IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL APPEAL JURISDICTIONI

CRIMINAL APPEAL CASE NO: HAA 11 OF 2025

(Lautoka Magistrates Court Case No 126 of 2025)

BETWEEN: **FARINA BI**

The Appellant

AND:

THE STATE

The Respondent

Counsel: Mr F. Daveta for Appellant

: Ms M. Lomaloma for Respondent

Date of Hearing : 29 May 2025

Date of Judgment: 3 June 2025

JUDGMENT

(Assault Causing Actual Bodily Harm-equivocality of guilty plea-domestic violence-suspended sentence)

Introduction

1. The Appellant was charged in the Magistrates Court at Lautoka with one count of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009.

2. The Appellant waived her right to legal counsel and pleaded guilty to the charge on 10 February 2025.

3. The facts admitted by the Appellant reveal that on 30 January 2025 at 11.30 pm, the *de facto* partner of the Appellant (the victim) had returned home after finishing his work for the day. He went to the washroom and when he came out of the washroom, the Appellant approached him and started touching him. He rejected her advances whereupon the Appellant grabbed him by the hand, scratched his chest and his back, and punched his chest. He became frightened and called his boss who directed him to spend the night at a colleague's home. According to his medical report, he had received multiple bruises on the biceps and a 4 cm laceration on his left upper chest.

4. The Learned Magistrate was satisfied that the plea was unequivocal. She found the facts proved the element of the offence of Assault Causing Actual Bodily Harm. The Appellant was found guilty and convicted accordingly.

5. On 21 February 2025 the Appellant was sentenced to 1 year and 2 months imprisonment with a non-parole period of 3 months.

6. Being dissatisfied with the conviction and the sentence, the Appellant filed a timely appeal against the conviction and the sentence on 19 March 2025 on the following grounds (reproduced verbatim):

Appeal against Conviction:

i. The Learned Trial Magistrate erred in law and in fact in not adequately explaining to the accused the consequences of pleading guilty and its significance thereby making the plea equivocal as opposed to being unequivocal and has been a miscarriage of justice.

ii. The learned trial magistrate erred in law and in fact in misdirecting and/or not properly and or sufficiently herself specifically on the sentencing comments.

iii. That the learned magistrate erred in law and in fact with the laws on evidence and in particular the accused not understanding her plea of guilty.

Appeal against Sentence

iv. The sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case, where a suspended sentence would have met the ends of justice.

v. That the learned trial magistrate erred in law and in fact in taking irrelevant matters into consideration when sentencing the appellant and not into relevant consideration.

vi. That the learned trial magistrate erred in law and in fact in not taking into consideration the provisions of the Sentencing and Penalties Decree 2009 when sentencing the appellant.

Analysis

7. All three grounds against the conviction can be dealt together as they concern the equivocality of the guilty plea. The Appellant submits that the Learned Magistrate should have adequately explained to the Appellant the consequences of pleading guilty.

8. As per the copy record, the Appellant was served with her disclosures in court. She waived her right to legal counsel. The Appellant was asked whether she was ready for plea or needed more time to go through disclosures. The Appellant informed the court that she was ready for plea.

9. There is no indication in the record that the Appellant's guilty plea was equivocal. The charge was put to her in her preferred language which was Hindi. There is no indication that the Appellant did not understand the consequence of her guilty plea. The conviction was not recorded on the day she pleaded but ten days thereafter on the day she was

sentenced. The Appellant had ample time to revisit her decision, but she maintained her guilty plea.

