

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

CRIMINAL APPEAL CASE NOS. HAA 22, 23 AND 24 OF 2020

(Magistrates' Court Case No. 11 of 2018, 310 and 311 of 2020)

BETWEEN: **VILIAME FINAU**

APPELLANT

AND: **THE STATE**

RESPONDENT

Counsel: **Appellant in person**
 Mr Rakaria for the Respondent

Date of Hearing: **18 August 2020**

Date of Judgment: **24 August 2020**

JUDGMENT

1. The appellant was charged with different offences in three different files. He pleaded guilty to all the charges and was sentenced as follows:

Criminal Case No 11 of 2018 – Appeal HAA of 22 of 2020

Count 1 Assault causing actual bodily harm – 7 months 25 days imprisonment

Count 2 Breach of bail condition – 3 months imprisonment (concurrent with count 1)

Total sentence – 7 months 25 days imprisonment concurrent with Case No 310 of 2020

Permanent DVRO

Criminal Case No 310 of 2020 – Appeal HAA of 23 of 2020

Count 1 Absconding bail

Count 2 Breach of bail condition

Aggregate sentence of 80 days imprisonment

Criminal Case No 311 of 2020 – Appeal No. HAA of 24 of 2020

Count 1 Absconding bail

Count 2 Breach of bail condition

Aggregate sentence of 3 months imprisonment consecutive with Case No 11 of 2018

2. The appellant filed three separate appeals. However, at the hearing his main complaint was that in the Case 11 of 2018, he was wrongly convicted and sentenced on the basis that the offence of assault was committed in a domestic context. He submits that there was no relationship between him and the complainant.
3. When the appellant applied for bail in this matter the prosecution objected to the granting of bail saying that the victim was the de-facto partner of the appellant and that the appellant allegedly reoffended whilst on bail. The appellant's counsel informed the learned magistrate that the appellant and the victim were not de-facto partners. The appellant was released on bail.
4. When the appellant pleaded guilty to the charges, he was unrepresented. The prosecution tendered the following facts in support of the charges:

Criminal Case No 11 of 2018 – Appeal HAA of 22 of 2020

Offence: Breach of bail condition contrary to section 2(10)(c) of the Bail Amendment Act No. 28 of 2012 and Amendment section 26(1) of the Bail Act 2002.

Accused was charged for the offence of assault causing actual bodily harm on the 4th day of December 2017, he had assaulted one Loraini Lewanivanua by SSV CF No. 11/18 in which he had breached the bail condition for other CF No. 207/17, 395/17 and 434/17 in which he was released on bail with conditions.

Criminal Case No 310 of 2020 – Appeal HAA of 23 of 2020

On the above date, time and place, Accused case was called vide case number 20/16 whereby Accused failed to appear. A warrant to arrest Accused was issued from the Magistrate Court at Savusavu vide warrant number 611/19.

On 22/05/20, victim was informed that Accused was arrested at Nadi Police Station whereby victim was deployed to go to Nadi Police Station and escorted accused to Savusavu Police Station. Accused had also breach one of his bail condition in which he was residing at Lot 23, Kenney, Nadi, whereby it clearly states in one of his bail condition, sub section (c) that accused is to reside at Naqere, Savusavu until the case vide case number 20/16 is finally disposed of.

Matter was reported at Savusavu Police Station whereby accused was re-arrested and brought in at Savusavu Police Station. Accused was interviewed under caution admitted to the relation of offences and has been charged for one count of absconding bail and one count of breach of bail condition.

Criminal Case No 311 of 2020 – Appeal No. HAA of 24 of 2020

On the above date, time and place, Accused case was called vide case number 11/18 whereby accused failed to appear. A warrant to arrest accused was issued from the Magistrate Court at Savusavu vide warrant number 653/18.

On 22/05/20, victim was informed that accused was arrested at Nadi Police Station whereby victim was deployed to go to Nadi Police Station and escorted accused to Savusavu Police Station. Accused had also breach one of his bail condition in which he was residing at Lot 23, Kennedy, Nadi, whereby it clearly states in one of his bail condition, sub section (c) that accused is to reside at Naqere, Savusavu until the case vide case number 20/16 is finally disposed of.

Matter was reported at Savusavu Police Station whereby Accused was re-arrested and brought in at Savusavu Police station. Accused was interviewed under caution admitted to the relation of offences and has been charged for one count of absconding bail and one count of breach of bail condition.

5. Apart from these facts, the prosecution also handed the medical report of the complainant to the learned magistrate. In referring to the facts in his sentencing remarks in Case No. 11 of 2018 the learned magistrate said at paragraph 5:

“Being satisfied with your guilty plea to both counts of the charge and your admission to the summary of facts, the court convicted you as charged”.

6. After reciting the facts, the learned magistrate considered the offence as domestic violence to sentence the appellant and to issue a DVRO. The learned magistrate said at paragraph 23:

“You must control your anger and must protect your de-facto partner as she is not a punching bag for you to unleash your anger. Your de-facto partner is a human being”.

7. The facts submitted by the prosecution and admitted by the appellant did not disclose any relationship between the appellant and the victim. However, when the victim relayed the history to the doctor during medical examination she told the doctor that she was assaulted by her partner who was drunk. The history relayed to the doctor by the victim was hearsay and was not part of the facts that the appellant admitted. The facts did not disclose the circumstances of the assault or the particulars of the bail condition that the appellant had breached. The learned magistrate should not have taken the facts from the medical report to consider the circumstances of the offence. The circumstances of the assault and relationship between the appellant and the victim should have formed part of the facts admitted by the appellant before they could have been taken into account in sentence.
8. In Case No 11 of 2018 the guilty pleas are ambiguous because the facts do not disclose the charged offences. The learned magistrate should have directed the prosecution to provide further facts to support the charges instead of relying on the hearsay facts contained in the medical report of the victim that the appellant had not admitted.

9. In Appeal No HAA 22 of 2020, the appeal is allowed and the appellant's guilty pleas are vacated. The conviction, sentence and permanent DVRO are set aside. The case is remitted to the Magistrates' Court at Savusavu for the appellant's pleas to be retaken by the same magistrate.
10. In Appeals 23 and 24, the sentences are affirmed and the appeals are dismissed.
11. The appellant is remanded in custody in Case No. 11 of 2018. A production order is issued for the appellant to be produced in the Magistrates' Court at Savusavu on 4 September 2020 at 9.30am.



A handwritten signature in blue ink, consisting of a stylized initial "D" followed by a long horizontal line.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Appellant in Person

Office of the Director of Public Prosecutions for Respondent