

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

**CRIMINAL APPEAL NO. AAU 0075 OF 2023**  
**[Lautoka High Court: HAC 100 of 2021]**

**BETWEEN** : **ROMANU BATIRATU**

**Appellant**

**AND** : **THE STATE**

**Respondent**

**Coram** : Mataitoga, P

**Counsel** : Appellant in Person  
Nasa J, and Lomaloma M for the Respondent

**Date of Hearing** : 6 March, 2025

**Date of Ruling** : 26 March 2025

**RULING**

[1] The appellant [Romanu Batiratu] was charged pursuant to the filing of an information by the DPP, with the following offence:

***Statement of Offence***

**RAPE**: Contrary to section 207 (1) and 2 (a) of the Crimes Act, 2009.

### *Particulars of Offence*

**ROMANU BATIRATU** between 1 April 2021 and 18 September 2021 at Qina Settlement, Nawaka, Nadi, in the Western Division, had carnal knowledge of “S.M” without her consent.

- [2] At the trial, the prosecution called two witnesses [the complainant and DC 4926 Bolakivei] and after the prosecution closed its case, the trial court ruled that the appellant had a case to answer for the count of rape as charged. The appellant did not call any witness and but he relied only on the evidence adduced via cross-examination of the complainant.
- [3] At the trial the appellant’s main contention was there was consent in the sexual intercourse with the complainant. This was denied by the complainant.
- [4] Following the trial in the High Court at Lautoka, the appellant was found guilty as charged and was convicted on 23 March 2023. He was sentenced on 12 April 2023 to 16 years and 5 months imprisonment with 14 years imprisonment non-parole period of imprisonment. A permanent non-molestation and non-contact orders was issued against the appellant, under the Domestic Violence Act. He was given 30 days to appeal.

### **The Appeal**

- [5] The appellant wrote a letter dated 10 May 2023 titled: Notice of Appeal for Leave against Conviction and sentence. Which was submitted by the Prison Authority to the Court Registry vide a letter dated 3 June 2023. This letter was received in the Court of Appeal on 4 July 2023. It will evident that the initial letter of the appellant dated 10 May 2023 was submitted within the 30-day period for the appeal. The delay occasioned in the appellant’s letter reaching the Court Registry was beyond his control.
- [6] The appellant’s letter stated 2 grounds of appeal against conviction and 1 ground against sentence. Additional grounds of appeal were submitted by the appellant. At the time of the hearing of the appeal, the following grounds of appeal were the final:

Grounds Against Conviction [grounds duplicated verbatim from submission]

- i) That the learned trial judge erred in law and fact when he failed to fully and properly consider the issue of delayed reporting of the complaint thus questioning the credibility of the victim and the veracity of her complaint. It is material in this regard.
- ii) That the learned trial judge erred in law and in fact did not consider the opportunity that were available to complaint to late the neighbour's for help is she was raped.
- iii) That the learned trial judge erred in taking into consideration irrelevant and/or appropriate matters to cause himself to doubt the credibility of the witness in that prosecution failed to provide reason for the delay of 6 months in report the incident to the police. It is material in this regard that the accused is biological mother was taken for particularisation relevance.
- iv) According to the particulars vs 18<sup>th</sup> of the offence, the accused between 1<sup>st</sup> April 2021 September 2021 at Qina Settlement, Nawaka, Nadi, in the Western Division had carnal knowledge of (SM) without her consent.
- v) The above prosecution evidence of facts alone in the crux of the matter that is "actual evidence" which substantiate the belatedness of the complaints lateness in her reporting the incident (para. 36, pg.9 judgment).
- vi) The version of the complainant's evidence in that: (1) she was forced by her aunt Mere to report the matter to Police (para.36]; (2) the complainant agreed that she was embarrassed because she was 'pregnant' [para 36]; (3) had she not got pregnant she would not have reported the matter to the police [para 36]; (4) the complainant agreed that she was further embarrassed of the fact that the father of the child

was her father [para 36]; (5) the complainant maintain that the accused had raped her.