10. In ***Corerega v State***[1] the court cited several local and foreign decisions regarding equivocality of guilty pleas:

> [11]. In Nalave v State [2008] FJCA 56; AAU0004.2006; AAU005.2006 (24 October 2008) the Court of Appeal held:
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> > (23] It has long been established that an appellate court will only consider an appeal against conviction following a plea of guilty if there is some evidence of equivocation on the record (Rex v Golathan (1915) 84 L.J.K. B 758, R v Griffiths (1932)23Cr.App.R.153, R v. Vent (1935) 25 Cr. App. R. 55). A guilty plea must be a genuine consciousness of guilt voluntarily made without any form of pressure to plead guilty (R v Murphy [1975] Vic Rp 19; [19751 VR 187). A valid plea of guilty is one that is entered in the exercise of a free choice (Meissner v The Queen [19951 HCA 41; (1995) 184 CLR 132).'
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> [12] It was stated by the High Court of Australia in Meissner v The Queen [1995 HCA 41; (1995) 184 CLR 132);
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> > It is true that a person may plead guilty upon grounds which extend beyond that person's belief in his guilt. He may do so for all manner of reasons: for example, to avoid worry, inconvenience or expense; to avoid publicity; to protect his family or friends; or in the hope of obtaining a more lenient sentence than he would if convicted after a plea of not guilty. The entry of a plea of guilty upon grounds such as these nevertheless constitutes an admission of all the elements of the offence and a conviction entered upon the basis of such a plea will not be set aside on appeal unless it can be shown that a miscarriage of justice has occurred. Ordinarily that will only be where the accused did not understand the nature of the charge or did not intend to admit he was guilty of it or if upon the facts admitted by the plea he could not in law have been guilty of the offence.
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> [13] In Tuisavusavu v State [2009] FJCA 50; AAU0064.2004S (3 April 2009) the Court of Appeal stated:
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> > [9] The authorities relating to equivocal pleas make it quite clear that the onus falls upon an appellant to establish facts upon which the validity of a guilty plea is challenged (see Bogiwalu v State [1998] FJCA 16 and cases cited therein). It has been said that a court should approach the question of allowing an accused to withdraw a plea with caution bordering on circumspection' (Liberti (1991) 55 A Crim R 120 at 122). The same can be said as regards an appellate court considering the issue of an allegedly equivocal plea.'

[1][2023] FJCA 221.AAU131.2020 (12 October 2023)

11. The Appellant had not shown how the guilty plea she entered was equivocal. Therefore, the grounds of appeal advanced by the Appellant against her conviction have no merits and be dismissed.

Appeal against Sentence

12. All the grounds against sentence can be discussed under one ground of whether the Learned Magistrate fell in to error in the exercise of her sentencing discretion when she sentenced the Appellant to one year and two months' imprisonment, which the Appellant argues was harsh and excessive.

13. The guiding principle for appeal against sentence was laid down in *of* ***Kim Nam Bae – v- State***[2] where the Court of Appeal stated as follows: -

> 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) 55 CLR 499).

14. The maximum sentence for the offence of Assault Causing Actual Bodily Harm is 5 years imprisonment. The tariff for this offence is well established and was confirmed in ***State vs Naqelo***[3] , which identified the tariff for a domestic violence offence ranging from 6 months to 18 months' imprisonment. A suspended sentence is reserved for exceptional circumstances.

15. The Respondent (State) concedes that the tariff for a domestic violence assault causing actual bodily harm ranged from 6-18 months' imprisonment and that that tariff should have been applied to the Appellant's case.

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[2] [1999] FJCA 21; AAU 15 of 1998 (26th February 1999)
[3] [2023] FJHC 697; HAC 173 of 2020 (26th September 2023)

16. In ***Matai v State***[4] Madigan J confirmed that the tariff for the offence of Assault Causing Actual Bodily Harm, when committed in a domestic setting, ranged from 6 months to 18 months' imprisonment, wide enough to cater for all kinds of injuries. Referring to Shameem J's judgment in ***Salote Tugalala***[5], His Lordship observed:

> In light of Shameem J's finding (supra) it must now be said that the tariff for a domestic violence assault causing actual bodily harm is a wide range of 6 to 18 months, wide enough to cater for all kinds of injuries. It would be only in exceptional circumstances that a suspended sentence would be passed for the offence, given that sending the convict back into the family home could well have perilous consequences. For a second offence on the same victim, a suspended sentence is inconceivable.

