IN THE HIGH COURT OF FIJI
AT SUVA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL NO. HAA 38 OF 2019

IN THE MATTER of an Appeal from the decision of the Magistrate's Court of Fiji at Nausori, in Criminal Case No. 79 of 2015.

BETWEEN : RAMAN PRASAD

APPELLANT

AND THE STATE

RESPONDENT

Counsel : Mr. Shelvin Singh with Ms. I. Lutu for the Appellant
Ms. Sheenal Swastika for the Respondent

Date of Hearing : 10 June 2020

Judgment : 17 July 2020

JUDGMENT

[1] This is an Appeal made by the Appellant against his conviction and sentence imposed by the Magistrate's Court of Nausori.

[2] The Appellant was charged in the Magistrate's Court of Nausori for the following offence:

Statement of Offence (a)

SEXUAL ASSAULT: Contrary to Section 210 (1) (b) (i) and (2) of the Crimes Decree No. 44 of 2009.

Particulars of Offence (b)

RAMAN PRASAD, on the 14th day of January 2015, in Waituri Irrigation Road, Nausori, in the Central Division, unlawfully and indecently assaulted **MOHAMMED ZAHID ZIYYARD ALI** by bringing his penis into contact with the mouth of the said **MOHAMMED ZAHID ZIYYARD ALI**.

[3] The Appellant pleaded not guilty to the charge and the matter proceeded to trial.

[4] At the conclusion of the trial, on 7 June 2019, the Appellant was found guilty and convicted of the said charge.

[5] Thereafter, on 30 September 2019, the Appellant was sentenced to 68 months imprisonment, with a non-parole period of 60 months imprisonment.

[6] Aggrieved by the said Order the Appellant filed a Petition of Appeal in the High Court on 25 October 2019. The Petition of Appeal is in respect of both his conviction and sentence.

[7] This matter was taken up for hearing on 10 June 2020. Counsel for both the Appellant and the Respondent were heard. Both parties filed written submissions, and referred to case authorities, which I have had the benefit of perusing.

[8] As per the Petition of Appeal the Grounds of Appeal taken up by the Appellant are as follows:

APPEAL AGAINST CONVICTION

1. The Learned Magistrate erred in law and in fact in holding that the prosecution had proved its case beyond reasonable doubt.
2. The Learned Magistrate erred in fact in accepting the complainant's evidence that the Appellant forced him to suck his penis.

3. The Learned Magistrate erred in fact in accepting the complainant's evidence that the complainant did in fact suck the Appellant's penis on 14 January 2015.
4. The Learned Magistrate erred in law in not allowing advising the Appellant of the statutory defence of mistake of age.
5. The Learned Magistrate erred in law in not allowing the Accused to elect to trial in either the Magistrates Court or the High Court as the offence with which the Appellant was charged with was an indictable offence triable summarily.
6. The Learned Magistrate erred in law and in fact in failing to consider and/or analyse the evidence of the Accused that he did not force the complainant to suck his penis on 14 January 2015 and that the complainant did not suck his penis on that date at the alleged place.
7. The Learned Magistrate erred in law and in fact in not drawing any adverse inferences from the inconsistencies in the evidence of the complainant and the other prosecution witnesses.
8. The Learned Magistrate erred in law in not holding that the charge was defective.
9. The Learned Magistrate erred in law and in fact in holding that the prosecution had proved its case beyond a reasonable doubt.
10. Such further and/or other Grounds as may become apparent on availability of the Court Record.

APPEAL AGAINST SENTENCE

1. The Learned Magistrate erred in law when he sentenced your Petitioner (Appellant) to 68 months imprisonment which is harsh and excessive considering the facts of the offending.
2. The Learned Magistrate failed to consider the medical report of the complainant in his sentencing.
3. The Learned Judge erred in law when sentencing your Petitioner (Appellant) by failing to take into account and/or consider the Sentencing Guidelines and the General Sentencing Provisions in the Sentencing and Penalties Decree 2009.

