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

CRIMINAL APPEAL NO. AAU 012 of 2017
[In the High Court at Suva Case No. HAC 281 of 2013]

BETWEEN	:	**PAULA VURA**
		Appellant
AND	:	**STATE**
		Respondent
Coram	:	**Prematilaka, RJA** **Qetaki, JA** **Morgan, JA**
Counsel	:	**Ms. T. Kean for the Appellant**
	:	**Mr. T. Tuenuku for the Respondent**
Date of Hearing	:	**05 September 2023**
Date of Judgment	:	**28 September 2023**

JUDGMENT

Prematilaka, RJA

[1] The appellant was charged with three others in the High Court at Suva and convicted on one count of aggravated burglary (by braking into and entering the dwelling house of Sophia Ji and Wen Yi as trespassers with intent to commit theft) contrary to section 313(1)(a) of the Crimes Act, 2009 and another count of theft (of property of Sophia Ji and others to the total value of $14,985.00) contrary to section 291(1) of the Crimes Act, 2009 committed on 19 July 2013 at Namadi Heights in the Central Division.

[2] The appellant had absconded since 30 April 2015 and the prosecution had applied to try him *in absentia* on 01 October 2015 and accordingly, the trial proper had commenced on 07 October 2015 in his absence. After trial, on 09 October 2015 the assessors had unanimously found the appellant guilty of the two counts as charged and delivering his judgment on the same day, the learned High Court judge had agreed with the assessors and convicted the appellant of both charges. He had been sentenced on 15 October 2015 to 04 years and 03 months of imprisonment on each count to run consecutively. Thus, the total sentence of 08 years and 06 months was directed to take effect with a non-parole period of 08 years from the time of his arrest. The appellant had been arrested on 01 October 2016 and released on bail pending appeal by a Judge of the Court of Appeal on 15 November 2021.

[3] A judge of this court allowed the appellant enlargement of time to appeal against sentence on the following ground of appeal.

> *'The Learned trial Judge erred in law and in fact in finding and declaring the appellant as a habitual offender and in turn using that to sentence the appellant to a consecutive sentence without considering and exercising his discretion in granting a concurrent sentence and in failing to consider or exercise this discretion also failed to take into account relevant consideration which would have warranted a concurrent sentence.'*

Facts in brief

[4] The evidence of the prosecution as summarised by the learned trial judge in the summing-up is as follows.

> *'18. The prosecution's case were as follows: The accused was 40 years old on 19 July 2013. He is married with 2 daughters aged 21 and 19 years old. He is a casual labourer at the Kings Wharf, and had resided at Tamavua-i-wai Settlement most of his life. He reached Form 6 level education at Laucala Bay Secondary School. On 19 July 2013, at about 11pm, he met a friend and others at Upper Ragg Avenue Road. They had previously planned to break into the complainants' house to steal some money other valuables. They later went to the complainants' dwelling house.*
>
> *19. When they arrived, the complainants were still awake. They waited at a nearby cassava patch for the complainants to sleep. Later the complainant went to sleep. The accused and his friends then cut the complainant's fence and went into their compound. They went through the back door. It was*

unlocked. They then ransacked the complainants' house. They woke the complainant's up and told them not to resist or they will be hurt. They demanded money.

20. They continued to ransack the house and later stole the properties mentioned in count no.2. The accused and his friends tried to escape in the complainants' vehicle, but they crashed the same against the complainant's gate. They later fled the scene on foot. Because of the above, the prosecution is asking you, as assessors and judges of fact, to find the accused guilty as charged. That was the case for the prosecution.'

Ground of appeal

[5] The appellant argues that the trial judge had erred in declaring him as a habitual offender and using that fact as the basis to make the sentences run consecutively. The trial judge had stated in the sentencing order as follows.

> *'Furthermore, in the last 10 years to your offending on 19 July 2013, you had been convicted of five 'robbery with violence' offences on 27 February 2004, and as such, I determine you to be a habitual offender pursuant to section 10 (c) and 11 (1) of the Sentencing and Penalties Decree 2009.'*

[6] The appellant's previous conviction record shows that he had indeed been convicted *inter alia* for five counts of robbery with violence in case no.531/2004 on 27 February 2004. In addition, the appellant also had been convicted *inter alia* of robbery with violence and house breaking entering and larceny in July 2000, house breaking entering and larceny and attempted breaking in March 1997, house breaking entering and larceny in January 1997, house breaking entering and larceny and service station breaking entering and larceny in January 1997, house breaking entering and larceny in August 1996, house breaking entering and larceny in July 1996 and burglary & larceny in dwelling house in May 1989.