#### Grounds Against Sentence

- vii) That the sentence imposed is manifestly harsh and excessive.
- viii) In considering unsupported evidence in principle when sentencing the appellant.
- ix) As it is harsh and exercise in totality considering the circumstances of the events.
- x) In disparity with pre executed and or similar cases.
- xi) In failing to deduct the appellants remain period from his non-parole term.
- xii) The trial judge erred in law and fact when he failed to fully and properly consider the delayed

#### **At the Hearing**

- [7] At the hearing the appellant informed the Court that he is withdrawing his appeal against Conviction. He is now appealing against conviction only.

#### **Conviction Appeal Withdrawn**

- [8] At the inquiry of the court, in light of the **Masirewa v State [2010] FJSC 5**, principle, the appellant confirmed that his decisions to withdraw his appeal against conviction is his own. He was not encouraged or dictated to make the decision to withdraw by anyone else and that he was aware once accepted by the Court, his appeal cannot be brought again. The purpose of the inquiry is to establish that the decision to withdraw has been made deliberately, intentionally and without mistake. Ideally, the decision should be informed also. That aspect is not always an easy matter to achieve in a

jurisdiction such as Fiji with limited access to appellate advice, and occasionally if rarely, will give rise to difficulty.

- [9] The court having being satisfied with the answers given by the appellant decided that the Order for the appellant's withdrawal of his appeal against conviction will be made. He was directed to fill Form 3.

### **Appeal against sentence**

- [10] The grounds of appeal against sentence is the claim it is harsh and excessive, but there are no meritorious grounds given to support such a claim.

- [11] It is well established law that before this Court can disturb the sentence, the appellant must demonstrate that the Court below fell into error in exercising its sentencing discretion. This error may be apparent from the reasons for sentence or it may be inferred from the length of the sentence itself (*House v The King* (1936) 55 CLR 499).

- [12] In **Kim Nam Bae v State [1999] FJCA 21**, the Court of Appeal set out the following factors for consideration in reviewing a sentence on appeal:

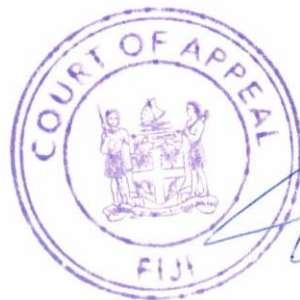
- i. Considered wrong principle
- ii. Allowed irrelevant or extraneous factors;
- iii. Made a mistake
- iv. Does not take into consideration relevant factors

- [13] In reviewing the sentencing approach, it is clear that the trial judge had not erred in his approach and in the principles he relied on to determine sentence. Given the serious harm and lack of remorse in the appellant the sentence is not unreasonable. The charge for which the appellant was tried is a representative count and there were evidence before the court that there were two incidents of Rape. The court selected 11 years imprisonment as the starting point from a tariff range of 11 to 20 years, which is at the lower end of the tariff after assessing the objective seriousness of the offence committed. This is generous sentence.

- [14] The trial judge did not rely on an incorrect principle of sentencing, having relied on relevant authorities in **Gordon Aitcheson v State [2018] FJSC 29; Alfaaz v State [2018] FJSC 17 and Felix Ram v State [2015] FJSC 26**, which are directly relevant to the facts in this case.
- [15] There were no irrelevant factors taken into consideration by the trial judge in finalising the sentence in this case. The sentence in this case, after taking in consideration all the relevant factors is reasonable within the permissible range: **Koroicakau v State [2006] FJSC** and **Sharma v State [2015] FJCA 178**.
- [16] The appeal against sentence has no merit.

**ORDERS:**

1. Appellant's withdrawal of his appeal against conviction is accepted by the Court and accordingly ordered.
2. Appeal against sentence dismissed.



  
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**Hon. Justice Isikeli U. Mataitoga**  
PRESIDENT, COURT OF APPEAL