal may be filed, is given in the decisions in **Rasaku v State** CAV0009, 0013 of 2009: 24 April 2013 [2013] FJSC 4, **Kumar v State: Sinu v State** CAV0001 of 2009: 21 August 2012 [2012] FJSC 17

[6] In ***Kumar*** the Supreme Court held

> *'[4] Appellate courts examine five factors by way of a principled approach to such applications. Those factors are:*
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> *(i) The reason for the failure to file within time.*
> *(ii) The length of the delay.*
> *(iii) Whether there is a ground of merit justifying the appellate court's consideration.*
> *(iv) Where there has been substantial delay, nonetheless is there a ground of appeal that will probably succeed?*
> *(v) If time is enlarged, will the Respondent be unfairly prejudiced?*

[7] ***Rasaku*** the Supreme Court further held

> *'These factors may not be necessarily exhaustive, but they are certainly convenient yardsticks to assess the merit of an application for enlargement of time. Ultimately, it is for the court to uphold its own rules, while always endeavouring to avoid or redress any grave injustice that might result from the strict application of the rules of court.'*

[8] I think the remarks of Sundaresh Menon JC in **Lim Hong Kheng v Public Prosecutor** [2006] SGHC 100 shed some more light as to how the appellate court would look at an application for extension of time to appeal.

> *'(a)……*
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> *(b) In particular, I should apply my mind to the length of the delay, the sufficiency of any explanation given in respect of the delay and the prospects in the appeal.*
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> *(c) These factors are not to be considered and evaluated in a mechanistic way or as though they are necessarily of equal or of any particular importance relative to one another in every case. Nor should it be expected that each of these factors will be considered in exactly the same manner in all cases.*
>
> *(d) Generally, where the delay is minimal or there is a compelling explanation for a delay, it may be appropriate to subject the prospects in the appeal to rather less scrutiny than would be appropriate in cases of inordinate delay or delay that has not been entirely satisfactorily explained.*
>
> *(e) It would seldom, if ever, be appropriate to ignore any of these factors because that would undermine the principles that a party in breach of these rules has no automatic entitlement to an extension and that the rules and statutes are expected to be adhered to. It is only in the deserving cases, where it is necessary to enable substantial justice to be done, that the breach will be excused.'*

[9] Sundaresh Menon JC also observed

> *'27…… It virtually goes without saying that the procedural rules and timelines set out in the relevant rules or statutes are there to be obeyed. These rules and timetables have been provided for very good reasons but they are there to serve the ends of justice and not to frustrate them. To ensure that justice is done in each case, a measure of flexibility is provided so that transgressions can be excused in appropriate cases. It is equally clear that a party seeking the court's indulgence to excuse a breach must put forward sufficient material upon which the court may act. No party in breach of such rules has an entitlement to an extension of time.'*

[10] Under the third and fourth factors in ***Kumar***, test for enlargement of time now is **'real prospect of success'**. In **Nasila v State** [2019] FJCA 84; AAU0004.2011 (6 June 2019) the Court of Appeal said

'[23] In my view, therefore, the threshold for enlargement of time should logically be higher than that of leave to appeal and in order to obtain enlargement or extension of time the appellant must satisfy this court that his appeal not only has 'merits' and would probably succeed but also has a ***'real prospect of success'*** *(see* ***R v Miller*** *[2002] QCA 56 (1 March 2002) on any of the grounds of appeal.....'*

Length of delay

[11] As already pointed out the delay is one year and six months and substantial.

[12] In **Nawalu v State** [2013] FJSC 11; CAV0012.12 (28 August 2013) the Supreme Court said that for an incarcerated unrepresented appellant up to 3 months might persuade a court to consider granting leave if other factors are in his or her favour and observed.