[7] However, none of the convictions prior to 2004 had been considered by the trial judge in determining the appellant as a habitual offender. According to section 5 of the Rehabilitation of Offenders (Irrelevant Convictions) Act 1997, rehabilitation period applicable to a conviction for a person over 17 years of age is 10 years and as per section 6, the rehabilitation period commences either on the date of conviction or where a custodial sentence was imposed on the date on which the convicted person was unconditionally released from imprisonment.

[8] The state counsel argued that pre-2004 convictions were still relevant in terms of Rehabilitation of Offenders (Irrelevant Convictions) Act 1997 in that the rehabilitation period of those convictions had not expired (vide section 3 of the said Act). He submitted that in terms of section 26(1) of the Rehabilitation of Offenders (Irrelevant Convictions) Act 1997, before the rehabilitation period of one conviction was over, the appellant had been convicted of another offence and therefore, the rehabilitation period of the previous conviction had not expired until the rehabilitation period applicable to the later conviction expired, thus keeping all previous convictions prior to 2004 relevant at the time of sentencing in the current case. He sought to argue that therefore, the trial judge was justified in declaring the appellant as a habitual offender. Section 26(1) is as follows.

> *'26.-(1) Where a person is convicted of an offence and before the rehabilitation period applicable to that conviction has expired, that person is convicted, in Fiji or overseas, of another offence, the rehabilitation period applicable to the first conviction shall not expire until the rehabilitation period applicable to the later conviction expires.'*

[9] Sections 3, 5 and 6 of the Rehabilitation of Offenders (Irrelevant Convictions) Act 1997 are as follows.

3. For the purposes of this Act, a conviction is irrelevant:-

(a) where there is no direct relationship between that conviction and the particular matter in respect of which it is sought to take that conviction into account; or

(b) if the rehabilitation period has expired.

Definition of rehabilitation period

5.-(1) Notwithstanding subsection (2), the rehabilitation period applicable to a conviction is:

(a) in case of a person who is seventeen years or over, ten years; or

(b) in case of a person who is under the age of seventeen years.-

(i) seven years, for a term of imprisonment or detention not exceeding two years under section 30 or 31 of the Juveniles Act; or

(ii) ten years, for a term of imprisonment or detention exceeding two years under section 31 of the Juveniles Act.

(2) Subject to subsection (1), the rehabilitation period applicable to Part III, is five years.

Commencement of rehabilitation period

6.-(1) The rehabilitation period commences:-

(a) on the date of conviction; or

(b) where a custodial sentence was imposed, on the date: on which the convicted person was unconditionally released from imprisonment; or

(c) where the release of a convicted person from detention is subject to a condition or other penalty imposed by the Court, when the condition or that other penalty is fulfilled.

(2) The rehabilitation period for a conviction that was entered before the commencement of this Act shall be deemed to have been expired on the day the rehabilitation period would have expired as if the Act had been in force:

Provided that it does not affect any act done or omitted that may have been an offence under or in contravention of, this Act before the coming into force of this Act.

[10] It was the submission of the State that even if the trial judge had not considered the appellant's other previous convictions other than those in 2004, this court may take into account his other previous convictions as relevant at the time of sentencing and still determine him as a habitual offender and justify the consecutive sentences.

[11] However, the state counsel conceded that for some inexplicable reason the prosecution had made no application to determine the appellant as a habitual offender in the High Court and therefore no argument similar to the one advanced in this court regarding pre-2004 convictions had been made before the High Court judge. It is not certain as to how many of those convictions could legitimately be regarded as relevant at the time the appellant was sentenced for his current sentencing. Despite having the appellant's previous conviction record before him, the trial judge had not considered any of the previous convictions prior to 2004 in his determination of the appellant as a habitual offender. The Court of Appeal in **Chand v State** [2016] FJCA 65; AAU0063.2012 (27 May 2016) responded as follows to a similar request by the State to determine an appellant as a habitual offender.