The Law and Analysis

[9] Section 246 of the Criminal Procedure Act No 43 of 2009 (Criminal Procedure Act) deals with Appeals to the High Court (from the Magistrate's Courts). The Section is re-produced below:

> *"(1) Subject to any provision of this Part to the contrary, any person who is dissatisfied with any judgment, sentence or order of a Magistrates Court in any criminal cause or trial to which he or she is a party may appeal to the High Court against the judgment, sentence or order of the Magistrates Court, or both a judgement and sentence.*
>
> *(2) No appeal shall lie against an order of acquittal except by, or with the sanction in writing of the Director of Public Prosecutions or of the Commissioner of the Independent Commission Against Corruption.*
>
> *(3) Where any sentence is passed or order made by a Magistrates Court in respect of any person who is not represented by a lawyer, the person shall be informed by the magistrate of the right of appeal at the time when sentence is passed, or the order is made.*
>
> *(4) An appeal to the High Court may be on a matter of fact as well as on a matter of law.*
>
> *(5) The Director of Public Prosecutions shall be deemed to be a party to any criminal cause or matter in which the proceedings were instituted and carried on by a public prosecutor, other than a criminal cause or matter instituted and conducted by the Fiji Independent Commission Against Corruption.*
>
> *(6) Without limiting the categories of sentence or order which may be appealed against, an appeal may be brought under this section in respect of any sentence or order of a magistrate's court, including an order for compensation, restitution, forfeiture, disqualification, costs, binding over or other sentencing option or order under the Sentencing and Penalties Decree 2009.*
>
> *(7) An order by a court in a case may be the subject of an appeal to the High Court, whether or not the court has proceeded to a conviction in the case, but no right of appeal shall lie until the Magistrates Court has finally determined the guilt of the accused person, unless a right to appeal against any order made prior to such a finding is provided for by any law."*

[10] Section 256 of the Criminal Procedure Act refers to the powers of the High Court during the hearing of an Appeal. Section 256 (2) and (3) provides:

"(2) The High Court may —

(a) confirm, reverse or vary the decision of the Magistrates Court; or

(b) remit the matter with the opinion of the High Court to the Magistrates Court; or

(c) order a new trial; or

(d) order trial by a court of competent jurisdiction; or

(e) make such other order in the matter as to it may seem just, and may by such order exercise any power which the Magistrates Court might have exercised; or

(f) the High Court may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the Appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(3) At the hearing of an appeal whether against conviction or against sentence, the High Court may, if it thinks that a different sentence should have been passed, quash the sentence passed by the Magistrates Court and pass such other sentence warranted in law (whether more or less severe) in substitution for the sentence as it thinks ought to have been passed."

The Grounds of Appeal against Conviction

[11] As can be observed there are 10 Grounds of Appeal against the Conviction; and 3 Grounds of Appeal against the Sentence. However, during the hearing of this matter the Counsel for the Appellant informed Court that the Appellant would no longer be relying on Grounds 4 and 5 of the Grounds of Appeal against Conviction.

[12] I find that Ground 9 of the Grounds of Appeal against the Conviction is a repetition of Ground 1. Therefore, Ground 9 would not be dealt with separately. Furthermore, although the Appellant had submitted that such further and/or other Grounds would be filed if any such Ground became apparent on availability of the Court Record, no such further Grounds have been filed.

[13] Therefore, the Grounds of Appeal against Conviction remaining for determination by this Court are Grounds 1-3 and 6-8. Since Grounds 1, 2, 3, 6 and 7 all relate to the

evidence in the case, I deem it appropriate to discuss the aforesaid Grounds of Appeal against Conviction together. Ground 8 would be discussed separately.

Grounds 1, 2, 3, 6 and 7

[14] These Grounds of Appeal are that the Learned Magistrate erred law and in fact in holding that the prosecution had proved its case beyond reasonable doubt and that the Learned Magistrate erred in fact in accepting the complainant's evidence that the Appellant forced him to suck his penis and accepting the complainant's evidence that the complainant did in fact suck the Appellant's penis on 14 January 2015.

[15] Further, that the Learned Magistrate erred law and in fact in failing to consider and/or analyze the evidence of the Appellant and that he erred in law and in fact in not drawing any adverse inferences from the inconsistencies in the evidence of the complainant and other prosecution witnesses.

[16] During the course of the trial in Magistrate's Court the prosecution relied on the evidence of the following witnesses:

1. Mohammed Zahid Ziyyaad Ali [Pages 19-30 of the Magistrate's Court Record].
2. Corporal 3834 Josefa Ranuku [Pages 30-33 of the Magistrate's Court Record].
3. Doctor S. Dasa [Pages 33-35 of the Magistrate's Court Record].
4. Mohammed Aiyaz Ali [Pages 35-38 of the Magistrate's Court Record].

