

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

CRIMINAL APPEAL NO. HAA 32 OF 2024

IN THE MATTER of an Appeal against the decision of the Magistrate's Court of Nadi, in Criminal Case No. 33 of 2022.

BETWEEN : **MOHAMMED SHAIF**

APPELLANT

AND : **STATE**

RESPONDENT

Counsel: Ms. Salote Veitakiyaki for the Appellant
Ms. Brook Navunicagi for the Respondent

Written Submissions by the Appellant: 24 March 2025

Written Submissions by the State: 21 May 2025

Judgment: 8 October 2025

JUDGMENT

- [1] This is an Appeal made by the Appellant against his Conviction and Sentence imposed by the Magistrate's Court of Nadi, in Criminal Case No. 33 of 2022. The Appellant is said to be currently employed in Auckland, New Zealand.
- [2] In the Magistrate's Court of Nadi, Criminal Case No. 33 of 2022, the Appellant was charged with one count of Assault Causing Actual Bodily Harm, contrary to Section 275

of the Crimes Act No. 44 of 2009 (Crimes Act). The full details of the charge read as follows [Vide Charge at page 9 of the Magistrate's Court Record]:

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act of 2009.

Particulars of Offence

MOHAMMED SHAIF, on the 15th day of January 2022, at Nadi, in the Western Division, assaulted **SHALINI LATA** thereby occasioning her actual bodily harm.

- [3] The Appellant was first produced in the Magistrate's Court of Nadi for this matter on 20 January 2022 and was enlarged on bail on the same day. The matter had been adjourned for plea to 5 May 2022. However, the plea could not be taken on the said day and the matter had been further adjourned.
- [4] When the matter was called on 11 May 2023, the Appellant had not been present in Court and a Bench Warrant had been issued against him. Even on the next Court dates, 24 August 2023 and 26 October 2023, the Appellant had continued to be absent and the Bench Warrant had been extended.
- [5] On 11 January 2024, it is recorded that the Appellant had again been absent from Court. However, on the said day, Counsel on his behalf had informed Court that the Appellant was in New Zealand and will return in September 2024 and moved for a date thereafter for the Appellant to take a progressive approach in the matter. The matter had been adjourned to 23 September 2024 and the Bench Warrant had been further extended.
- [6] On 9 September 2024, a Notice of Motion had been filed by the Appellant moving that the matter be called on the 10 September 2024 for the Bench Warrant to be cancelled. The Notice of Motion had been supported by an Affidavit deposed to by the Appellant.
- [7] Accordingly, the matter was called on 10 September 2024. The Appellant was ready for his plea and his plea had been taken. The Appellant had pleaded guilty to the charge.

- [8] On the same day, the Appellant had understood and admitted to the Summary of Facts and had been found guilty and convicted of the charge [Vide page 14 of the Magistrate's Court Record]. The Summary of Facts reads as follows [Vide page 16 of the Magistrate's Court Record]:

"On the 15th day of January 2022, at about 20.10 hours, one Shalini Lata (Complainant), 38 years, Director's PA of Relcorp, of Field 5 Sabeto, Nadi, reported that she was assaulted by her husband Mohammed Shaif (Accused), 38 years, Self Employed of Field 5 Sabeto, Nadi.

On the above mentioned date, time and place (Complainant) was at home preparing dinner when (Accused) entered the house went straight to her and started accusing (Complainant) that she is having an affair with her boss.

In addition they had a heated argument where (Accused) started punching (Complainant) two times. The first punch landed on the (Complainant's) right side of her face and other punch landed on her nose. After that the (Accused) went to the kitchen to get the cane knife. The (Complainant) then ran out of the house and got into her vehicle, and drove to Namaka Police Station.

Furthermore, the (Accused) was interviewed under caution and charged for the offence of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act of 2009.

Injuries as per medical findings of Shalini Lata

- 1. Swelling on the upper left forehead.*
- 2. Dried blood on nose."*

- [9] On 13 September 2024, the Sentence was pronounced [Vide Sentence from pages 5-8 of the Magistrate's Court Record]. The Appellant had been imposed a sentence of 6 months imprisonment, which was suspended for a period of 5 years.
- [10] Aggrieved by the said Order made by the Learned Magistrate, Nadi, the Appellant filed this Appeal in the High Court. This Appeal was received in the High Court on 11 October 2024 and, as such, is a timely appeal.
- [11] The Learned Counsel for the Appellant and the Respondent have filed written submissions, and referred to case authorities, which I have had the benefit of perusing.

This matter was fixed for hearing before me on 6 August 2025. On the said both parties moved that I pronounce my Judgment based on the written submissions filed.

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

Grounds of Appeal

1. That the Learned Magistrate erred in law and in fact in recording a conviction contrary to Section 15 of the Sentencing and Penalties Act 2009, when the Court was informed in the Appellant's mitigation that a conviction would affect his migration and work status while working in New Zealand.
2. That the Learned Magistrate erred in law and in fact in relying on and/or considering and/or taking into account the aggravating factors when parties had reconciled.
3. That the Learned Magistrate erred in law and in fact in failing to provide cogent reasons, laws and case authorities to substantiate a conviction.

