

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**CRIMINAL APPEAL CASE NO.: HAA 27 OF 2014**

**BETWEEN:** RUCI SEMO

*Appellant*

**AND:** STATE

*Respondent*

**Counsels:** Mr. E. Maopa for the Appellant  
Mr. Josaia Niudamu for the Respondent

**Date of Hearing:** 29 October 2014

**Date of Judgment:** 30 October 2014

**JUDGMENT**

1. The appellant was charged before the Nadi Magistrate Court with one count of Indecently Annoying a Person contrary to Section 213 (1) of the Crimes Decree No. 44 of 2009. The particulars of the offence are as follows:

**RUCI SEMO** on the 16<sup>th</sup> day of November 2013 at Nadi in the Western Division with intent to insult the modesty of **MARCUS HILL** uttered the words "Fucken White Bastard" intending that such word be heard by said **MARCUS HILL**.

2. She had pleaded guilty for the count and admitted the summary of facts.
3. The summary of facts are as follows:

On the 16<sup>th</sup> day of November 2013 at about 1.50 p.m. at Namaka Lane, Nadi one Marcus Hill (Complainant) 42 years, Photographer of Vuda, Lautoka was on his way Namaka Lane in his motorbike and was following a vehicle registration number HG 955 which was driven very slowly. Complainant parked his motorbike beside MH supermarket. There was enough space for the Fijian lady to pass through but she kept on pressing the

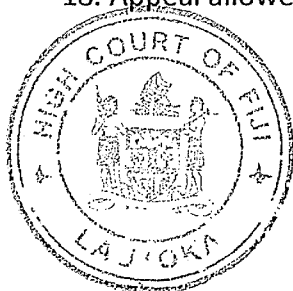
horn. Then complainant knocked her window which was up and told her that she had enough space to drive through.

Both drivers and the passenger started to swear at complainant saying "fucken white bastard" whereby complainant got annoyed as such words.

The matter was reported at Namaka police station. Accused was arrested, caution interviewed and later charged for the offence of Indecently Annoying a Person. Accused totally denied the allegation.

4. Appellant was convicted and sentenced to 3 months imprisonment suspended for 3 years on 25.7.2014.
5. This appeal was filed on 6.8.2014 within time.
6. The grounds of appeal are:
  - (i) That the said sentence as being inappropriate and or does not exist in law.
7. Both parties have filed written submissions. State in their submissions has conceded that the sentence is inappropriate.
8. The learned Magistrate had correctly identified the maximum sentence as 1 year imprisonment.
9. Then the learned Magistrate had followed judgments **Kumar v State** [1995] FJHC 2; HAA 003j.1995b (7 February 1995) and **Prakash v State** [2013] FJHC 656; HAA 27.2013( 4 December 2013) and stated that the tariff is from binding over to 6 months imprisonment.
10. In **Kumar v State** for kissing a female on her mouth a sentence of 9 months was reduced to a sentence of 3 months. In **Prakash v State** for texting messages an act of a nature likely to offend her modesty a 3 months suspended sentence was substituted by a binding over order for a period of 12 months.
11. The learned Magistrate had taken a starting point of 3 months and added 3 months for the aggravating factor that the appellant swore at the complainant without any provocation. Then 1 month was deducted for the mitigating factors. Namely appellant being a first offender. Further two months were deducted for the guilty plea.
12. In paragraph 10 of the sentence it is stated that '*Therefore, now I sentence you for 3 months imprisonment for indecently annoying Marcus Hill.*'
13. However in paragraph 11 it is stated that '*I suspend your 6 months imprisonment for 3 years.*'

14. Therefore the learned Magistrate had passed two sentences for the same offence. Further he had failed to consider Sections 4(2) and 16 (1) (a) (b) (c) of the Sentencing and Penalties Decree 2009 and exercise the judicial discretion properly.
15. This background warrants this Court to exercise its powers in terms of Section 256 (3) of the Criminal Procedure Decree to quash the sentence passed by the Magistrate in respect of the count and pass other sentence which reflects the gravity of the offence within the acceptable range of tariff.
16. Accordingly the appellant is sentenced to a 'Binding Over'. The appellant is bound over for a sum of \$1,000 for the next 12 months to maintain good behavior and peace with no interference to the complainant's life.
17. The Magistrate Court of Nadi is ordered to execute the Bond of the appellant's 'Binding Over.' The appellant is ordered to present herself at the Registry of the Nadi Magistrate's Court on 7<sup>th</sup> November 2014 to sign the bond.
18. Appeal allowed. Sentence varied.



At Lautoka  
30<sup>th</sup> October 2014

  
Sudharshana De Silva  
**JUDGE**

Solicitors : Babu Singh & Associates for the Appellant  
Office of the Director of Public Prosecutions for Respondent