'[35] The Respondent had urged this Court to declare the Appellant as a habitual offender under the Sentencing and Penalties Decree, 2009. This application should have been made before the trial judge who could have considered the material and made an appropriate order. I do not think that this is the correct forum to make this application for the first time at the hearing of the Appellant's appeal.'

[12] In the circumstances set out above, I am not inclined to accede to the state counsel's request to declare the appellant as a habitual offender by virtue of the powers vested in this court by section 11(2) of the Sentencing and Penalties Act. Therefore, this court is left with 05 convictions considered by the trial judge to declare the appellant as a habitual offender which enabled him to make the sentences consecutive.

Habitual offender

[13] The term habitual offender is not defined in the Sentencing and Penalties Act. A habitual offender is a term used to describe a person who repeatedly commits crimes or offenses, often involving a pattern of criminal behavior over an extended period of time. Some legal systems may require a specific number of prior convictions or certain types of offenses to qualify as a habitual offender, while others may have more flexible criteria. The goal is generally to address the problem of chronic criminal behavior by imposing more severe consequences on individuals who repeatedly break the law and in order to deter repeat offenders and protect society from individuals who continue to engage in criminal activities.

[14] In terms of section 11(1)(a) of the Sentencing and Penalties Act, an offender could be declared a habitual offender only when sentencing for an offence or offences of the nature described in section 10. According to section 11(1)(b) the offender's previous convictions for offences should be of a like nature to the present one. The state counsel at the leave stage conceded that even if the appellant had been handed over 05 convictions in 2004 that alone would not justify him being treated as a habitual offender because the trial judges in Fiji hardly classify an accused as a habitual offender on the basis of a few convictions. He cited the case of **Suguturaga v State** [2014] FJCA 206; AAU0084.2010 (5 December 2014) as an authority that has dealt with a similar issue where the trial judge had classified the appellant as a habitual offender but was reversed by the Court of Appeal.

[15] In the case of the appellant, all five previous convictions considered by the trial judge arise from one and the same case and therefore presumably from one transaction. The first question is when such convictions are from one transaction, whether they could be considered as previous convictions for declaring an accused as a habitual offender.

[16] Whether an accused can be classified as a habitual offender for committing several offenses in the same transaction typically depends on the laws of the specific jurisdiction where the offenses occur. In many legal systems, being labelled a habitual offender often involves a history of multiple convictions for various offenses over a period of time, rather than committing several offenses in a single transaction. However, some jurisdictions do have provisions that allow for enhanced penalties or habitual offender status based on a single incident if it involves multiple offenses that are considered distinct and separate under the law.

[17] Firstly, the Sentencing and Penalties Act does not require a particular number of previous convictions for an offender to be declared a habitual offender. In terms of section 11(1)(b) of the Sentencing and Penalties Act, there is no bar for an accused to be declared a habitual offender on the basis of multiple convictions based on a single transaction or incident as long as those previous convictions for offences are of like nature. However, a survey of instances where accused had been determined to be habitual offenders in Fiji demonstrates that in those instances there had been several previous convictions for offences of similar nature committed on multiple occasions.

[18] Be that as it may, quite apart from the number of previous convictions required and whether those convictions should relate to multiple occasions to trigger the application of section 11, section 11(1)(c) contains another vital prerequisite for the determination of an offender as a habitual offender in that the court should be satisfied that the offender constitutes a threat to the community.

[19] Section 11 of the Sentencing and Penalties Act states:

> *"(1) A judge may determine that an offender is a habitual offender for the purposes of this Part –*
>
> *(a) When sentencing the offender for an offence or offences of the nature described in section 10;*

(b) Having regard to the offender's previous convictions for offences of a like nature committed inside or outside Fiji; and

(c) If the court is satisfied that the offender constitutes a threat to the community.

(2) The powers under this Part may be exercised by the court of Appeal and the Supreme Court when hearing an appeal against sentence."

[20] Section 10 of the Sentencing and Penalties Act states:

"This Part applies to a court when sentencing a person determined under section 11 to be a habitual offender for –

(a) a sexual offence;
(b) offences involving violence;
(c) offences involving robbery or housebreaking;
(d) a serious drug offence; or
(e) an arson offence."