[13] As could be observed this appeal is both in respect of Conviction and Sentence.

The Law

[14] 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 reproduced 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."

[15] Section 247 of the Criminal Procedure Act stipulates that *"No appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by a Magistrates Court, except as to the extent, appropriateness or legality of the sentence."*

[16] 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."

Appeal against Sentence

[17] 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)."*

[18] 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."*

[19] 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.

[20] 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 *Naikелеkelevesi –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."

The Grounds of Appeal against Conviction and Sentence

[21] The first Ground of Appeal is that the Learned Magistrate erred in law and in fact in recording a conviction contrary to Section 15 of the Sentencing and Penalties Act No. 42 of 2009 (Sentencing and Penalties Act), when the Court was informed in the Appellant's mitigation that a conviction would affect his migration and work status while working in New Zealand. The third Ground of Appeal is that the Learned Magistrate erred in law and in fact in failing to provide cogent reasons, laws and case authorities to substantiate a conviction. In my opinion, both these Grounds of Appeal are interconnected and will be discussed together.

[22] What must be highlighted at the very outset is that in terms of Section 247 of the Criminal Procedure Act no appeal shall be allowed in the case of an accused person who has pleaded guilty, and who has been convicted on such plea by a Magistrates Court, except as to the extent, appropriateness or legality of the sentence.

[23] In this case, on 10 September 2024, the Appellant had pleaded guilty to the charge. On the same day, the Appellant had understood and admitted to the Summary of Facts and had been found guilty and convicted of the charge. Therefore, in terms of Section 247

of the Criminal Procedure Act, the only grounds on which the Appellant is permitted to appeal in this case is as to the extent, appropriateness or legality of the sentence imposed on him.

[24] In mitigation, it had been submitted that the Appellant is 41 years of age, residing in Wellington, New Zealand and earning approximately \$1,000.00 per week, working as a Bus Driver. He is married to the Complainant. The Appellant is said to be remorseful of his actions and regrets his conduct. The Complainant and the Appellant are said to have reconciled and got back together. The Complainant had also been present in Court during the time of the Sentence Hearing.

[25] It has been further submitted in mitigation that the Appellant is a first offender and has pleaded guilty to the charge. As such, Counsel on his behalf had sought a lenient sentence. Since the Appellant was working in New Zealand, the Learned Defence Counsel had sought a non-conviction, as a conviction would affect his citizenship status in New Zealand. It had also been submitted to Court, that the Appellant was flying off the following Sunday [Vide pages 14 and 15 of the Magistrate's Court Record].

[26] In this case the Learned Magistrate has duly considered all the above submission in mitigation in arriving at his Sentence [Vide paragraph 13 of the Learned Magistrate's Sentence]. He has provided cogent reasons as to why he is not inclined to impose a non-conviction. At paragraph 3 of the Sentence, the Learned Magistrate has stated as follows:

"... The Complainant suffered swelling on her left upper forehead and dried blood on nasal cavity. Your Counsel has sought a non-conviction. Court has considered the submissions by Counsel per Section 16 of the Sentencing and Penalties Act 2009. In cases of domestic violence the Courts must ensure that sentences that are being passed protect the victims of this crime. The High Court has viewed this offence as serious because the tariff notes that only in exceptional circumstances must a suspended be considered. That view from the High Court was made specifically on the importance of protecting victims of domestic violence. In my view, this is not a case for a non-conviction to be granted considering the facts of the case and what the accused did after assaulting the complainant."

[27] For the aforesaid reasons, I find that the first and third Grounds of Appeal have no merit.

[28] The second Ground of Appeal is that the Learned Magistrate erred in law and in fact in relying on and/or considering and/or taking into account the aggravating factors when parties had reconciled. This Ground of Appeal has absolutely no basis. Merely because the parties are said to have reconciled, that does not preclude the Sentencing Court from taking into consideration the aggravating factors. The fact that the parties have reconciled is a mitigating factor that the Learned Magistrate has duly considered in arriving at his Sentence.

[29] For the aforesaid reasons, I find that the said Ground of Appeal also has no merit and should be rejected.

[30] In the circumstances, I find that the Learned Magistrate has duly taken into account all relevant factors in arriving at his final sentence of 6 months imprisonment, which was suspended for a period of 5 years. Considering all the facts and circumstances of the case in its totality, I am of the opinion that the Appellant is fortunate to have got away with a non-custodial sentence (a suspended sentence) in this matter.

Conclusion

[31] Accordingly, I conclude that this Appeal should be dismissed.

FINAL ORDERS

[32] 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 Nadi, in Criminal Case No. 33 of 2022 is affirmed.


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI



AT LAUTOKA

Dated this 8th Day of October 2025

Solicitors for the Appellant:

Turuva Legal, Barristers & Solicitors, Nadi.

Solicitors for the Respondent:

Office of the Director of Public Prosecutions, Lautoka.