17. The Learned Magistrate identified the sentencing tariff for the Appellant between 9 months and 12-months' imprisonment with an enhancement up to 18 months if the assault be considered serious. She had cited *State v Prasad* [2015] FJHC 493 (3 July 2015), where Madigan J had deviated from the established tariff of 6 to 18 months' imprisonment, he himself had applied in ***Matai v State*** *(supra).*

18. The selection of a wrong sentencing tariff for the Appellant resulted in a higher starting point of 9 months.

19. At tier two of the sentencing process, the Learned Magistrate had added 03 years for the sole fact that the offence had been committed in breach of trust. This is a huge leap for a single aggravating factor. In mitigation, a massive 2 years' discount had been allowed for personal circumstances and a further one third deduction for the early guilty plea to reach a sentence of 01 year and 2 months' imprisonment, a sentence just 4 months short of the upper end of the tariff.

20. In *State v Prasad*, the appeal judgment from which the Learned Magistrate had drawn the sentencing tariff, the High Court had adjusted the sentence to four months imprisonment for a police officer husband who had caused similar type of injuries, but by punching his wife's head.

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[4] [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018)
[5] [2008] FJHC 78 (29 April 2008)

21. The Appellant has not specified what irrelevant matters the sentencing magistrate had considered and what relevant matters she had not taken into consideration when sentencing the Appellant. Nor has he specified what provisions of the Sentencing and Penalties Act the learned sentencing magistrate had overlooked.

22. The Counsel for Appellant submits that the victim who was the *de-facto* partner of the Appellant had also assaulted the Appellant in the same transaction for which a case against him for a similar type of charge is still pending in the Magistrates Court. This fact is not disputed by the Respondent. This fact had not been drawn to the attention of the sentencing magistrate because the Appellant was unrepresented.

23. The summary of facts reveals that the victim had also offered a degree of provocation when he just rejected the Appellant's advances which I assume to be intimate in nature. The fact that the Appellant was a first offender is not accounted for in the Ruling. These were the relevant factors the Learned Magistrate could have considered had the Appellant been represented by a well-advised counsel.

24. The reason recorded by the sentencing magistrate to deny the Appellant a suspended sentence had been the injuries the Appellant had caused to her *de factor* partner which she described as 'significant bruising and a laceration'. However, the medical report does not indicate that the bruising was significant as they noted nil active bleeding.

25. The Counsel for Appellant informed the Court that, after this incident, the parties had parted away from each other and are living separately. Therefore, the chance of having 'perilous consequences' Shameem J described in ***Salote Tugalala*** (supra) in sending the convict back into the family home was lacking in this case. In any event, an immediate custodial sentence was still inevitable because this was a breach of trust case in a domestic setting, with nil exceptional circumstances, to send a clear message in terms of general deterrence to the domestic violence ridden Fijian society.

26. For these reasons, I find that the sentence imposed by the Learned Magistrate was harsh and excessive in all the circumstances of the offence and the offender. Pursuant to section 256(2) of the Criminal Procedure Act 2009, the sentence imposed by the

Learned Magistrate should be quashed and substituted with a sentence of 6 months' imprisonment at the bottom end of the tariff to fit the Appellant, a first offender, who had pleaded guilty to the charge at the first available opportunity expressing her genuine remorse.

27. The following Orders are made.

I. The appeal against conviction is dismissed.
II. The appeal against sentence is partially allowed.
III. The sentence imposed by the Learned Magistrate is quashed, and,
IV. An imprisonment term of six (6) months is substituted effective from the date of the original sentence which was 21 February 2025.
V. The Domestic Violence Restraining Order imposed on the Appellant is affirmed.

Aruna Aluthge
Judge

At Lautoka
3 June 2025

Solicitors:

Daveta Avocates for Appellant
Office of the Director of Public Prosecution for Respondent