'In ***Julien Miller v The State*** *AAU0076/07 (23rd October 2007) Byrne J considered 3 months in a criminal matter a delay period which could be considered reasonable to justify the court granting leave. The appellant in that case was 11½ months late and leave was refused.'*

[13] Faced with a delay of 03 years in **Khan v State** [2009] FJCA 17; AAU0046.2008 (13 October 2009) Pathik J observed that *'There are Rules governing time to appeal. The appellant thinks that he can appeal anything he likes. He has been ill-advised by inmate in the prison. The court cannot entertain this kind of application'*

[14] I also wish to reiterate the comments of Byrne J. in **Julien Miller v The State** AAU0076/07 (23 October 2007) that

'.... that the Courts have said time and again that the rules of time limits must be obeyed, otherwise the lists of the Courts would be in a state of chaos. The law expects litigants and would-be appellants to exercise their rights promptly and certainly, as far as notices of appeal are concerned within the time prescribed by the relevant legislation.'

[15] Therefore, delay alone is sufficient to defeat the appellant's appeal if that is the only consideration.

Reasons for the delay

[16] The appellant had stated in his affidavit that he had attempted to draft appeal papers by himself but failed until some inmates assisted him. However, he had been fully defended by a counsel at the trial and the appellant could have got his assistance or the assistance of the Legal Aid Commission without waiting for 1 ½ years.

[17] Therefore, I am not convinced that the appellant has satisfactorily explained the substantial delay in lodging his appeal.

Merits of the appeal

[18] In the **State v Ramesh Patel** (AAU 2 of 2002: 15 November 2002) this Court, when the delay was some 26 months, stated (quoted in **Waqa v State** [2013] FJCA 2; AAU62.2011 (18 January 2013) that delay alone will not decide the matter of extension of time and the court would consider the merits as well.

> *"We have reached the conclusion that despite the excessive and unexplained delay, the strength of the grounds of appeal and the absence of prejudice are such that it is in the interests of justice that leave be granted to the applicant."*

[19] Therefore, I would proceed to consider the third and fourth factors in ***Kumar*** regarding the merits of the appeal as well in order to consider whether despite the substantial delay and want of an acceptable explanation, still the prospects of his appeal would warrant granting enlargement of time.

[20] Grounds of appeal urged on behalf of the appellant are as follows.

> ***Ground One*** *(conviction):*
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> *That the Learned Trial Judge erred in law and fact when he failed to consider the issue of delayed reporting of the complaint along with the recent complaint made to her grandmother thus questioning the credibility of the complainant.*
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> ***Ground Two*** *(sentence):*
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> *That the Appellant's sentence is harsh and excessive.*

[21] The evidence shows that the complainant had been the appellant's eldest son's daughter. Her father had committed suicide in 2002 because of marital difficulties. As the victim's grandfather, the appellant had taken on the responsibility of looking after the granddaughter, the victim from 2006 to 2009. His wife had been a market vendor working from 6.00 am to 6.00 pm. However, the appellant had suddenly changed his attitude towards the victim in 2006 and began to secretly abuse the victim. First he had repeatedly raped her in his bedroom, when everyone was away, in 2006 when she was still 10 to 11 years old. He had continued to abuse her in 2007 and sodomized her in 2008 when she was 13 years old. The appellant had raped her again in 2009 and assaulted her on 17 September 2009. The victim had reported the matter to her grandmother after the assault in 2009.

[22] Doctor Maryanne Koraai (PW2) had medically examined the complainant's vagina and anus at CWM Hospital on 18 September 2009. According to her the vaginal examination had suggested previous penetration, but the doctor could not say what had caused it. She also had said that from her examination of the complainant's anus, penetration could not be ruled out.

[23] The appellant had chosen to give sworn evidence but called no witnesses. He had denied all the allegations against him on oath and said that he did not punch the victim in the face, but only slapped her on her face.

01st ground of appeal

[24] The appellant argues that the victim's complaint, particularly relating to the first 03 counts, was belated and the trial judge in the summing-up or the judgment had not addressed the issue of delay. The basis of his complaint arises from the fact that the sexual abuses in the form of vaginal and anal rapes as stated in the first three counts had supposedly taken place in 2006, 2007 and 2008 whereas the act of rape stated in count 4 had allegedly happened in September 2009 and the act of assault on 17 September 2009 whereupon the victim had complained to her grandmother resulting in the legal process being initiated.

