

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 003 OF 2013

BETWEEN : **SATENDRA NATHAN**
[Appellant]

AND : **STATE**
[Respondent]

Counsel : **Mr Dora Sami Naidu for for Appellant**
Mr. F. Lacanivalu for the Respondent

JUDGMENT

[1] The Appellant above named filed an appeal through his counsel and submitted the following grounds of appeal.

- a) The Learned Magistrate misdirected himself as to the application of Section 4(2) (j) of the Sentencing & Penalties Decree 2009 in failing to suspend the sentence of the accused;
- b) That the Learned Magistrate erred in law and in fact by failing to give sufficient weight to the Accused character and the mitigating factors in imposing a custodial sentence.
- c) That the Learned Magistrate erred in law and in fact by failing to take into consideration based on the summary of facts tendered by the Prosecution that the accused was

intoxicated to an extent that the commission of the offence was not premeditated/calculated.

[2] **Background:**

On the 24th December 2012, the Appellant was arrested by the Border Police and kept in custody. While in custody, the Appellant approached ASP Pita Keni and gave him two fifty dollars notes so that he could be released from police custody. The Appellant was charged with one count of Bribery of Public Official and one count of Drunk and Disorderly.

On the 28th December 2012, the Appellant pleaded guilty to the charges and on the 11th January 2013, the Appellant was convicted and sentenced to 8 months imprisonment for the first count of Bribery of Public Official and fined with a sum of \$350.00 for the count of Drunk and Disorderly.

The Appellant now seeks to appeal against the sentence regarding the charge of Bribery of Public Official.

[3] The first ground of appeal is that the Magistrate had not considered Section 4(2) (j) of the Sentencing & Penalties Decree. Section 4(2) states as follows:

(2) In sentencing offenders a court must have regard to —

- “(a) the maximum penalty prescribed for the offence;
- (b) current sentencing practice and the terms of any applicable guideline judgment;
- (c) the nature and gravity of the particular offence;
- (d) the offender’s culpability and degree of responsibility for the offence;

- (e) the impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
- (f) whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;
- (g) the conduct of the offender during the trial as an indication of remorse or the lack of remorse;
- (h) any action taken by the offender to make restitution for the injury, loss or damage arising from the offence, including his or her willingness to comply with any order for restitution that a court may consider under this Decree;
- (i) the offender's previous character;
- (j) the presence of any aggravating or mitigating factor concerning the offender or any other circumstance relevant to the commission of the offence; and**
- (k) any matter stated in this Decree as being grounds for applying a particular sentencing option."

[4] Considering the sentencing remarks of the Magistrate I find that the Learned Magistrate carefully considered the medical condition, age and the disability of the Appellant. In paragraph 8 & 9 further he had reduced 16 months for that reason.

Recently the Court of Appeal in *Singh v State* (2010) FJCA 53, AAU83.2010 (16 December 2010) state as follows:

"The approach to medical conditions within sentencing policies in Fiji are the same as in mainstream common law jurisdictions such as England, Scotland and Australia. Shortly stated ill health is not a reason for a non custodial sentence if the Court is of the view that only a custodial sentence is appropriate in all the circumstances. The only exception is where an incurable illness is in its last phase and the prisoner has only a few months to live. In 2009 with a prognosis of six months at most Al Megrahi, the Lockerbie bomber, was returned to Libya on a compassionate basis within this policy, which decision was made by the Scottish Executive and by the Minister for Justice in

Scotland. Some time ago, in a similar situation, Great Train robber Ronald Biggs was allowed within policy by the Home Secretary to leave prison.”

- [5] Considering the sentencing remarks I find the trial Magistrate was very sympathetic and generous to grant 16 months deduction out of 24 months. Hence I do not find the Magistrate had failed to consider section 4 of the Sentencing & Penalties Decree. Eventually this ground of appeal fails on its own merits.
- [6] The second ground of appeal was that the Magistrate failed to give sufficient weight to the accused character and the mitigating factors.
- [7] The counsel for the Appellant submits that this case is different from FICAC v Singh. Considering the facts of the present appeal I find that the Appellant who was detained by the border police for an offence. The Appellant paid \$100.00 to the Commanding Officer to release him from the custody.

The act of bribery can be in any form as the Learned Magistrate says in paragraph 11 as *“bribery is a social menace and undoubtedly rotten the democratic foundation of the society”*. I may say it is cancerous to a reasonable democratic society. Fiji at present is overcoming this menace and progressing towards the correct path. This is the view of transparency international and other Bribery and corruption indicating agencies. I too endorse these remarks.

- [8] The Appellant who is 58 years may have experience in life he should know that this is not only bad but also killing the basic foundation of democratic society.

- [9] Considering the Learned Magistrate's reasoning I find he had properly calculated the sentence and given very generous deductions. Hence I do not find that he had misdirected himself. For the reasons stated above this ground of appeal fails on its own merits.
- [10] The last ground of appeal is the Magistrate failed to consider Section 4(2) (j) which I have extensively discussed with the first ground of appeal. I do not find there is merit in this ground of appeal.
- [11] After carefully considering extensive submissions filed by the counsels for the Appellant and State I find none of the grounds of appeals succeeds hence I dismiss the appeal.
- [12] Since the appeal is dismissed the Appellant will serve his sentence from today.
- [13] Appeal dismissed.

S. Thurairaja

Judge

At Lautoka

10 May 2013

Solicitors: Pillai Naidu & Associates for the Appellant

The Office of the Director of Public Prosecution for State