[21] Also relevant is section 12 of the Sentencing and Penalties Act which states:

"Where any court is proposing to impose a sentence of imprisonment on a person who has been determined to be a habitual offender under section 11 for an offence of a nature stated in section 10, the court, in determining the length of the sentence –

(a) shall regard the protection of the community from the offender as the principal purpose for which the sentence is imposed; and

(b) may, in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence."

[22] The Court of Appeal in ***Suguturaga*** said that there are two prerequisites for an exercise of discretion to declare an offender a habitual offender under section 11(1) of the Sentencing and Penalties Act:

*'[14]..... The **first prerequisite** is that the offender is convicted of an offence of a nature that is prescribed under section 10. If the first prerequisite is met, then the **second prerequisite** is that the sentencing court having regard to the offender's previous convictions for offences of similar nature must be satisfied that the offender constitutes a threat to the community. If the sentencing court is so satisfied, then a sentence that is longer than that which is proportionate to the gravity of the offence can be imposed under section 12 for the purpose of protecting the community. Section 12 has clearly created an exception to*

the proportionality principle in sentence. The exception allows for the use of previous convictions as an aggravating factor to enhance the offender's sentence in order to protect the community.....'

[23] It is clear from paragraph 4(iii) of the sentencing order that the learned trial judge had only considered 05 previous convictions related to one case of the appellant for 'robbery with violence' in classifying the appellant as a habitual offender. He had not given his mind to all the prerequisites in section 11 of the Sentencing and Penalties Act and the pronouncement in ***Suguturaga***. Although the requirements in sections 10(c); 11 (1)(a) and (b) may have been satisfied in this case, most importantly, the trial judge had not satisfied himself that the appellant constituted a threat to the community as required in section 11(1)(c) which is a mandatory requirement.

[24] After the trial judge treated the appellant as a habitual offender, he had in determining the length of the sentence considered the protection of the community as the principal purpose of the sentence in terms of section 12(a) of the Sentencing and Penalties Act and acting under section 12(b) imposed a longer sentence than that which was proportionate to the gravity of the offence by making the two sentences for aggravated burglary and theft consecutive. However, it must be remembered that considerations under section 12 only relate to the length of the sentence to be imposed on a habitual offender and not to determining a person to be a habitual offender which is governed by considerations under section 11.

[25] Section 12(b) of the Sentencing and Penalties Act creates an exception to and permits a trial judge to depart from proportionality principle in sentencing a habitual offender by imposing a longer sentence disproportionate to the gravity of the offence.

[26] Can the judge do it by making sentences consecutive? Or should the judge not impose a longer sentence on each of the offences and make them run concurrently?

[27] The Court of Appeal said in **Batimudramudra v State** [2021] FJCA 96; AAU113.2015 (27 May 2021) that the answer lies in section 22(2)(c) of the Sentencing and Penalties Act which states that the default position of concurrency of every term of imprisonment unless otherwise directed by court, set out in section 22(1) does not apply to a habitual offender under Part III and in respect of a habitual offender the sentencing judge has the option of acting under section 12 in imposing a

longer sentence disproportionate to the gravity of the offence or acting under section 22(2)(c) of the Sentencing and Penalties Act by making sentences consecutive. The letter course is possible only if the accused is convicted of more than one offence. In the former the sentencing judge would be departing from *'proportionality'* principle and in the latter from *'one transaction rule'*.

Totality principle & Proportionality principle

[28] It has been said that the principle of totality is a component of the principle of proportionality (see **R. v. Sidwell** (K.A.), 2015 MBCA 56 (CanLII). In some sense, totality is a 'subsidiary' of proportionality (see **R v May**, 2012 ABCA 213 (CanLII).

[29] Nevertheless, the totality principle and the proportionality principle are related concepts in criminal sentencing, but they are not the same. They both pertain to the idea of ensuring that the punishment imposed on a convicted individual is fair and just, but they approach this goal from slightly different perspectives.

[30] The totality principle is primarily concerned with the overall sentence an individual receives when they have been convicted of multiple offenses in a single criminal case or during a specific period. It suggests that when a person is convicted of multiple offenses, the sentencing judge should consider the cumulative impact of all the sentences to ensure that the total punishment is not excessive or disproportionate to the overall criminal conduct. In essence, it encourages judges to take into account the full range of offenses committed by the defendant and the combined impact of the sentences to avoid overly harsh punishments that do not fit the overall criminal behaviour. Totality principle is particularly important when sentences are made consecutive rather than concurrent.

