

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO: HAA 012/2013

BETWEEN:

ANAND PRASAD

APPELLANT

AND:

STATE

RESPONDENT

COUNSEL:

Mr R Vananalagi for the Appellant

Mr J B Niudamu for the Respondent/State

Hearing Date: 07.11.2013

Judgment Date: 22.11.2013

JUDGMENT

[1] **Anand Prasad** (hereinafter "the appellant") was charged for one count of Obtaining Financial Advantage by Deception Contrary to Section 318 of Crimes Decree No:44 of 2009 and Robbery Contrary to Section 310(1)(a)(ii) of the Crimes Decree No: 44 of 2009. The Charge was filed at the Suva Magistrates Court on 1st day of June, 2012.

[2] The particulars of the charges are as follows:

1. Anand Prasad, on the 27th day of May 2012, at Suva, in the Central Division, by deception, dishonestly obtained \$60.00 from Faizal Nisha.
2. Anand Prasad on the 27th day of May 2012 at Suva in the Central Division stole one gold chain valued at \$350.00 from Faizal Nisha and immediately before stealing, used force to the said Faizal Nisha.

- [3] The Appellant initially pleaded not guilty to the charges. But he changed his plea subsequently . On 21/11/2012, the charges in respect of Criminal Case No: 769/2012 was read out to the Appellant. Appellant appearing in person pleaded guilty to the charges and admitted the summary of facts.
- [4] On 04/12/2012 he was sentenced to a prison term of 24 months.
- [5] Being aggrieved by above sentence the appellant has appealed against the sentence on the following ground:
01. That the sentence being manifestly harsh and excessive and wrong in principle in all circumstances of the case.
 02. The learned Trial Magistrate erred in law and in fact in taking irrelevant matters into consideration when sentencing the Appellant and not taking relevant matters into consideration.
- [6] The general principle of sentencing under Section 15(3) of the Sentencing and Penalties Decree No: 42 of 2009 States:
- “As a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in this part”
- [7] The objectives of sentencing, as set-out in Section 4(1) of the Decree, are as follows:
1. To punish offenders to an extend and in a manner, which is just in all the circumstances;
 2. To protect the community from offenders;
 3. To deter offenders or other persons from committing offences of the same or similar nature;
 4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
 5. To signify that the court and the community denounce the commission of such offences; or

6. Any combination of these purposes.

[8] Section 26 (1) of the Sentencing & Penalties Decree 2009 states:-

“On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances”

[9] The Learned Magistrate, after considering the aggravating factors and mitigation submissions has imposed 24 months imprisonment.

[10] The maximum penalty for the offence of Obtaining Financial Advantage By Deception under section 318 of the Crimes Decree No: 44 of 2009 is 10 years imprisonment and Robbery under Section 310(1) (a) (1) of the Crimes Decree No: 44 of 2009 is 15 years imprisonment.

[11] Justice Winter in the case **Viliame Cavuilagi v State** Crim. App. HAA 031 of 2004 stated that:

“Repetitive, recidivist of offending must inevitably lead to longer sentences of imprisonment, unless the offender can demonstrate special circumstances that motive the court to sentence otherwise. This principle meets three of society’s needs. Firstly it might act as a deterrent to the offender and others who fall in into a pattern of semi-professional crime to support themselves. Second, society is entitled to sideline or warehouse repeat offenders out of the community for longer period of time so that at least during the term of incarceration they cannot wreck havoc on the lives of law abiding citizens. Third, offenders deserve punishment that fits circumstances of the crime”.

Justice Goundar in **State v Sakiusa Rokonabete & Others** stated that:

“The dominant factor in assessing seriousness for any type of robbery is the degree of force used or threatened. The degree of injury to the victim or nature of and duration of threat are also relevant in assessing the seriousness of an offence of Robbery with Violence. If a weapon is involved in the use or force that will always be an important aggravating feature. Group Offending will aggravating an offence because the level of intimidation and fear caused to the victim will be greater. It may also indicate planning and gang activity. Being the ringleader in a group is an aggravating factor. If the victims are

vulnerable, such as elderly people and persons providing public transport, then that will be an aggravating factor. Other aggravating factors may include the value of the items taken and the fact that an offence was committed whilst the offender was on bail. The seriousness of an offence of Robbery is mitigated by factors such as timely guilty plea, clear evidence of remorse, ready to co-operate with the police, response to previous sentences, personal circumstances of the offender, first offence of violence, voluntary return of property taken, playing a minor part, and lack of planning involve”.

[12] The Appellant in his submissions stated that the only loss which the victim suffered was \$60.00, which the Appellant was prepared to return. The learned trial Magistrate did not ask the Appellant whether he wants to return the money to the complainant.

[13] Further the gold chain recovered without any damage. The gold chain has been returned in one piece to the victim. The Appellant and the complainant are good friends.

[14] State in their submission states that the learned magistrate had considered all mitigating and aggravating factors before passing the sentence.

[15] The Appellant has three previous convictions which are totally different to the charges in this case.

[16] The money obtained by the Appellant by deception was a small amount. Now he is willing to pay \$60.00 back to the complainant. The gold chain has been recovered and handed back to the complainant.

[17] Shameem J followed Gates J (as he then was) decision in **State v Mahendra Prasad** HAC 009.02S quoting that:

“where there is an earnest and sincere wish to effect reparation to the victim and where that wish is prompt and an expression of remorse, a suspended sentence is not wrong in principle”

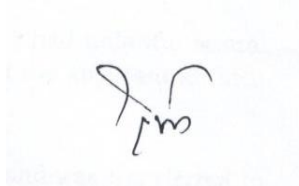
[18] In **Mahendra Prasad** the total money involved was \$59,000.00 and the accused therein received a suspended sentence.

[19] The Appellant is truly remorseful and must be given an opportunity to prove that remorse by embarking on a period of good behaviour. The Appellant had already served 11 ½ months in the prison. I, therefore, suspend the remaining period of imprisonment for three years from today (22/11/2013). Suspended sentence is explained to the Appellant.

[21] Appellant has to return \$60.00 to the complainant within one month of this order.

[22] Subject to above various in Sentence his appeal against the sentence is allowed.

[23] Appellant has 30 days to appeal.

A handwritten signature in black ink, appearing to be 'P Kumararatnam', is centered on the page. The signature is written in a cursive style with a large initial 'P' and 'K'.

P Kumararatnam

JUDGE

At Suva
22/11/2013

