

**IN THE HIGH COURT OF FIJI**  
**AT LABASA**  
**[APPELLATE JURISDICTION]**

**CRIMINAL APPEAL CASE NO. HAA 02 OF 2020**

**(Magistrates' Court Case No. 168 of 2017)**

**BETWEEN:**           ASHNEEL AMIT LAL

**APPELLANT**

**AND:**                 THE STATE

**RESPONDENT**

**Counsel:**       Ms K Boseiwaqa for the Appellant  
                  Ms D Rao for the Respondent

**Date of Hearing:**   20 May 2020

**Date of Judgment:** 22 May 2020

**JUDGMENT**

[1]     This is an appeal against sentence only.

[2]     On 26 April 2016, the appellant was charged with defilement of a 13-year old girl (Case No 250/16). The alleged incident occurred between November 2015 and March 2016. He was convicted after trial, and on 18 March 2019, he was sentenced to a partial suspended term of imprisonment by the Magistrates' Court. On 10 June 2019 this Court reviewed

the sentence imposed on the appellant in the Magistrates' Court and sentenced him to 3 ½ years' imprisonment effective from 18 March 2019 (Review No HAR001 of 2019).

- [3] While the appellant was on bail pending trial in Case No 250/16 he allegedly reoffended on 13 April 2017 and was charged with defilement of the same girl on 17 April 2017 (Case No 168/17). He pleaded not guilty to that charge and was later released on bail by the Magistrates' Court. After the appellant's sentence was enhanced on review by the High Court, the appellant on 18 October 2019 pleaded guilty to the charge in Case No 168/17. On 20 January 2020, the appellant was sentenced to 14 months' imprisonment to be served consecutively with the sentence imposed in HAR001 of 2019.
- [4] The only complaint against sentence is that it should have been made concurrent with the sentence imposed in HAR001 of 2019.
- [5] In his sentencing remarks, the learned magistrate considered the statutory maximum sentence for defilement and the guidelines set out in *Donumainasava v The State* [2001] FJHC 25; Haa0032j.2001s (18 May 2001) at p 3:

The offence is clearly designed to protect young girls, who have entered puberty and who are experiencing social and hormonal changes, from sexual exploitation. The offence carries a maximum of 5 years imprisonment. Reported cases in Fiji and abroad show that sentences passed range from suspended sentences (usually where the accused and victim are both of the same or similar age, and are in a relationship) to 3/4 years imprisonment where the accused is in a position of trust in relation to the victim, and much older than her.

- [6] While the guidelines in *Donumainasava* was decided when the maximum statutory penalty was 5 years imprisonment under the Penal Code, the guidelines remain applicable after the maximum penalty was increased to 10 years' imprisonment under the Crimes Act. In cases of defilement, the primary purpose of sentence should be deterrence, both

personal and general. Suspension of sentence should only be considered if there are special circumstances such as the victim and the offender are of the same or similar age, and are in a relationship.

[7] After considering the mitigating and aggravating factors the learned magistrate arrived at a term of 14 months imprisonment. He directed his mind to suspension and decided not to suspend the sentence in order to give effect to the purpose of deterrence. He then considered whether the sentence should be made consecutive or concurrent with the pre-existing sentence of 3 ½ years. He made the sentence consecutive and gave the following reasons at [22]:

Section 22 (1) of the Sentencing and Penalties Act 2009 states that “Subject to sub-section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment.” However, pursuant to section 22 (2) (b) and (e) read with sections 22 (4) and 22 (6) of the Sentencing and Penalties Act, it is clear that the above rule shall not apply if the accused has committed an offence whilst on bail. The facts reflect that, you have committed this offence whilst you were on bail for the case of CF 250/16. Pursuant to section 22 (6) of the Sentencing and Penalties Act, an offence committed whilst released on bail in relation to any other offence, unless there are exceptional circumstances accused must serve this sentence consecutive to any uncompleted sentence of imprisonment. I do not find in this case, any exceptional circumstances that justify an order for this sentence to be served concurrent to the sentence in HAR 1 of 2019. As such, you shall therefore serve this sentence consecutive to the sentence in HAR 1 of 2019.

[8] The learned magistrate complied with the law when he made the sentence consecutive. The wording of section 22 (6) of the Sentencing and Penalties Act is clear. When an

offence is committed while the offender is on bail, the sentence must be served consecutively unless there are exceptional circumstances. The burden to establish exceptional circumstances rests with the offender.

[9] In the present case there was no dispute that the offender reoffended shortly after he was released on bail. He defied his bail conditions, made contact with the victim and had a sexual relationship with her for the second time. The learned magistrate was justified to impose a consecutive sentence in absence of any exceptional circumstance. The total term of 4 years 8 months imprisonment falls within the applicable range and is neither excessive nor wrong in principle.

[10] For these reasons, this appeal is dismissed.



.....  
Hon. Mr Justice Daniel Goundar

**Solicitors:**

Office of the Legal Aid Commission for the Appellant  
Office of the Director of Public Prosecutions for the Respondent

