

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal Case No. HACDA 007 of 2021S

PRAVIR RATTAN

vs.

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

Counsels:

Ms. Choo N.	-	For Applicant
Ms. Pene J.	-	For Respondent/FICAC

Date of Ruling: 23 August 2022

RULING

1. The Applicant has filed this application in this Court challenging the conviction and sentence imposed by the Learned Magistrate of Suva against him in the Magistrate's Court of Suva case number 310 of 2018.

Background

2. The Appellant had been charged with one count of Bribery contrary to **Section 4 (1) (a)** of the **Prevention of Bribery Act 2007** in the Magistrate's Court of Suva. In this regard, Prosecution had claimed that the Applicant without lawful authority or reasonable excuse offered an advantage of FJD\$100.00 to **Sereima Rokovada** an Exemption Officer at the Department of Immigration on account of the said **Sereima Rokovada** performing any act in her capacity as a public officer.
3. Following the trial in the Magistrate Court, the Learned Magistrate had found the Applicant guilty and convicted him of the said offence. The Applicant had represented himself in person at the trial. Thereafter, the Applicant had been sentenced to 15 months imprisonment by the Learned Magistrate.
4. Aggrieved by this finding, the Applicant has appealed to this Court challenging both the conviction and the sentence.

Amended Appeal Grounds of the Applicant

5. In challenging the conviction and the sentence imposed by the Learned Magistrate, the Applicant tenders the following grounds of appeal.

Grounds against Conviction

- A. The Learned Magistrate erred in fact and in law in making the following inferences.
 - i. That the Appellant had given a loan to Sereima Rokovada
 - ii. That the Appellant did not adduce any evidence.
 - iii. That there was no evidence to be considered in the Appellant's Defense.

- B. The Learned Magistrate erred in fact and in law in failing to consider that the appellant's Caution Interview had been exhibited by the Respondent and contained relevant evidence and answers pertaining to the allegation made against the Appellant.

- C. The Learned Magistrate erred in fact and in law in failing to apply the test relating to circumstantial evidence.

- D. The Learned Magistrate erred in fact and in law in failing to give the Appellant the benefit of doubt since the inference of guilt was not the only option available on the circumstantial evidence.

Appeal against Sentence

- E. The Learned Magistrate erred in fact and in law in failing to take into account the following relevant factors:
 - i. In this case the Learned Magistrate did not analyze any of the relevant cases such as **Niraj Singh v State** and **Rizvi Khan v State**
 - ii. The Court failed to consider suspending a part of the sentence.
 - iii. In this case Sereima Rokovada had some 7 months of her sentence suspended.
 - iv. The Court completely overlooked the fact that the Appellant had been charged since that time.
 - v. From February 2018 until he was sentenced in June 2021 the Appellant was in fact bound by bail conditions.
 - vi. A factor that the Court failed to take into account the length of time it took from the date of first court appearance until a sentence was pronounced.
 - vii. Bail conditions means that an Accused Person is like a prisoner in that he cannot travel out of Fiji and is bound by strict reporting requirements. His life is virtually at a standstill. It took over 3 years and 3 months to conclude this matter. The Appellant should have been given some credit for the time he was subjected to bail conditions.
 - viii. The Court did not in any way discuss how a custodial sentence would rehabilitate the Appellant. Once a person is sentenced the Court should consider some initiative to the convicted person. Normally a non-parole period or partial suspension of a sentence allows the prisoner to work hard towards an early release. A prison sentence should not only be a deterrent, there must be a balance in order to rehabilitate the convicted person.

- ix. Sentences up to 24 months can be suspended. Here, the Appellant was a first offender. He had a clean record up to the age of 60 years. He was on bail from 39 months awaiting the outcome of the trial. There was no likelihood of the Appellant committing another offence. He had fully co-operated with the authorities upon his arrest. Justice would have been achieved with a suspended sentence or with part of the sentence being suspended.