[25] The appellant relies on **State v Serelevu** [2018] FJCA 163; AAU141.2014 (4 October 2018) on how to deal with a delayed complaint where it was held:

> '[24] In law the test to be applied on the issue of the delay in making a complaint is described as "the totality of circumstances test". In the case in the United States, in **Tuyford** 186, N.W. 2d at 548 it was decided that:-
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> > *'The mere lapse of time occurring after the injury and the time of the complaint is not the test of the admissibility of evidence. The rule requires that the complaint should be made within a reasonable time. The surrounding circumstances should be taken into consideration in determining what would be a reasonable time in any particular case. By applying the totality of circumstances test, what should be examined is whether the complaint was made at the first suitable opportunity within a reasonable time or whether there was an explanation for the delay.'*
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> [26] However, if the delay in making can be explained away that would not necessarily have an impact on the veracity of the evidence of the witness. In the case of **Thulia Kali v State of Tamil Naidu**: 1973 AIR.501; 1972 SCR (3) 622:
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> > *'A prompt first information statement serves a purpose. Delay can lead to embellishment or after thought as a result of deliberation and consultation. Prosecution (not the prosecutor) must explain the delay satisfactorily. The court is bound to apply its mind to the explanation offered by the prosecution through its witnesses, circumstances, probabilities and common course of natural events, human conduct. Unexplained delay does not necessarily or automatically render the prosecution case doubtful. Whether the case becomes doubtful or not, depends on the facts and circumstances of the particular case. The remoteness of the scene of occurrence or the residence of the victim of the offence, physical and mental condition of persons expected to go to the Police Station, immediate availability or non-availability of a relative or friend or well-wisher who is prepared to go to the Police Station, seriousness of injuries sustained, number of victims, efforts made or required to be made to provide medical aid to the injured, availability of transport facilities, time and hour of the day or night, distance to the hospital, or to the Police Station, reluctance of people generally to visit a Police Station and other relevant circumstances are to be considered.'*
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> [27] In the case of **State of Andhra Pradesh v M. Madhusudhan Rao** (2008) 15 SCC 582:
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> > *"The delay in lodging a complaint more often than not results in embellishment and exaggeration which is a creature of an afterthought. That a delayed report not only gets bereft of the*

advantage of spontaneity, the danger of the introduction of coloured version, exaggerated account of the incident or a concocted story. As a result of deliberations and consultations, also creeps in issues casting a serious doubt in the veracity. Therefore, it is essential that the delay in lodging the report should be satisfactorily explained. Resultantly when the substratum of the evidence given by the complainant is found to be unreliable, the prosecution's case has to be rejected in its entirety". (See: Sahib Singh v State of Haryana, AIR 1977 SC 3247; Shiv Rama Anr v State of U.P AIR 1998 SC 49; Munshi Prasad & Ors v State of Bihar, AIR 2001 SC 3031).

[26] In **Mukhtayar Ahmad vs State Of U.P.** Criminal Appeal No. 5633 of 2009 (30 May, 2018) where the appellant (father) had committed rape upon the victim (daughter) continuously for one and half years before she made the complaint Allahabad High Court said

"29. ..... unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are."

[27] In **Deepak vs. State of Haryana** (2015) 4 SCC 762 the Supreme Court of India held

"15. The Courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerns the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by victim or by any member of her family. .."

