

IN THE MAGISTRATES' COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION

Traffic Criminal Case No: 398 - 2016

STATE

-v-

SURENDRA CHAND SAHAY

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
For Defendant : Mr Reddy J. [ Jiten Reddy Lawyers ]  
Date of Sentence : 13<sup>th</sup> August 2019

**SENTENCE**

1. SURENDRA CHAND SAHAY, you have pleading guilty to the following counts:

**First Count**

*Statement of Offence*

**DRIVING MOTOR VEHICLE UNDER THE INFLUENCE OF INTOXICATING LIQUOR:**

Contrary to section 102 [ 1 ] and 114 of the Land Transport Act 35 of 1998.

*Particulars of Offence*

SURENDRA CHAND SAHAY on the 17<sup>th</sup> day of July 2016 at Tavua in the Western Division being the driver of motor vehicle registration number ROCKYS on Goldfield Toko Tavua, drove the said motor vehicle whilst under the influence of intoxicating liquor to such an extent as to be incapable of having proper control of the said vehicle.

**Second Count**

*Statement of Offence*

**DANGEROUS DRIVING:** Contrary to section 98 ( 1 ) and 114 of the Land Transport Act. No. 35 of 1998.

*Particulars of Offence*

**SURENDRA CHAND SAHAY** on the 17<sup>th</sup> day of July 2016 at Tavua in the Western Division being the driver of motor vehicle registration number ROCKYS on Goldfield Toko Tavua in a manner which was dangerous to the public.

2. I am satisfied that your guilty plea is voluntary and that you understand the consequences of your plea. Your admission in court, the evidence tendered in support of your plea persuades me that you committed the offences.
3. I have found you guilty and I convict you of both counts reflected in the charge.
4. It was around 4 pm. This was on a Sunday. You were driving your vehicle in a 'zig zag' manner. An oncoming bus tried to avoid you as you had come onto its lane but you hit still hit the bus. You were helped out of your vehicle by police and the smell of liquor was on you. Your eye was red too. You were examined by a medical officer the same day. You were observed to be alert but you were loud. You said that you were drinking. You were opined by the medical officer to be under the influence of alcohol or drug to such an extent as to be incapable of having proper control of a vehicle.
5. You were interviewed by police almost 3 months later. You said that you had a 'black out'. You denied being under the influence of alcohol at the time.
6. You have no previous conviction.
7. I will not consider any time you have spent in remand as time served. You had to be remanded in custody. There was a strong indication that you were a danger to the community. I gave the reasons in your bail ruling dated the 17<sup>th</sup> of August 2018 in CF 49 – 18. While you were on bail for failing to supply a sufficient sample of breath in CF 554 - 14, you attracted 2 other traffic cases. This case CF 398 – 16 where you are charged with 1 count of driving a vehicle while incapable due to liquor and 1 count of dangerous driving and CF 49 – 18 where you are charged with 1 count of driving with alcohol in your blood which exceeded the legal limit and 1 count of breach of bail.
8. In your mitigation it is submitted that you have been cooperative with prosecution and the court. You have been observing your curfew as part of your bail conditions which is between 7pm to 8am. You need your license to operate your tractor to help

in your farm. You have not consumed alcohol since September 2018. You have been attending to your court cases diligently. You are a person of a good character.

### **AGGREGATE SENTENCE**

9. The offences or both counts were committed in the course of the same transaction or founded on the same facts.
10. Pursuant to section 17 of the **Sentencing and Penalties Act 2009**, I will impose an aggregate sentence on you for both the counts.
11. Since the 1<sup>st</sup> count of driving whilst incapable is the more serious of the 2 counts, I will use that as the foundation or yardstick when passing your aggregate sentence.

### **MAXIMUM SENTENCE**

12. For driving while incapable, you can be imposed a fine of up to \$5,000 and or imprisoned up to 5 years and you can be disqualified from holding or obtaining a driver's license for up to 5 years.