[17] The Defence relied on the evidence of the Appellant himself [Pages 39-47 of the Magistrate's Court Record] and the following two witnesses:

1. Komal Singh [Pages 47-48 of the Magistrate's Court Record] and
2. Amit Prasad [Pages 49-51 of the Magistrate's Court Record].

[18] The complainant Mohammed Zahid Ziyyaad Ali testified to the events which took place on 14 January 2015. At the time he would have been 14 years of age [His date of birth as mentioned in the Medical Examination Report is 17 August 2000]. He stated that around 9.00 in the morning of 14 January 2015 he had called the Appellant over the phone to speak to him. The line had got disconnected. He said the Appellant was

his friend. He had called him to check if the Appellant could drop him in the afternoon at his training place.

[19] Thereafter he had left home and come to the bus stand, which was situated close to his home. There had been a digger operating digging a drain. Whilst the complainant was sitting at the bus stop, the Appellant had come in his car and stopped near the bus stop. The Appellant had told the complainant to get into his car. The complainant had done so. Thereafter the Appellant had driven to Waituri Irrigation Road and asked the complainant to get off the vehicle.

[20] The Appellant had then taken the complainant into a bush and told him to suck his penis. The Appellant had also told the complainant that if he did not do so that he will be assaulted. So the complainant said he had knelt down/sat down and sucked the Appellant's penis three times. At the time the complainant said the Police had arrived there (a Police vehicle). The Appellant had threatened the complainant not to tell anything to the Police [Pages 22 and 23 of the Magistrate's Court Record].

[21] When the complainant was asked:

How he (Appellant) did it?

The answer recorded is:

(Demonstrated by victim) he standing told to kneel down (showed by hand on head). So I sat down he pulled down his trousers and told me to suck his penis.

[22] Corporal 3834 Josefa Ranuku, an Officer who was attached to the Nausori Police Station at the time of the incident, testified that on 14 January 2015 he was going around in a Police vehicle attending to pending reports. SC Sheik had been with him. On reaching the Irrigation Road he had noticed a white car parked on the roadside and felt suspicious. Thus he had got out of the vehicle and looked towards the bushes where the vehicle was parked. At the time he saw Appellant standing up from under one tree and quickly pulling up his trousers. The complainant had been present at the time with the Appellant.

[23] The witness had then taken the complainant to the Police vehicle and questioned him. The complainant had said that the Appellant had made him suck his penis.

[24] Mohammed Aiyaz Ali, the father of the complainant and Doctor S. Dasa, Sub-Division Medical Officer, Rewa, also testified on behalf of the prosecution.

[25] The Appellant testified in Court and totally denied the allegations against him. He stated that when his vehicle approached the bus stop where the digger had been operating, the complainant saw his vehicle, came running towards the vehicle, opened the door and got in. Although the Appellant had told the complainant to get off the vehicle, he did not. The complainant had an injury on his leg and had said that his father had assaulted him. The complainant had shown his swollen legs to the Appellant and demanded for $20.00 to go to hospital. However, the Appellant said he had not given him the money.

[26] The Appellant further testified that the complainant had wanted to smoke a cigarette. Since the Appellant did not want the complainant to smoke inside the car, he had stopped the car at a junction and got off the car with the complainant. The Appellant had lit a cigarette and the complainant had taken a couple of puffs. They had been standing beside the car outside, when the Police vehicle had arrived.

[27] The Learned Magistrate had duly analyzed all the evidence lead at the trial and come to the finding that the prosecution has proved its case beyond reasonable doubt [Vide Pages 54-63 of the Magistrate's Court Record for the Learned Magistrate's Judgment]. The Learned Magistrate has held that the prosecution case was credible and not inconsistent. She has accepted the complainant's evidence that the Appellant had threatened him to suck his penis and that the complainant had done so. Accordingly, the Learned Magistrate has found the Appellant guilty for Sexual Assault and convicted him.

[28] I see no reason or justification to interfere with the Learned Magistrate's Order.

[29] For the aforesaid reasons, I find that Grounds 1, 2, 3, 6 and 7 of the Grounds of Appeal against the Conviction are without merit.

Ground 8

[30] This Ground of Appeal against Conviction is that the Learned Magistrate erred in law in not holding that the charge was defective.