Respondent's response to the Applicant's Amended Grounds of Appeal

6. This Court needs to highlight that though FICAC has accepted the amended Grounds of Appeal from the Applicant which are noticeably different from the original grounds of appeal filed on 17th March 2022, FICAC has failed to submit its position in relation to the amended grounds of appeal.
7. In this regard, this Court is disappointed in relation to the actions of FICAC in this matter, whereas as responsible entity of the government with ample resources, FICAC had the duty to assist this Court in reaching its determination by filing the required submissions on the amended grounds of appeal of the Applicant. Therefore, this Court will now consider the limited responses available on behalf of the Respondent on the amended grounds of appeal of the Applicant.

Grounds against Conviction

A. i. *Applicant giving a loan to Sereima Rokovada.*

8. It is the position of the Respondent that the definition of offering any advantage in **section (2) (a)** of the **Prevention of Bribery Act 2007** states:

“(2) For the purposes of this Promulgation-

(a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out or agrees, undertakes or promises to give afford or hold out, any advantage to or for the benefit of or in trust for any other person”

9. Further, it is the contention of the Respondent that **Section 2 (1)** of the **Prevention of Bribery Act of 2007** defines “advantage” as:

“(a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description.”

10. On the above definition, Respondent submits there was no error by the Learned Trial Magistrate in referring to the advantages as a loan.

Analysis of Court

11. This Court will now proceed to make its determination on each ground of appeal submitted by the Applicant.

Grounds against Conviction

12. A. *The Learned Magistrate erred in fact and in law in making the following inferences.*

i) *That the Appellant had given a loan to Sereima Rokovada*

- As highlighted by the Respondent, according to the amended **Section (2) (a)** of the **Prevention of Bribery Act 2007** the relevant offence occurs if a person offers an advantage for the benefit of another directly or indirectly.
- Further, in Section 2 (1) of the **Prevention of Bribery Act 2007**, the word “*advantage*” is defined as, “*any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description.*”
- According to above detailed definitions under the Act, parting with money in any form for the benefit of the 3rd accused could come within the ingredients required for the offense.
- In the caution interview of the Applicant, he had admitted giving \$100 to the 3rd accused.
- Therefore, regardless of the term used for the offering in the judgement, the act done by the Applicant would satisfy the requirement for the offense as required.
- Therefore, this ground of appeal is misinformed.

ii) *That the Appellant did not adduce any evidence.*

- According to the case record, the Applicant (the 2nd Accused at the M/C trial) had exercised his right to remain silent when the Defense was called from all the accused at the trial.
- Therefore, at the trial at the Magistrate’s Court the Applicant had not adduced any evidence but remained silent. As a result, though there was no responsibility under our law for the Applicant to adduce evidence at the trial, in reality, the Applicant had not adduced any evidence.
- Therefore, if the Learned Magistrate had mentioned anywhere in his judgement that the Applicant had not adduced any evidence, the Learned Magistrate had stated a fact. In this regard, there could only be an error on the part of the Magistrate if he made any inferences on the

premise that the Applicant did not adduce any evidence, but there is no such reference in his judgement.

- Therefore, this Court finds this ground of appeal frivolous and dismiss the same.

iii) *That there was no evidence to be considered in the Appellant's Defense.*

- As highlighted above, the Applicant had remained silent when the defense was called.
- Therefore, apart from requiring the Prosecution to establish the case beyond reasonable doubt with the evidence adduced in Court, there had been no evidence from the Applicant to be considered by the Learned Magistrate.
- Therefore, this ground is also frivolous as above and is dismissed by this Court.

13. B. *The Learned Magistrate erred in fact and in law in failing to consider that the appellant's Caution Interview had been exhibited by the Respondent and contained relevant evidence and answers pertaining to the allegation made against the Appellant.*

- While recognizing the submission of the Caution Interview of the Applicant in evidence by the Prosecution in the judgement, the Learned Magistrate refers to the burden of proving expressed defense the under **Section 24** of the **Prevention of Bribery Act 2007** that states:

"In any proceedings against a person for an offence under this Act, the burden of proving a defense of lawful authority or reasonable excuse shall lie upon the accused."