### **SENTENCING RANGE or SENTENCING TARIFF**

13. The courts have not set any sentencing preference or tariff for the offence and so the final sentence in each case will be determined by the circumstance of each case.
14. It may be worthwhile to consider that aggravated dangerous driving occasioning actual bodily harm contrary to section 97 ( 3 ) of the **Land Transport Act 1998** can also attract a fine of up to \$5,000 and or imprisonment up to 5 years and disqualification from holding or obtaining a driving license of up to 2 years.
15. The Hon. Justice Sharma S. in **Reddy v State [2017] FJHC 574; HAA53.2017 ( 27 July 2017 )** at paragraph [ 26 ] held that an appropriate tariff would be between 12 months to 24 months with disqualification from driving.
16. The above tariff maybe useful when dealing with your case as the offence of being incapable of driving either through drink or drug has a similar maximum sentence.

17. Amongst other things, the Sentencing and Penalties Act 2009 particularly section 4 ( but not limited to ) will guide me when deciding your sentence.

**Starting Point**

18. Based on the objective seriousness of the offence, I select an aggregate starting point of 12 months imprisonment.

**Aggravating Factor**

19. Your driving was certainly dangerous, at least to the driver of the oncoming bus. However I am not certain whether there were passengers or how many were in the oncoming bus or pedestrians for instance on the road, so I will not use these to increase your sentence.
20. This was at 4pm and your manner of driving and evidence from police who says that the smell of liquor emanated from you and the opinion of the medical officer, strongly suggests that you were overly drunk.
21. For this factor, your sentence is increased to 16 months imprisonment.

**Mitigating Factors**

22. I give no weight to your interview with police. You obviously had 3 months to think about the incident and you denied the allegation that you were drunk or that you were drinking liquor.
23. You have no previous conviction.
24. You are remorseful.
25. You have a farm to look after and family to support.
26. You are about 70 years old.
27. Over time, I accept that your case such as the bail conditions or attending court can be taxing on you.
28. I reduce your sentence to 12 months imprisonment.

### Guilty Plea

29. You have not pleaded guilty early. You denied the allegation initially on the 10<sup>th</sup> of March 2017. However, some discount will be given to you for pleading guilty nonetheless.
30. I will reduce your sentence to 10 months imprisonment.

### Suspended Term and Disqualification

31. I can suspend your sentence whether in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the Sentencing and Penalties Act 2009, if your sentence is below 2 years imprisonment.
32. Your sentence is aimed at deterrence and is to punish you adequately.
33. The length of time a person can be disqualified from holding or obtaining a driver's license can be determined by assessing the standard of driving shown, any previous traffic violations, the need to protect the public from dangerous or drunk drivers, good character of the defendant and whether there is any serious hardship to the family and whether driving is a source of income [ State v Joel Sahai Case No. HAAR 002 of 2017 (29<sup>th</sup> August 2017)].
34. It is discretionary whether the court should order a disqualification in your case pursuant to section 59 of the Land Transport Act 1998.

### SUMMARY

35. **As explained earlier, no further time will be deducted for any time spent in remand.**
36. **You will receive an aggregate sentence for both the counts.**
37. **You are sentenced to an aggregate 10 month imprisonment term.**
38. **I am inclined to suspend your sentence but only in part.**
39. **9 months imprisonment is suspended for the next 3 years.**

40. Do not commit any other offence punishable with imprisonment in the next 3 years. If you do, this 9 months imprisonment held in waiting may be activated.
41. You will serve 1 month imprisonment immediately.
42. You are disqualified from holding or obtaining a driver's license which also means that you are not to drive. You are disqualified for the next 6 months.
- [ surrender your license ]
43. I decline ordering any fine.
44. 28 days to appeal.



Lisiate T.V. Fotofili  
**Resident Magistrate**

Dated at Tavua this 13<sup>th</sup> day of August 2019