

IN THE COURT OF APPEAL, FIJI ISLANDS
AT SUVA

Appellate Jurisdiction

CRIMINAL APPEAL NO. AAU0090 OF 2007

BETWEEN : ASHOK CHANDRA *Appellant*
AND : THE STATE *Respondent*

Before the Honourable Judge of Appeal, Mr Justice John E. Byrne

Counsel : Appellant - In Person
: A.G. Elliot for the Respondent

Date of Hearing & Ruling : 23rd May 2008

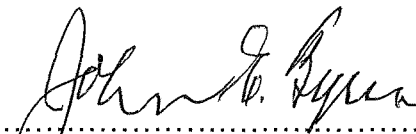
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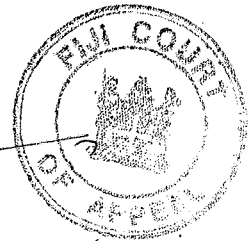
- [1] The Appellant seeks leave to appeal from a decision of Winter J. in the High Court on the 6th of August 2007 in which the Judge rejected his appeal against a conviction and sentence on one count of insulting the modesty of a female under Section 154(4) of the Penal Code. He was given a 9 month sentence suspended for 3 years by the Magistrates Court on the 6th of March 2007.
- [2] He seeks leave to appeal on several grounds. Summarised, he submits that the learned Magistrate failed to properly consider the available evidence, was overborne by the young age of the complainant and otherwise failed to give appropriate weight to the defence case thereby reaching an unsupportable and erroneous

conviction. He claims that the sentence was manifestly excessive. He seeks leave to appeal to the Full Court of this Court on virtually the same grounds on which he appealed to the High Court.

- [3] The evidence in the case was summarised by Winter J. at page two of his Decision and it is not necessary to repeat it here. The Appellant is fully aware of it.
- [4] Winter J. referred to the "*well reasoned Judgment*" of the learned Magistrate which he considered was unassailable. He found that the learned Magistrate correctly recounted the evidence and made a proper analysis of the facts to support his findings.
- [5] The Judge found also that there was no indication from the record that the Appellant received an unfair trial. There was one incident before the Court. The Prosecution evidence was clear and the learned Magistrate's findings were appropriate and available from the evidence presented in Court. Accordingly Winter J. dismissed the appeal against conviction.
- [6] I have read the Magistrates' Court record and the Decision of Winter J.
- [7] The learned Judge and the Magistrate both considered that the Appellant's evidence could only be characterized as vague. He alleged that the complainant was lying, young and unbelievable. He conceded that he had been to see the young girl's headmaster. The Appellant called one witness who did not help him because he said that he knew nothing about the case.

- [8] Before me the Appellant alleged that the complainant was a well-known prostitute but this is the first time such an allegation was made. When he cross-examined the complainant in the Magistrate's Court he did not put this claim to her. I reject it as being of recent invention.
- [9] As to sentence, Winter J. found the sentence imposed by the learned Magistrate was correct in law and considerably restrained bearing in mind the circumstances of the offending. The learned Judge considered, and I agree, that the suspended term of imprisonment was not manifestly excessive, and like the Judge I too consider that the Magistrate was quite lenient. As I told the Appellant during his submissions, if I had been the learned Magistrate I would have had no hesitation in imposing a custodial sentence of 3 months bearing in mind that the maximum sentence is 12 months. For these reasons I find no merit in the application and it is therefore dismissed.


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[John E Byrne]
JUDGE OF APPEAL



At Suva

23rd May 2008