

IN THE HIGH COURT OF FIJI

AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 020 OF 2018S

BETWEEN : SAKIUSA MATAVESI DUWAI

APPELLANT

AND : THE STATE

RESPONDENT

Counsels : Ms. S. Colavanua for Appellant  
Ms. S. Serukai for Respondent

Hearings : 25 October and 16 November, 2018

Judgment : 28 December, 2018

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## JUDGMENT

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1. On 9 May, 2016, the appellant waived his right to counsel. The following charge was read and explained to him:

“Statement of Offence [a]

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Decree No. 44 of 2009.

Particulars of Offence [b]

SAKIUSA MATAVESI DUWAI on the 08<sup>th</sup> day of February, 2016 at Vuci Methodist School, Nausori in the Central Division, assaulted SHANAYA PRASAD thereby causing her actual bodily harm.”

2. He said, he understood the charge. He pleaded not guilty to the same. In other words, he denied the allegation against him. Full disclosure of the witnesses' statements and a

copy of the charge was given to him in court. It was adjourned to 13 December 2016 for mention to set a hearing date.

3. On 13 December 2016, the appellant failed to turn up in court and a bench warrant was issued against him. On 8 February 2017, he was brought to court after being arrested on the bench warrant. He told the court he forgot the court date on 13 December 2016. The court set the 31 March 2017 as the trial date. Mention dates were held on 17 and 23 February and 13 March 2017. On 31 March 2017, the hearing was vacated as the appellant's counsel was not in court. A new trial date on 20 June 2017 was set by the court, in the presence of the accused.
4. The case was adjourned for mentions on 12 and 21 April 2017. On 20 June 2017, the appellant and his counsel failed to turn up in court for trial. The court decided to proceed in absentia against the appellant. The prosecution's witnesses were in court. The prosecution called three witnesses, that is, Doctor R. Singh (PW1); Ms. Rina Lata (PW2) and Ms. Shanaya Sharon Prasad (PW3).
5. The prosecution's case were as follows. PW3 was the complainant. She said, on 8 February 2016, she was a Form 4 student at Vuci Methodist School. She said, she was taken before the appellant's staff room. She said, the appellant was her teacher. She said, in the staff room, the appellant hit her back with a rake handle five times. She said, she complained to her parents later, and she was taken to a hospital. PW2 confirmed that PW3 reported the above matter to her after school. PW2 said, they later reported the matter to police. PW1 said, he medically examined PW3 at Nausori Health Centre on 8 February 2016 at about 5.45 pm. He found contusions and abrasions on PW3's back. These injuries were contained in PW3's medical report, which was tendered in evidence, as Prosecution Exhibit No. 1.
6. After the hearing on 20 June 2017, the court adjourned to 10 July 2017 for judgment. On 10 July 2017, the court found the accused guilty as charged and convicted him accordingly. On 18 January 2018, the appellant's plea in mitigation was taken. On 1 February 2018, the appellant was sentenced to 7 months imprisonment.
7. The appellant was not happy with the above conviction and sentence. On 28 March 2018, he applied to the High Court for permission to appeal against conviction and sentence out of time. Permission can be granted if he shows "good cause", and this often



meant he had merits in his appeal. While perusing the appeal file, I found that the appellant had not filed any purported petition of appeal. However, during his application, I gathered that his major complaint was that he was tried in absentia and this was not fair on him.

8. To find out whether or not he was correct in his complaint, we will have to start with section 14 (2)(h)(i) of Fiji's 2013 Constitution, which reads as follows:

**"Every person charged with an offence has the right-  
to be present when being tried, unless-**

- (i) **The court is satisfied that the person has been served with a summons or similar process requiring his or her attendance at the trial, and has chosen not to attend."**

9. The above section is the supreme law of the land. It entitled the appellant to be present in court when tried. However, the section also said he can be tried in absentia if "the court is satisfied that (he) had been served with a summon or similar process requiring his attendance at the trial, and has chosen not to attend." Applying the above law to the fact of this case, the appellant had been warned by the court on 31 March 2017 to be present on 20 June 2017 for the trial. By conduct, he and his counsel chose not to attend trial on 20 June 2017. The court proceeded to try him in absentia. After trial, the court found him guilty as charged and convicted him as charged. He was later sentenced to 7 months imprisonment. In my view, after perusing the Magistrate Court record, and hearing and considering the parties' written and verbal submissions, the appellant was duly tried, convicted and sentenced according to law.

10. Given the above, I find the appellant had no merit in his purported appeal, and leave to appeal out of time is refused.



**Salesi Temo**  
**JUDGE**

**Solicitor for Appellant : Colavanua Law, Barristers & Solicitors, Suva**

**Solicitor for Respondent : Office of DPP, Nausori.**