- In view of the evidence of PW7 in relation to the phone records of the 3 accused as per their phone conversations at the time of the offence and evidence of PW5 & PW6 in relation to the 3rd accused handling the visa application of the 1st accused, the Learned Magistrate had reached the conclusion that the Applicant has not fulfilled the evidentiary requirements under **Section 24** of the **Prevention of Bribery Act 2007**.
- Considering the fact that the Learned Magistrate had witnessed this evidence at trial before reaching its conclusion, this Court does not intend to interfere with the finding of the trial judge without noticing a substantial error in law or fact.
- In the absence of such, this Court finds that this ground of appeal is devoid of merit.

14. C. *The Learned Magistrate erred in fact and in law in failing to apply the test relating to circumstantial evidence.*

- In this ground of appeal, though the counsel for the Applicant speaks of a test relating the circumstantial evidence, the claimed applicable test is not submitted.
 - As a result, this Court holds that this ground of appeal *fails eliminate* and does not require further consideration.
15. D. *The Learned Magistrate erred in fact and in law in failing to give the Appellant the benefit of doubt since the inference of guilt was not the only option available on the circumstantial evidence.*
- In the judgement of the Learned Magistrate in page 7, 8 and 14 the evidence led by the Prosecution against the 2nd accused had been well analyzed. Subsequently, the Learned Magistrate had come to the conclusion that when he considers the Prosecution case in toto, there exists a strong case built on circumstantial evidence against the accused.
 - Further, based on this material, the Learned Magistrate reach the conclusion that all the elements required to be proved for the first and third count have been established, as required. In addition, the Learned Magistrate had been confident that the Prosecution case has not been discredited by the Defense through cross-examination.
 - On the above analysis the Learned Magistrate had found the Applicant guilty of the first count, as charged, at the trial.
 - Therefore, the Magistrate had not made a mere inference in this matter in considering the circumstantial evidence, but had found the Applicant guilty of the count charged on establishment of the elements required for the offense through circumstantial evidence by the Prosecution.
 - In considering the above analysis, this Court finds the above ground of appeal unfounded.

Grounds against the Sentence

16. By the 9 grounds of appeal stipulated by the Applicant in this appeal against the sentence, the Applicant attempts to claim that the sentence imposed by the Learned Magistrate against him was too excessive. Therefore, in considering all those claimed grounds, this Court will now consider the justifiability of the sentence imposed by the Learned Magistrate.
17. In this matter, considering the circumstances the sentencing Magistrate had imposed an imprisonment of 15 months. In reaching this sentence, in the absence of an applicable tariff for this offence, the Learned Magistrate had picked a starting point of 18 months and in considering the mitigating factors submitted by the Defense, the sentence had been reduced by 3 months.
18. In considering sentences imposed in our jurisdiction for similar offences of Bribery, this Court wish to highlight the decision of the High Court in appeal in the case of

*Beranaliva v Fiji Independent Commission against Corruption [2017] FJHC 911*¹, where **His Lordship Justice Aluthge** had affirmed a conviction and the sentence imposed by the Learned Magistrate of Nadi for commission of offences under **Section 4 (2)** of the **Prevention of Bribery Act of 2007**, where the Learned Magistrate had imposed a sentence of 18 months imprisonment with a fine of \$1,000.00 and in default of fine, an imprisonment of 100 days to be served consecutive to the main sentence.

19. Therefore, this Court perceives that the imposed sentence by the Learned Magistrate is within the contours of sentences imposed for Bribery offenses in our jurisdiction.

20. Therefore, these grounds of appeal for the sentence imposed by the Learned Magistrate are without a cogent basis for further consideration.

Orders of Court

21. On the above analysis, this appeal against conviction and sentence is dismissed.

22. You have 30 days to appeal to the Court of Appeal of Fiji.



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Hon. Justice Dr. Thushara Kumarage

At Suva

This 23rd day of August 2023

**cc: Fiji Independent Commission Against Corruption, Suva.
R. Patel Lawyers, 77 Cakobau Rd, Domain**

¹ [2017] FJHC 911: HAA 30.2017 (1st December 2017)