

# IN THE COURT OF APPEAL, FIJI ISLANDS ON APPEAL FROM THE HIGH COURT OF FIJI

## APPELLATE JURISDICTION

CRIMINAL APPEAL NO.: AAU111 OF 2007S  
(HIGH COURT CRIMINAL CASE NO.: HAC 052 OF 2007L)

### BETWEEN:

BOBBY HEMANT PRASAD

*Applicant*

### AND:

THE STATE

*Respondent*

Hearing: Tuesday 5<sup>th</sup> August, 2008

Counsel: Appellant in Person  
Mr. P. Bulamainavalu for the State

Date of Judgment: Friday 8<sup>th</sup> August, 2008

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## **RULING**

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- [1] This is an application to appeal against sentence out of time. On 12 October 2007, the applicant was convicted of attempted murder on a plea of guilty and sentenced to 8 years imprisonment.
- [2] On 26 November 2007, he appealed against sentence saying the sentence is unduly harsh and excessive given his personal background and the circumstances of the offence.

- [3] The victim was the applicant's defacto spouse. The relationship between the two was not a happy one. On 17 January 2000, the applicant took the victim to a place called Maro on the pretence of taking her out.
- [4] The applicant forcefully took the victim's sari off and tied it around her stomach and face. To overpower the victim, the applicant also tied her hands and legs to a tree. The applicant then poured a bottle of kerosene over the victim and set her on fire.
- [5] The victim managed to snap herself from the tree and jumped into a nearby creek. She received 20% burns on her body. The burn marks have left scars on the victim's face, chest, left hand, breast, back, stomach and upper thigh. She cannot walk properly. She has to limp.
- [6] In his sentencing remarks the learned Judge took 9 years imprisonment as a starting point. His Lordship considered the life scaring injuries and the betrayal of trust as the aggravating factors. The only mitigating factor was the early guilty plea. After adjusting for the aggravating and mitigating factors, the learned Judge arrived at a sentence of 8 years imprisonment.
- [7] The applicant had been at large for a long time before he was apprehended on 27 March, 2007. He had changed his identity and residential address. He therefore was not entitled for any credit for the delay.
- [8] The sentence is within the tariff for attempted murder. However, one matter concerns me. The applicant had spent 8 months (equivalent of 1 year after remission) in custody pending trial.

- [9] There is no reference in the learned Judge's sentencing remarks that he had taken the time spent in custody into account. This matter should be considered by the full court.
- [10] The application is allowed.
- [11] Leave is granted to appeal against sentence. .



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**Daniel Goundar**  
**JUDGE OF APPEAL**

**At Suva**  
**Friday 8<sup>th</sup> August, 2008**

**Solicitors:**

Appellant in Person  
Office of the Director of Public Prosecutions, Suva for the State

