

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT

CRIMINAL APPEAL AAU 13 OF 2014
(High Court HAC 73 of 2013)
(Magistrates Court 1582 of 2013)

BETWEEN : IRSHAD ALI
Appellant

AND : THE STATE
Respondent

Counsel : Ms M Rakai for the Appellant
Mr M Korovou for the Respondent

Date of Hearing : 8 December 2014

Date of Decision : 12 December 2014

DECISION

[1] This is an application for leave to appeal against sentence. The test for leave is whether the Appellant can show an arguable error in the exercise of the sentencing discretion by the learned Magistrate.

- [2] On a plea of guilty the Appellant was convicted on 14 November 2013 in the Magistrates Court exercising extended jurisdiction of the High Court on one count of acting with intent to cause grievous harm contrary to section 255 of the Crimes Decree 2009 and on one count of breaching his suspended sentence contrary to section 47 of the Sentencing and Penalties Decree 2009.
- [3] The particulars of the first charge were that the Appellant on 3 December 2012 at Nakasi with intent to do grievous harm did unlawfully wound Sunita Sandhya Mani with a kitchen knife. The particulars of the second offence were that the Appellant whilst on a suspended sentence imposed by the Suva Magistrates Court in criminal case 774 of 2011 did breach that suspended sentence by committing the offence in the first count.
- [4] The Appellant was sentenced to a term of imprisonment of 2 years and 6 months in respect of count 1. As for count 2, the suspended term of 9 months imprisonment was activated forthwith to be served concurrently with the sentence imposed for count 1. The Appellant was ordered to serve a term of 2 years before being eligible for parole. A domestic violence restraining order was also issued by the Magistrate.
- [5] The agreed background facts may be stated briefly. On 3 December 2012 at about 5.00p.m the complainant (the Appellant's then wife) was returning home on foot. At a certain point in Nakasi the Appellant confronted her. In a threatening manner he demanded that she sit inside his van. The complainant complied out of fear. As soon as she sat down in the van, the Appellant drove off. During the course of driving the Appellant asked the complainant whether she still loved him. The complainant told the Appellant that she loved another boy from India. At Naulu Road the Appellant stabbed the complainant's right thigh with a kitchen knife. The Appellant grabbed the complainant's mobile phone and started reading the messages. When the van reached Koronivia, the complainant was able to jump out of the van and was assisted by a taxi driver. She reported the matter to the Nakasi Police. The complainant was medically examined at the Nausori Health Centre on the same day.
- [6] In arriving at the sentence for count 1 the learned Magistrate has indicated that the aggravating factors to be considered for sentencing purposes were (1) this was an

attack on a person using a weapon that is a kitchen knife, (2) the complainant was wounded and (3) the accused had no regard to the complainant's sense of well being and her right not to be unlawfully attacked.

[7] The Appellant submits that the learned Magistrate has considered as aggravating factors matters that were either components of the offence charged (factors 1 and 2) or were not aggravating facts (factor 3). The State concedes that there is an arguable error.

[8] It is arguable that there has been an error in the exercise of the learned Magistrate's sentencing discretion and leave to appeal against sentence is granted.

Order:

Leave to appeal against sentence is granted.



W. Calanchini
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Hon. Mr Justice W. D. Calanchini
PRESIDENT, COURT OF APPEAL