[31] The charge against the Appellant is that he committed Sexual Assault, contrary to Section 210 (1) (b) (i) and (2) of the Crimes Act No. 44 of 2009 (Crimes Act).

[32] For a better understanding of the charge Section 210 of the Crimes Act is reproduced below.

(1) A person commits an indictable offence (which is triable summarily) if he or she—

(a) unlawfully and indecently assaults another person; or

(b) procures another person, without the person's consent—

(i) to commit an act of gross indecency; or

(ii) to witness an act of gross indecency by the person or any other person.

[33] In the charge framed against the Appellant the statement of offence describes the charge of Sexual Assault as one falling under Section 210 (1) (b) (i) and (2) of the Crimes Act. However, in the particulars of offence it is stated that the Appellant unlawfully and indecently assaulted the complainant by bringing his penis into contact with the mouth of the said complainant. The term unlawfully and indecently is part of Section 210 (1) (a) of the Crimes Act. Section 210 (1) (b) (i) refers to a person procuring another person, without the person's consent, to commit an act of gross indecency.

[34] Therefore, in this respect there is a discrepancy between the statement of offence and the particulars describing the offence. The Learned Magistrate in her Judgment, in defining the elements of the offence has made reference to the fact that the Appellant has unlawfully and indecently assaulted the complainant by bringing his penis into contact with the victim's mouth (Paragraph 10 of her Judgment).

[35] Therefore, it is clear that although the statement of offence makes reference to Section 210 (1) (b) (i) of the Crimes Act, the Learned Magistrate has proceeded on the basis that the Appellant has committed an offence in terms of Section 210 (1) (a) of the Crimes Act, which is what is set out in the particulars of offence.

[36] Although the Learned Magistrate has proceeded on that basis (that the Appellant has committed an offence in terms of Section 210 (1) (a) of the Crimes Act), at paragraph

23 of her Judgment she has found the Appellant guilty of Sexual Assault contrary to Section 210 (1) (b) (i) of the Crimes Act. I concede that this is clearly an error of law.

[37] However, it is my opinion that no prejudice has been caused to the Appellant by virtue of this defect or discrepancy in the charge or the the Learned Magistrate's finding.

[38] Furthermore, in terms of Section 279 of the Criminal Procedure Act it is stated that:

> *"(1) Subject to sub-section (2), no finding, sentence or order passed by a Magistrates Court of competent jurisdiction shall be reserved or altered on appeal or revision on account of any objection to any information, complaint, summons or warrant for any alleged defect of substance or form or for any variance between such information, complaint, summons or warrant and the evidence, unless it is found that —*
>
> *(a) such objection was raised before the Magistrates Court whose decision is appealed from; and*
>
> *(b) the Magistrates Court refused to adjourn the hearing of the case to a future day notwithstanding that it was shown to the Magistrates Court that by such variance the appellant had been deceived or misled.*
>
> *(2) If the appellant was not represented by a lawyer at the hearing before the Magistrates Court, the High Court may allow any such objection to be raised."*

[39] In this case it is clear that the Appellant was represented by Counsel during the proceeding in the Magistrate's Court. No objection had been raised by the Counsel before the Magistrate's Court that the charge framed against the Appellant was defective.

[40] In ***Penisoni Saukelea v. The State*** [2019] FJSC 24; CAV0030.2018 (30 August 2019); the Fiji Supreme Court held (at paragraph 36):

> *"The main consideration in situations similar to this where there is some infelicity or inaccuracy of drafting is whether the accused knew what charge or allegation he or she had to meet: **Koroivuki v The State** CAV 7 of 2017; [2017] FJSC 28. Secondly it was important that the accused and his counsel were not embarrassed or prejudiced in the way the defence case was to be conducted: **Skipper v Reginam** Cr. App. No. 70 of 1978, 29th March 1979 [1979] FJCA 6. The Court of Appeal whilst not conceding merit in the point properly applied the proviso under section 23 of the Court of Appeal Act and dismissed the ground of appeal. Similarly in this Court, Ground 2 (which is a ground of appeal against a defective charge) fails."*

[41] Therefore, it is my opinion that this Ground of Appeal against conviction has no merit.

