

IN THE COURT OF APPEAL, FIJI ISLANDS
APPELLATE JURISDICTION

Criminal Appeal No: AAU0111/07
[Criminal Case No: HAC 52/07]

BETWEEN:

BOBBY HERMANT PRASAD

Appellant

AND:

THE STATE

Respondent

Coram: Hon. Justice Goundar JA
Hon. Justice Temo JA
Hon. Justice Calanchini JA

Hearing: 30th March 2010

Counsel: Ms S. Vaniqi for Appellant
Mr. S. Qica for State

Date of Judgment: 8th April 2010

JUDGMENT OF THE COURT

- [1] Following a plea of guilty to a charge of attempted murder, the appellant was sentenced to 8 years imprisonment by the High Court. He filed an untimely appeal against sentence to this Court, and on 8 August 2008, was granted leave to appeal.
- [2] The facts of the case are very disturbing. The victim and the appellant were in a defacto relationship. The appellant took the victim to an isolated location on

pretext of taking her out when his intention was to kill her. He tied her to a tree, poured kerosene over her body and lit her alive.

- [3] The victim managed to snap herself from the tree and jumped into a nearby creek. The incident has left permanent scars on her face, chest, breast, head, stomach and upper thigh. She is now unable to walk properly.
- [4] In his sentencing remarks, the learned Judge took 9 years as his starting point and added 3 years to reflect the aggravating factors. The sentence was reduced by 4 years to reflect the mitigating factors which included the guilty plea and arrived at a term of 8 years imprisonment.
- [5] Before the appellant pleaded guilty to the offence, he had spent about 8 months in custody on remand. The learned Judge did not make any adjustment to the sentence to reflect the time spent in custody.
- [6] As a matter of sentencing principle, any period that the offender spends in custody on remand should be taken into account when calculating the sentence, although it is not necessary to make a precise calculation (*Basa v. The State* [2006] FJCA 23; AAU0024.2005 (24 March 2006)).
- [7] In *Ledua v. State* [2008] FJSC 31; CAV0004.2007 (17 October 2008), the Supreme Court reinforced the principle that time spent in custody should be taken into account in the sentence and said:

“It is common ground that a sentencing judge is required to give due allowance for time spent in custody pending trial when he or she comes to sentence following conviction. Here there is nothing in the remarks as to sentence to show that this was taken into account as a “mitigating” factor for downwards adjustment of the ten year starting point identified by the sentencing judge.”

- [8] Despite the serious nature of the crime committed by the appellant, we take the view that the learned Judge erred in not adjusting the sentence downwards to take into account the time the appellant had spent on remand before pleading guilty. The State concedes the appeal on this point.
- [9] Taking into account that the period of custody is approximately 8 months and with necessary remissions, we think a downward adjustment by a period of 12 months would be appropriate.

Result

- [10] Appeal against sentence allowed. Sentence for attempted murder reduced from 8 years to 7 years imprisonment.



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Hon. Justice Goundar
Judge of Appeal

A handwritten signature in black ink, appearing to read "Temo".

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Hon. Justice Temo
Judge of Appeal

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Hon. Justice Calanchini
Judge of Appeal

At Suva
8th April 2010

Solicitors:

Office of the Legal Aid Commission for Appellant
Office of the Director of Public Prosecutions for State