

IN THE HIGH COURT OF FIJI  
AT LABASA  
CRIMINAL JURISDICTION

Criminal Appeal No: HAA 21 of 2014

BETWEEN:

HIND MUNESHWAR LAL

*Appellant*

AND:

THE STATE

*Respondent*

**Counsel:** Appellant in person  
Mr. S. Vodokisolomone for Respondent

**Date of Hearing:** 24 December 2014

**Date of Judgment:** 31 December 2014

JUDGMENT

- [1] This is an appeal against sentence only.
- [2] The appellant was charged with an offence of traffic in obscene publications contrary to section 377 (1) (a) of the Crimes Decree. He pleaded not guilty to the charge and the trial commenced on 19 March 2013 in the Magistrates' Court. After the prosecution had led evidence from ten witnesses, the appellant freely and voluntarily changed his plea to guilty.

- [3] He admitted the facts tendered by the prosecution. The facts were that on 6 June 2011, the appellant posted nude photographs of a female victim at a bus shelter along the Waiqele Airport road. The photographs had the victim's and her father's name on it, together with the registration number of her father's vehicle. The next morning, women from the area saw the photographs and promptly advised the victim's father who went down to the bus shelter, removed the photos and reported the matter to the police. The appellant was arrested and interviewed under caution. He admitted the offence.
- [4] The learned trial Magistrate sentenced the appellant to 9 months' imprisonment. The grounds of appeal against sentence in summary are:
- (i) Error in using 24 months as the starting point.
  - (ii) Failure to consider case guidelines.
  - (iii) Error in not giving 1/3 discount for guilty plea.
  - (iv) Sentence is excessive.
- [5] Appellate courts review sentence for errors in the sentencing discretion of the court below (Simeli Bili Naisua v The State Crim. App. No. CAV0010 of 2013).
- [6] I deal with grounds 1-3 together. The offence of traffic in obscene publications is fairly a new offence under the Crimes Decree 2009. The offence is a summary offence punishable by five years' imprisonment. In sentencing the appellant, the learned Magistrate correctly accepted that there was no established sentencing tariff or guideline for this offence. She used 2 years as her starting point by subsuming the aggravating factors. She deducted 3 months for the mitigating factors and 4 months for the late guilty plea. A further reduction of 8 months was made to reflect the appellant's remand period. In my judgment, there is no error of law or fact in the sentencing discretion of the learned Magistrate. The use of 2 years as a starting point after accounting for the aggravating factors was on the lower end of the maximum penalty. There was no double counting of the aggravating factors.

- [7] The appellant's guilty plea was of little value. He changed his plea after testing the prosecution's evidence. The victim and her father were subjected to a lengthy cross examination by the appellant. The manner in which the appellant conducted himself showed he had no remorse for his conduct. In these circumstances, the appellant was fortunate to receive 4 months reduction for his change of plea.
- [8] The appellant's contention that his sentence is excessive lacks merit. The obscene photographs involved a child. The appellant befriended her and took nude photographs of her with exposed breasts. The public display of nude photographs of a juvenile girl (under the age of 18 years) is a serious offence. The courts have a duty to impose condign punishment to deter others from engaging in this kind of conduct. The appellant's conduct was clearly designed to publicly humiliate the victim and her family. The victim's father gave evidence that he felt like committing suicide when he saw the nude photographs of his daughter. The learned Magistrate in her sentencing remarks stated that the effect of public display of nude photographs of a juvenile girl in a small community like Labasa could be most tragic for the young girl and her family. I endorse that remark. In my judgment, the sentence of 9 months imprisonment is just and appropriate given the nature of offending by the appellant.
- [9] The appeal against sentence is dismissed.



Daniel Goundar

**JUDGE**



At Labasa  
31 December 2014

**Solicitors:**

Appellant in Person  
Office of the Director of Public Prosecutions for Respondent