The Grounds of Appeal against Sentence

[42] In the case of ***Kim Nam Bae v. The State*** [1999] FJCA 21; AAU 15u of 98s (26 February 1999); the Fiji Court of Appeal held:

> *"...It is well established law that before this Court can disturb the sentence, the Appellant must demonstrate that the Court below fell into error in exercising its sentencing discretion. If the trial judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some relevant consideration, then the Appellate Court may impose a different sentence. This error may be apparent from the reasons for sentence or it may be inferred from the length of the sentence itself (**House v. The King** [1936] HCA 40; [1936] 55 CLR 499)."*

[43] These principles were endorsed by the Fiji Supreme Court in ***Naisua v. The State*** [2013] FJSC 14; CAV 10 of 2013 (20 November 2013), where it was held:

> *"It is clear that the Court of Appeal will approach an appeal against sentence using the principles set out in **House v. The King** [1936] HCA 40; [1936] 55 CLR 499; and adopted in **Kim Nam Bae v The State** Criminal Appeal No. AAU 0015 of 1998. Appellate Courts will interfere with a sentence if it is demonstrated that the trial judge made one of the following errors:*
>
> *(i) Acted upon a wrong principle;*
> *(ii) Allowed extraneous or irrelevant matters to guide or affect him;*
> *(iii) Mistook the facts;*
> *(iv) Failed to take into account some relevant consideration."*

[44] Therefore, it is well established law that before this Court can interfere with the Sentence passed by the Learned Magistrate; the Appellant must demonstrate that the Learned Magistrate fell into error on one of the following grounds:

(i) Acted upon a wrong principle;

(ii) Allowed extraneous or irrelevant matters to guide or affect him;

(iii) Mistook the facts;

(iv) Failed to take into account some relevant consideration.

[45] In ***Sharma v. State*** [2015] FJCA 178; AAU48.2011 (3 December 2015) the Fiji Court of Appeal discussed the approach to be taken by an appellate court when called upon

to review the sentence imposed by a lower court. The Court of Appeal held as follows:

*"[39] It is appropriate to comment briefly on the approach to sentencing that has been adopted by sentencing courts in Fiji. The approach is regulated by the Sentencing and Penalties Decree 2009 (the Sentencing Decree). Section 4(2) of that Decree sets out the factors that a court must have regard to when sentencing an offender. The process that has been adopted by the courts is that recommended by the Sentencing Guidelines Council (UK). In England there is a statutory duty to have regard to the guidelines issued by the Council (**R –v- Lee Oosthuizen** [2006] 1 Cr. App. R.(S.) 73). However no such duty has been imposed on the courts in Fiji under the Sentencing Decree. The present process followed by the courts in Fiji emanated from the decision of this Court in **Naikelekelevesi –v- The State** (AAU 61 of 2007; 27 June 2008). As the Supreme Court noted in **Qurai –v- The State** (CAV 24 of 2014; 20 August 2015) at paragraph 48:*

" The Sentencing and Penalties Decree does not provide specific guidelines as to what methodology should be adopted by the sentencing court in computing the sentence and subject to the current sentencing practice and terms of any applicable guideline judgment, leaves the sentencing judge with a degree of flexibility as to the sentencing methodology, which might often depend on the complexity or otherwise of every case."

[40] In the same decision the Supreme Court at paragraph 49 then briefly described the methodology that is currently used in the courts in Fiji:

"In Fiji, the courts by and large adopt a two-tiered process of reasoning where the (court) first considers the objective circumstances of the offence (factors going to the gravity of the crime itself) in order to gauge an appreciation of the seriousness of the offence (tier one) and then considers all the subjective circumstances of the offender (often a bundle of aggravating and mitigating factors relating to the offender rather than the offence) (tier two) before deriving the sentence to be imposed."

[41] The Supreme Court then observed in paragraph 51 that:

"The two-tiered process, when properly adopted, has the advantage of providing consistency of approach in sentencing and promoting and enhancing judicial accountability _ _ _."

[42] To a certain extent the two-tiered approach is suggestive of a mechanical process resembling a mathematical exercise involving the application of a formula. However that approach does not fetter the trial judge's sentencing discretion. The approach does no more than provide effective guidance to ensure that in exercising his sentencing discretion the

judge considers all the factors that are required to be considered under the various provisions of the Sentencing Decree.

.....