[28] In the case of **State of Himachal Pradesh vs. Sanjay Kumar alias Sunny** (2017) 2 SCC 51 the Supreme Court of India one again stated

30. By no means, it is suggested that whenever such charge of rape is made, where the victim is a child, it has to be treated as a gospel truth and the accused person has to be convicted..... In such a situation one has to take stock of the realities of life as well. Various studies show that in more than 80% cases of such abuses, perpetrators have acquaintance with the victims

who are not strangers. The danger is more within than outside. Most of the time, acquaintance rapes, when the culprit is a family member, are not even reported for various reasons, not difficult to fathom. The strongest among those is the fear of attracting social stigma. Another deterring factor which many times prevent such victims or their families to lodge a complaint is that they find whole process of criminal justice system extremely intimidating coupled with absence of victim protection mechanism..... Equally, there is also a dire need to have a survivor centric approach towards victims of sexual violence, particularly, the children, keeping in view the traumatic long lasting effects on such victims.'

[29] In **Tulshidas Kanolkar vs The State of Goa** Appeal (crl.) 298 of 2003 (27/10/2003) the Supreme Court of India said on delay in reporting as follows.

'In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case.'

[30] The Indian Supreme Court in **The State Of Punjab vs Gurmit Singh & Ors** 1996 AIR 1393, 1996 SCC (2) 384 (16 January, 1996) also held

In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others over-powered by a feeling of shame and her natural inclination would be to avoid talking about it to any one, lest the family name and honour is brought into controversy. Therefore her informing to her mother only on return to the parental house and no one else at the examination center prior thereto is an accord with the natural human conduct of a female. The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The

inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not overlook.

The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case..... The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

[31] The above decisions contain useful observations in considering any issue of delay in reporting of sexual abuses and how to evaluate a victim's evidence in general.

[32] As far as the appellant's case is concerned there is nothing to indicate in the summing-up that he represented by counsel had challenged the victim's credibility on the basis of delayed reporting of the incidents relating to first to third counts. If the appellant had wished to discredit the victim on the basis of fabrication of allegations as a subsequent reflection as evidenced from the late complaint the victim must have been be confronted with that line of defense in cross-examination. Only then could the victim have explained reasons for not making a prompt complaint regarding the incidents in 2006, 2007 and 2008. Otherwise, the appellant's argument based on 'delay' in reporting remains only an afterthought taken up simply as an appeal point.

[33] Moreover, the appellant does not appear to have come out with any sinister motive as to why his granddaughter had made a series of allegations spanning over 03 years involving not just penile rape but anal rape as well.

[34] Apart from her total dependence on the appellant in the absence of her father and mother being unable to look after her, her immediate reactions to the appellant's sexual invasions are highlighted in paragraphs 33 and 34 of the summing-up which demonstrate her helplessness.

33. She said, she saw her grandfather closed the door of their house and locked it. He then drew the curtains and took her to their bedroom. She said, he placed her on the bed and took her clothes off. She said, she was scared and tried to scream. She said, her grandfather smacked her on the mouth, and threatened her not to raise the alarm. She said, he then tied a piece of cloth

around her mouth to stop her from raising the alarm. She said, he then took off his clothes. She said, he laid on top of her and inserted his penis into her vagina and had sex with her for a while. She said, she was scared and didn't know what to do. She said, he later ejaculated. She said, she was lost and did not know what to do. She said, he repeated the above to her in July, August, September, October and November 2006.

34. On Count No. 2, she said, her grandfather repeated the above episode to her on 22 March 2007. She said, his modus operandi was similar to the above. On Count No. 3, she said, her grandfather told her to bend down in his bedroom near his bed sometime in 2008. She said, he then inserted his penis into her anus. This was also after school between 3 pm and 3.30 pm. She said, it was painful to her. She said, she couldn't do anything as he was physically stronger than her.

35. On Count No. 4, she said, her grandfather also inserted his penis into her vagina sometimes in September 2009. She said, his modus operandi were similar to those in Count No. 1 and 2. She said, he did the above to her while her grandmother was at the market, and when she came back from school. She said, she could not recall the exact date of the incidents in Count No. 3 and 4. On Count No. 5, she said, her grandfather punched her on 17 September 2009. She said, when her grandmother returned from the market, she told her everything. The matter later came to the police's attention, and thus the present criminal proceeding. If you accept the complainant's evidence, then you must find the accused's guilty as charged on all counts. It is a matter entirely for you.