[31] In **Mill v R** [1988] HCA 70; (1988) 166 CLR 59 (8 December 1988) the High Court of Australia said of the totality principle as follows.

> *8. The totality principle is a recognized principle of sentencing formulated to assist a court when sentencing an offender for a number of offences. It is described succinctly in Thomas, Principles of Sentencing, 2nd ed. (1979), pp 56-57 as follows (omitting references):*

"The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate is 'just and appropriate'. The principle has been stated many times in various forms: 'when a number of offences are being dealt with and specific punishments in respect of them are being totted up to make a total, it is always necessary for the court to take a last look at the total just to see whether it looks wrong (')'; 'when ... cases of multiplicity of offences come before the court, the court must not content itself by doing the arithmetic and passing the sentence which the arithmetic produces. It must look at the totality of the criminal behaviour and ask itself what is the appropriate sentence for all the offences'."

[32] Lord Parker L.C.J. in **Reg. v. Faulkner** (1972) 56 Cr.App.R.594, at p 596, *'at the end of the day, as one always must, one looks at the totality and asks whether it was too much'.*

[33] The proportionality principle, on the other hand, is a broader concept that applies to individual sentences for single offenses. It emphasizes that the punishment for a particular crime should be proportionate to the seriousness of that specific offense. In other words, the punishment should fit the crime. This principle ensures that sentences are not unduly harsh or lenient, and it aims to strike a balance between the severity of the crime and the punishment imposed.

[34] In summary, while both the totality principle and the proportionality principle seek to achieve fairness in criminal sentencing, the former focuses on the combined impact of multiple sentences in cases of multiple offenses, while the latter addresses the appropriate punishment for each individual offense. Both principles are important in ensuring that the criminal justice system administers just and equitable sentences.

One transaction rule

[35] 'One-transaction rule' simply is that where two or more offences are committed in the course of a 'single transaction', all sentences in respect of these offences should, as a general rule, be concurrent rather than consecutive (see **Wong Kam Hong v State** [2003] FJSC 13; CAV0002.2003S (23 October 2003) & ***Suguturaga***).

[36] As a general rule consecutive sentences should not be such as to result in an aggregate term wholly out of proportion to the gravity of the offences viewed as a whole. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of sentence for the most serious of the individual sentences involved, or if its effect is to impose on the offender a crushing sentence not in keeping with his record and prospects. It is crucial in arriving at a sentence for several offences, after considering them individually, to stand back and look in a broader way at the totality of the criminal behaviour [**R v Bradley** [1979] NZCA 33; [1979] 2 NZLR 262)].

[37] As stated above, the learned judge had erred in declaring the appellant to be a habitual offender without complying with section 11(1)(c). The learned trial judge has therefore erroneously made the appellant's sentences for the two offences committed in the same transaction consecutive rather than concurrent departing from proportionality principle thereby lengthening the total sentence to 08 years and 06 months. Neither has he given any other reasons, at least as a best practice approach [see **Vaqewa v State** [2016] FJSC 12: CAV0016.2015 (22 April 2016)] why the consecutive sentences were justified in order to depart from one transaction rule as required under section 22(1) of the Sentencing and Penalties Act.

[38] The appellant's counsel has also submitted that it is wrong in principle to treat previous convictions as aggravating factors attaching to a subsequent offence for the purpose of sentencing [see **Saurara v State** [2008] FJSC 43; CAV0020.2007 (26 February 2008) & **Chand v State** [2016] FJCA 65; AAU0063.2012 (27 May 2016)].

[39] Therefore, I am inclined to act in terms of section 23(3) of the Court of Appeal Act and quash the sentence. The next question to be answered under section 23(3) is whether this court should pass a sentence warranted by law in substitution of the existing sentence or make such other order as the court thinks just.

[40] In deciding the proper course of action, I would adopt the following approach. When a sentence is reviewed on appeal, again it is the ultimate sentence rather than each step in the reasoning process that must be considered [vide **Koroicakau v The State** [2006] FJSC 5; CAV0006U.2005S (4 May 2006)]. The approach taken by the appellate court in an appeal against sentence is to assess whether in all the

circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range [**Sharma v State** [2015] FJCA 178; AAU48.2011 (3 December 2015)].

