

IN THE RESIDENT MAGISTRATES COURT
AT SIGATOKA - CRIMINAL DIVISION

Criminal Case No. 1 of 2019

BEWEEN : The State

Prosecution

AND : Sunny Ritesh Nand

ACCUSED

For the State : Inspector M.S Hassan

For the Accused : In-person

SENTENCE

1. The accused has been charged with the following offences:

“

First Count

Statement of Offence (a)

Criminal Intimidation: Contrary to Section 375 (1) (a) (i)(iv) of the Crimes Act 2009.

Particulars of Offence (b)

Sunny Ritesh Nand on the 22nd day of December 2018 at Sigatoka in the Western Division without lawful excuse, threatened to assault and cause injury to Divehsni Shaniya Devi with intent to cause alarm to the said Divehsni Shaniya Devi.

Second Count

Statement of Offence (b)

Breach of Suspended Sentence: Contrary to Section 28 (1)(2) and 26 of the Sentencing and Penalties Act 2009.

Particulars of Offence (b)

Sunny Ritesh Nand on the 22nd day of December 2018 at Sigatoka in the Western Division breached the suspended sentence order of 12 months imprisonment which was suspended for 2 years vide Sigatoka Cf: 522/18 given to him on the 9th day of November 2018 by committing another offence namely Criminal Intimidation.”

2. The charges were put to the accused on 3rd January 2019 after he waived his right to counsel. He pled guilty to the charges and admitted the summary of facts.
3. The Court has considered the guilty plea and is satisfied that the plea was voluntary and unequivocal. The accused is therefore convicted as charged.
4. The summary of facts show as follows:

“On 22/12/18 at about 8am at Bilalevu Sigatoka Sunny Ritesh Nand accused 36 years mechanic of Bilalevu Sigatoka verbally abused and threatened to assault Diveshni Shaniya Devi complainant 16 years of Bilalevu Sigatoka and also breached his suspended sentence vide CF 522/18.

The accused is related to the complainants a stepfather [sic]. On the above date time and place both accused and complainant were at home. When a call came to the complainant's brother's phone where a boy was calling and wanted to speak to the complainant. The complainants mother namely Shaleshni Devi (A-2) asked as to who was calling but the complainant refused to answer the accused heard the conversation and said that it is a boy from the same area. When the complainant heard that the accused is telling (A-2) that she is talking to one boy the complainant then told the accused to mind his own business whereby accused got upset and swore at the complainant saying 'Bajaru' meaning 'bitch' and 'maichod' meaning mother fucker and also threatened to assault her causing alarm to her.

The complainant got afraid and on 31/12/18 she somehow managed to sneak out from her home and reported the matter to police.

Investigation was conducted and the accused was arrested and charged accordingly.

Accused was on a suspended sentence of 12 months Imp which was suspended for 2 years ... to him on 9/11/18 by the Sigatoka Court”

5. The Accused informed the court in mitigation that he was remorseful and that he was the sole breadwinner. He reiterated that he had made a mistake and sought the court's forgiveness. In addition he wanted to be allowed to buy school items as school was about to begin.
6. The accused had twelve (12) previous convictions which he admitted.
7. The accused has also spent five (5) days in remand awaiting sentence.

8. In terms of the charge of Criminal Intimidation it has a maximum penalty of 5 years imprisonment.
9. The tariff was discussed by *Temo J* in ***State v Baleinadobua*** [2012] FJHC 981; HAC145.2010 (21 March 2012) where his Lordship suggested a tariff of 12 months to 4 years imprisonment.
10. The accused person and the complainant fall under the purview of ***Domestic Violence Act 2009***.
11. Considering the gravity of offending, the accused's culpability, his early plea, time spent in remand and the mitigation factors, this Court sentences the accused to three (3) months imprisonment for the offence of Criminal Intimidation (Count 1).
12. The court shall not suspend any part of the sentence given his previous convictions however the three (3) months shall be made concurrent to his sentence in count 2.
13. In sentencing the accused for Breach of Suspended Sentence (Count 2) the court has to consider Section 28 (4) and (5) of the ***Sentencing and Penalties Act 2009***. The said section is regurgitated herein as follows:

“(4) If on the hearing of a charge under sub-section (1) the court finds the offender guilty of the offence, it may impose a fine not exceeding 100 penalty units and in addition the court must restore the sentence or part sentence held in suspense and order the offender to serve it, but if the court considers that exceptional circumstances exist that make this unjust, the court may instead—

 - (a) restore part of the sentence or part sentence held in suspense and order the offender to serve it; or
 - (b) in the case of a wholly suspended sentence, extend the period of the order suspending the sentence to a date not later than 12 months after the date of the order under this sub-section; or
 - (c) make no order with respect to the suspended sentence.

(5) Any order for an offender to serve a term of imprisonment under sub-section (4) must be served —

 - (a) immediately; and
 - (b) unless the court orders otherwise, consecutively on any other term of imprisonment previously imposed on the offender by that court or any other court.”

14. Being mindful of the above provisions the court states that the act of suspending a sentence is offered to an offender to afford the same with an opportunity to reform him/herself.

15. In this matter the accused has been convicted of another offence within the operational period of the suspended sentence which garners the sentiments **“Ignorantia facti excusat; ignorantia juris non excusat-** Ignorance of fact is excuse, but ignorance of law is no excuse”

16. Whilst saying the above (para.15) and considering Section 28(4) & (5) of the **Sentencing and Penalties Act 2009**, are there any exceptional circumstances submitted to persuade the court to activate its discretion by sentencing leniently.

17. The answer is a plain **‘No’** on the basis that despite his mitigating factors, the accused has been given an opportunity to rehabilitate however has reoffended during the operational period of his suspended sentence.

18. As such the court as the law¹ states **must** restore the sentence in full or in part as no exceptional circumstances exist. This court does not see it fit to restore the sentence in part.

19. The court therefore orders as follows:

- i. Pursuant to Section 28(4) of the **Sentencing and Penalties Act 2009** the imprisonment term of 12 months which was suspended for C/F 522/18 is now restored;
- ii. Pursuant to Section 28(5)(a) of the **Sentencing and Penalties Act 2009** the accused shall serve the same immediately;


20. In summary the accused is sentenced as follows:

¹ Section 28(4) Sentencing and Penalties Act 2009

- i. **Count 1 (Criminal Intimidation)** – three (3) months imprisonment which is made concurrent to Count 2 (Breach of Suspended Sentence) pursuant to Section 24 of the **Sentencing and Penalties Act 2009**.
- ii. **Count 2 (Breach of Suspended Sentence)** - imprisonment term of 12 months which was suspended for C/F 522/18 is now restored.

21. The clerk will explain this sentence to the accused.

22. 28 days to appeal.


J.N.L SAVOU
Resident Magistrate
8th January 2019