[45] In determining whether the sentencing discretion has miscarried this Court does not rely upon the same methodology used by the sentencing judge. The approach taken by this Court is to assess whether in all the circumstances of the case the sentence is one that could reasonably be imposed by a sentencing judge or, in other words, that the sentence imposed lies within the permissible range. It follows that even if there has been an error in the exercise of the sentencing discretion, this Court will still dismiss the appeal if in the exercise of its own discretion the Court considers that the sentence actually imposed falls within the permissible range. However it must be recalled that the test is not whether the Judges of this Court if they had been in the position of the sentencing judge would have imposed a different sentence. It must be established that the sentencing discretion has miscarried either by reviewing the reasoning for the sentence or by determining from the facts that it is unreasonable or unjust."

[46] In this case the Appellant takes up the position that the sentence imposed on him is harsh and excessive considering the facts of the offending. The Appellant also takes up the position that the Learned Magistrate failed to consider the medical report of the complainant in his sentencing and when sentencing the Appellant he failed to take into account and/or consider the Sentencing Guidelines and the General Sentencing Provisions in the Sentencing and Penalties Act No 42 of 2009.

[47] At the outset it must be mentioned that the sentence in this case was delivered by another Resident Magistrate, since the Learned Magistrate who found the Appellant guilty and convicted him was promoted as the Acting Master of the High Court in Suva.

[48] The Learned Magistrate who passed the sentence had correctly identified the maximum penalty for an offence falling under Section 210 (2) of the Crimes Act, as 14 years imprisonment.

[49] Section 210 (2) reads as follows: *"The offender is liable to a maximum penalty of 14 years imprisonment for an offence defined in sub-section (1)(a) or (1)(b)(i) if the*

indecent assault or act of gross indecency includes bringing into contact any part of the genitalia or the anus of a person with any part of the mouth of a person."

[50] What must be borne in mind is that in terms of Section 210 (2), the maximum penalty would be the same whether the offence of Sexual Assault is one falling under Section 210 (1)(a) or Section 210 (1)(b)(i) of the Crimes Act.

[51] The Learned Magistrate has identified the tariff for this offence as between 2 years to 8 years imprisonment. At paragraph 3 of his sentence he has referred to the relevant cases of ***State v. Abdul Khaiyum*** [2012] FJHC 1274; Criminal Case (HAC) 160 of 2010 (10 August 2012) and ***State v. Epeli Ratabacaca Laca*** [2012] FJHC 1414; HAC 252 of 2011 (14 November 2012); where His lordship Justice Madigan proposed a tariff of between 2 years to 8 years imprisonment for offences of Sexual Assault in terms of Section 210 (1) of the Crimes Act.

[52] In determining the starting point within the said tariff, the Court of Appeal, in ***Laisiasa Koroivuki v. State*** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

> *"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

[53] The Learned Magistrate has made due reference to the above case authority.

[54] The fact that the complainant had been threatened by the Appellant with assault in the event he did not suck the Appellant's penis, had been considered as an aggravating factor by the Learned Magistrate.

[55] The Learned Magistrate has erred by making reference at paragraph 12 of the sentence as follows: "Therefore, by taking into consideration the objective seriousness

of the offence and the aggravating factors of the offence, which you committed, I select 80 months of imprisonment as the starting point of your sentence."

[56] However, in my opinion, considering all the facts and circumstances of this case, 80 months' imprisonment as a cumulative of the starting point and aggravating factors is not unreasonable. The Learned Magistrate has deducted 12 months for the mitigating factors and arrived at a final sentence of 68 months imprisonment. Considering the nature and gravity of the offence and the Appellant's culpability and degree of responsibility for the offence, it is my view, that the final sentence of 68 months imprisonment cannot be considered as harsh or excessive.

[57] Considering the aforesaid, I am of the opinion that the Grounds of Appeal against Sentence are also without merit.

Conclusion

[58] Accordingly, I conclude that this appeal should stand dismissed and the conviction and sentence be affirmed.

FINAL ORDERS

[59] In light of the above, the final orders of this Court are as follows:

1. Appeal is dismissed.
2. The conviction and sentence imposed by the Learned Magistrate Magistrate's Court of Nausori is affirmed.

HIGH COURT OF FIJI

Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA
This 17th Day of July 2020

Solicitors for the Appellant : Shelvin Singh Lawyers, Suva.
Solicitors for the Respondent: Office of the Director of Public Prosecutions, Nausori.