

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

**Criminal Appeal No. 89 of 2017**

**RAVIND KUMAR**

**V**

**STATE**

**Mr. Anil Singh           :     for the Appellant**  
**Ms S. Kiran             :     for the State**

**Date of Hearing         :     7 February 2018**  
**Date of Judgment     :     12 February 2018**

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**JUDGMENT**

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- 1.] On the 18<sup>th</sup> April 2017, the appellant ("the accused") entered a plea of guilty in the Magistrates Court at Nadi to the following two offences:

**COUNT 1**  
***Statement of Offence***

**FAIL TO MUZZLE DANGEROUS DOG** contrary to Section 4 of the Dogs Act Chapter 168 of the Laws of Fiji.

### ***Particulars of Offence***

**RAVIND KUMAR** on the 26<sup>th</sup> day of July 2016 at Nadi in the Western Division being the owner of two dogs which he knew to be dangerous let it (sic) at large without being properly muzzled.

### **COUNT 2**

### ***Statement of Offence***

**DOG ATTACKING PERSON:** Contrary to Section 5 of the Dogs Act Chapter 168 of the Laws of Fiji.

### ***Particulars of Offence***

**RAVIND KUMAR** on the 26<sup>th</sup> day of July 2016 at Nadi in the Western Division being the owner of two dogs at Waqadra, his dogs attacked **ADEN RYAN CHAND** whereby the said **ADEN RYAN CHAND** was injured.

### **Facts**

- 2.] The facts that the accused admitted were that on the 26<sup>th</sup> of July 2016 at about 6.00 pm at Waqadra, Nadi, one Aden Ryan Chand aged 5 years was playing in his home compound when he was attacked by the accused's dogs which came running into that compound from the accused's compound. After biting the boy the dogs ran back and the wife of the accused hearing the boy's mother shouting came running out. She saw that part of the front gate was open. The wife helped to take the boy and his mother to the hospital.
- 3.] The injuries caused were lacerations and a large gaping wound on the scalp.

### **Mitigation**

- 4.] In his comprehensive mitigation before the Magistrate, Counsel Anil Singh pleaded that this would be a suitable case in which to find the charges proved and

discharging the accused without conviction. He prayed in aid the early plea of guilty, the accused's long standing service to the nation and the fact that no moral blame attached to the accused by the technical offence.

### **The Sentence**

- 5.] The learned Magistrate after reciting the facts referred to the case of **Batiratu** [2012] FJHC 864 (13 February 2012) in which Gates CJ dealt among other matters with discharges without conviction.
- 6.] She then refused to accede to counsel's request and convicted the accused on both counts. She said that she would consider his service to the nation and his clear record as mitigation. She then listed 9 mitigating features attaching to the offences but made no allowance for them whatsoever by fining the accused the maximum penalty of \$100 for each of the two offences.

### **This Appeal**

- 7.] The Appellant prays that a discharge without conviction should have been open to him.
- 8.] He submits that despite the strong mitigation available to him, he was given no discount from the maximum penalty.
- 9.] He submits that the learned Magistrate fell into error by misunderstanding the relevant principles in **Batiratu** (supra).

### **Analysis**

- 10.] Leaving aside the question of non-conviction, it is clear that no credit was given to the accused for his conviction. The Magistrate listed the following features in his favour:

- (i) He is 52 years old
- (ii) He is married with 2 children
- (iii) He is the Director of the Meteorological Office in Nadi
- (iv) He has a clear record in his 30 years of public service
- (v) By his meteorological work he has saved lives in times of cyclone and other weather disasters
- (vi) His wife immediately rendered assistance to the young victim by taking him and his mother to the hospital in her vehicle
- (vii) He entered a plea of guilty at the first opportunity
- (viii) He is remorseful
- (ix) He is an active member of a Hindu organization promoting good values and morality.

11.] While the first two factors are not really mitigatory, the rest are strong mitigation that should have been reflected in the sentence.

12.] In ***Batiratu***, the Chief Justice drew a distinction between celebrities and people who have served society and State well. He decided that people of fame cannot use their status as a shield against the consequences of criminal conduct, but he added:

*“A history of good service to the State, combined with good character are both strongly mitigatory”.*

13.] Pursuant to Section 256 (2) of the Criminal Procedure Act 2009, I discard the sentence passed below and sentence the accused afresh.

14.] The appellant has served the State for 30 years in the Meteorological Department and he is presently the Director. He is required at time to travel abroad for conferences and meetings.

15.] In that time he has never offended.

- 16.] He entered an early plea of guilty to these very minor offences which were brought about by accident when he was not even present.
- 17.] There is no moral blame attaching to him, and in fact his wife did everything she could to ameliorate the harm done.
- 18.] This is an entirely suitable case for a conviction not to be recorded in terms of the Chief Justice's judgment in *Batiratu* (*supra*) and pursuant to Section 45 (1) of the Sentencing and Penalties Act 2009 this Court dismisses the charges and does not record any conviction.
- 19.] If the \$200 fine has been paid, then it is to be refunded to him.



**P.K. Madigan**  
**Judge**

**At Lautoka**  
**12<sup>th</sup> February, 2018**