[41] The appellant had submitted an affidavit stating *inter alia* that while serving imprisonment he had trained himself and obtained certificates in joinery and small business. Since being bailed out by this court on 15 November 2021, the appellant claims to have been engaged in farming, painting, plastering and carpentry work and is currently employed at a company as a carpenter as confirmed by the company in writing to support himself and his family. Thus, it appears that the appellant has taken significant strides towards rehabilitation whilst in prison and particularly during the last 01 year and 10 months after his release on bail.

Kumar & Vakatawa guidelines and appropriate sentence for the appellant

[42] The full court delivered a guideline judgment with regard to sentencing tariff for burglary and aggravated burglary in **Kumar v State** [2022] FJCA 164; AAU117.2019 (24 November 2022) [***'Kumar & Vakatawa'***] as follows.

Culpability / Harm	BURGLARY (OFFENDER ALONE AND WITHOUT A WEAPON)	AGGRAVATED BURGLARY (OFFENDER EITHER WITH ANOTHER OR WITH A WEAPON)	AGGRAVATED BURGLARY (OFFENDER WITH ANOTHER AND WITH A WEAPON)
HIGH (CATEGORY 1)	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years	Starting Point: 09 years Sentencing Range: 08–12 years
MEDIUM (CATEGORY 2)	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years	Starting Point: 07 years Sentencing Range: 05–10 years
LOW (CATEGORY 3)	Starting Point: 01 year Sentencing Range: 06 months – 03 years	Starting Point: 03 years Sentencing Range: 01–05 years	Starting Point: 05 years Sentencing Range: 03–08 years

[43] From the facts of the appellant's case, it appears that the appellant's sentencing range according to ***Kumar & Vakatawa*** is between 03-08 years with a starting point of 05 years. Considering the aggravating circumstances such as significant planning, offending committed in the night, the appellant's leading role, the value of the stolen property and attempt to escape in the complainant's car resulting in crashing it against the gate, his aggregate sentence for both offending should pitch higher at the scale.

[44] This case appears to be a situation where the approach to sentencing in **Zhang v R** [2019] NZCA 507 as quoted in **Seru v State** [2023] FJCA 67; AAU115.2017 (25 May 2023) could be adopted because the tariff in ***Kumar & Vakatawa*** applies to all sentencing that takes place after the date of guideline judgment regardless of when the offending took place but sentencing tariff in ***Kumar & Vakatawa*** only applies to sentences that have already been imposed, if and only if two conditions are satisfied: (a) that an appeal against the sentence has been filed before the date the judgment is delivered; and (b) the application of the judgment would result in a more favourable outcome to the appellant.

[45] The appellant had served 05 years and 1 ½ months since being arrested till released on bail pending appeal and had been in pre-trial remand for 01 year and 09 months. Thus, I think the total of 06 years and 10 ½ months of incarceration the appellant has already spent is an appropriate sentence for both offending which he has already served. However, for all purposes and records, the appellant should be deemed to have served a sentence of 06 years and 10 ½ months of imprisonment in respect of both offending in this case. The state counsel gracefully conceded that no purpose of sentencing would be served by returning the appellant to prison at this stage. Therefore, instead of passing another sentence warranted by law in substitution of the existing sentence at this stage, I would make an order to release the appellant forthwith which is just in all circumstances of the case.

Qetaki, JA

[46] I agree with the judgment, its reasoning and the orders made.

Morgan, JA

[47] I concur with this draft judgment and have no further comments.

Orders of Court:

1. Enlargement of time to appeal and the appeal against sentence is allowed.
2. Quash the sentence of 08 years and 06 months with a non-parole period of 08 years passed on the appellant by the High Court.
3. The appellant is deemed to have served a sentence of 06 years and 10 ½ months of imprisonment.
4. The appellant is released forthwith.

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Hon. Mr. Justice C. Prematilaka
RESIDENT JUSTICE OF APPEAL

COURT OF APPEAL FIJI

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Hon. Mr. Justice A. Qetaki
JUSTICE OF APPEAL

.....

Hon. Mr. Justice W. Morgan
JUSTICE OF APPEAL