[35] It is clear that the assault by the appellant on the victim had been the proverbial last straw that broke the camel's back. In addition when the last two incidents happened in 2009 the victim had grown to be 13 years of age from being the minor of 10 years old when the appellant started sexually abusing her in 2006.

[36] In the totality of circumstances including her tender age, her total dependence on the appellant being the sole caregiver and his complete domination and his relationship to her being her grandfather would themselves explain why she had delayed reporting his sexual abuses and therefore, the substratum of the evidence given by the complainant has not been affected by the delay in reporting.

[37] There is no real prospect of success in this ground of appeal.

02nd ground of appeal (sentence)

[38] The appellant complains that the sentence is harsh and excessive.

[39] It is true that serious breach trust, rape of children and lack of remorse could not have been considered in this instance separately as aggravating factors to enhance the sentence by 03 years. Similarly, the appellant should not have been considered a first offender to be given a discount of 02 years, for an accused who has committed several offences on the victim over a period of time cannot and should be treated similar to an accused who has committed the offence or offences in the same transaction for the first time.

[40] Serious breach trust and rape of children should not have been considered in this instance to enhance the sentence as the trial judge has picked the starting point at 14 years obviously considering the objective seriousness of the offences which included serious breach trust and rape of children. It amounts to a form of double counting. The Supreme Court in **Kumar v State** [2018] FJSC 30; CAV0017.2018 (2 November 2018) identified this instance of double counting by stating that many things which make a crime so serious have already been built into the tariff and that puts a particularly important burden on judges not to treat as aggravating factors those features of the case which already have been reflected in the tariff itself.

[41] The appellant's lack of remorse certainly deprived the appellant of any discount for 'genuine remorse' but it could not have been treated as an aggravating factor to enhance the sentence (vide paragraph [54] in **Alfaaz v State** [2018] FJCA 19; AAU0030.2014 (8 March 2018).

[42] On the other hand the appellant had got an undeserving discount of 02 years for being a 'first offender'. Thus, there are a few sentencing errors committed in the process.

[43] However, sentencing is not a mathematical exercise. It is an exercise of judgment involving the difficult and inexact task of weighing both aggravating and mitigating circumstances concerning the offending, and arriving at a sentence that fits the crime. Recognising the so-called starting point is itself no more than an inexact guide. Inevitably different judges and magistrates will assess the circumstances somewhat differently in arriving at a sentence. It is the ultimate sentence that is of importance, rather than each step in the reasoning process leading to it. When a sentence is

reviewed on appeal. again it is the ultimate sentence rather than each step in the reasoning process that must be considered [vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006) and **Maya v State** [2017] FJCA 110; AAU0085.2013 (14 September 2017)]. In determining whether the sentencing discretion has miscarried the appellate courts do not rely upon the same methodology used by the sentencing judge. The approach taken by them is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range (**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015).

[44] **The State Of Punjab vs Gurmit Singh & Ors** (supra) held

> *'Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.'*

[45] The ultimate sentence of 13 years imprisonment is well within the the tariff applicable to juvenile rape of 10-16 years of imprisonment [vide **Raj v State** (CA) [2014] FJCA 18; AAU0038.2010 (05 March 2014) and **Raj v State** (SC) [2014] FJSC 12; CAV0003.2014 (20 August 2014)] which is fully justified in this case. Now the tariff is 11-20 years of imprisonment in **Aicheson v State** (SC) [2018] FJSC 29; CAV0012.2018 (02 November 2018)

[46] Therefore, there is no real prospect of success in this ground of appeal.

Prejudice to the respondent

[47] No prejudice to the respondent has been submitted. Yet, given the fact that the offences had been committed from 2006 to 2009, it may pose difficulties for any fresh prosecution in terms of availability of witnesses and untold hardship to the victim.

Order

1. Enlargement of time against conviction is refused.
2. Enlargement of time against sentence is refused.

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Hon. Mr. Justice C. Prematilaka
JUSTICE OF APPEAL