

**ANIL PRAKASH v STATE (HAA 131 of 2006)**

HIGH COURT — APPELLATE JURISDICTION

5 SHAMEEM J

19 January 2007

10 **Criminal law — sentencing — appeals against conviction and sentence — indecent assault — whether punishment was harsh and excessive — seventeen previous convictions — whether mitigating factors justified the special leniency extended to first time offenders.**

15 This was an appeal against conviction and sentence. The Appellant claimed that the case against him was fabricated because the complainant's father was a policeman. He further claimed that there was no circumstantial evidence and he was denied representation. Also the penalty imposed was harsh and excessive without taking into account his guilty plea, the remorse that he expressed, the apology and the non-penetrative nature of the assault.

20 The Magistrates Court ordered a sentence of 2 years' imprisonment for the Appellant as he was found guilty of the offence of indecent assault. On the relevant date, the complainant was walking with her father when the Appellant suddenly pinched her left breast. The Appellant appealed against his conviction and sentence.

**Held** — (1) The court found there was no substance in the Appellant's appeal against conviction. The Appellant agreed to the facts which disclosed the offence of indecent assault and said that he understood the charge.

25 (2) The court found that the sentence of 2 years' imprisonment was within the tariff for indecent assault. The court considered the presence of aggravating factors such as the age of the child and the distress caused to her. The court also noted that the Appellant had 17 previous convictions including indecent exposure.

30 (3) The court considered the mitigating factors such as the guilty plea, the remorse expressed, the non-penetrative nature of the assault, and the evidence of the Appellant's life as a hiker, tour guide and interest in ecotourism. However, the Appellant did not deserve the special leniency accorded to first offenders.

(4) The court considered all the matters and found that the term imposed was not wrong in principle and not manifestly excessive.

Appeal dismissed.

35 No cases referred to.

Appellant in person

*J. Tuiteci* for the State

40 **Shameem J.** The Appellant appeals against conviction and sentence. He was sentenced to 2 years' imprisonment for the offence of indecent assault. The Appellant, who is not represented, appeals against conviction on the grounds that the case against him was fabricated because the complainant's father was a policeman, that there was no evidence of any mens rea, that he was denied his right to representation and that the sentence was harsh and excessive. His appeal was out of time, but leave to appeal was granted by the Magistrates' Court on 2 October 2006.

The charge reads as follows:

*Statement of Offence*

50 **INDECENT ASSAULT:** Contrary to s 154(1) of the Penal Code, Act 17.

*Particulars of Offence*

ANIL PRAKASH s/o Chet Ram, on 18<sup>th</sup> day of February 2006, at Suva in the Central Division, unlawfully and indecently assaulted a girl namely REBECCA NATASHA.

5 KHAN d/o Feroz Khan, aged 8 years, 7 months and 6 days.

The Appellant's plea was initially not guilty and he was given time to take legal advice.

On 23rd of June 2006 he changed his plea saying:

10 I wish to change my plea. I intend to confess and apologise to the girl and her father.  
Not forced to change my pleas.

After the charge was read, he said he fully understood it and admitted the offence. The summary of facts was then read. They were that on 18 February 2006, at 1.30 pm at Rodwell Road, an 8-year old girl, Rebecca Natasha Khan was walking with her father when the Appellant suddenly pinched her left breast. Her father, who is a police officer, was told about this, and he immediately arrested the Appellant and took him to the police station. He was interviewed under caution but the court was not told what he said to the police. He admitted the facts.

15 He had 17 previous convictions (some of which he disputes). He does not however dispute a conviction in 1998 for indecent exposure, in 1999 for indecently insulting the modesty of a female, and in 2001 for annoying a female. In mitigation he said he was 42 years old and employed as a tour guide. He is divorced and apologised to the victim and her father.

He was sentenced on 10 July 2006. The learned magistrate said:

25 Men that have the habit of indecently harassing females including children, deserve to be locked out from society for a long period as they are a nuisance.

She took into account his guilty plea and nature of the offending and sentenced him to 2 years' imprisonment.

30 He now appeals against conviction and sentence. There is clearly no substance in his appeal against conviction. The facts, which disclose the offence of indecent assault, were agreed to. He said he understood the charge and the facts. He was given time to seek legal advice but did not obtain such advice. His mitigation reflects his knowledge of wrongdoing. Further, I see no evidence that the proceedings were tainted by the fact that the victim's father was a police officer.

35 The plea was unequivocal, and the conviction stands.  
The sentence of 2 years' imprisonment is within the tariff for indecent assault cases. Aggravating factors are the age of the child and the distress caused to her. The medical report tendered records that the patient was mentally shocked and embarrassed by the incident.

40 Mitigating factors are the guilty plea, the remorse expressed, the apology, the non-penetrative nature of the assault, and the evidence of the Appellant's life as a hiker, tour guide and interest in ecotourism. Despite these mitigating factors, he did not deserve the special leniency shown to first offenders.

45 Taking all these matters into account, I cannot say that the 2-year term imposed was wrong in principle or manifestly excessive. This appeal is dismissed.

*Appeal dismissed.*