

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION
CRIMINAL APPEAL CASE NO.: 29 OF 2013

BETWEEN: **TIGER CHANDRA NARAYAN**

Appellant

AND: **STATE**

Respondent

Counsels: **Appellant in person**
Mr. Josaia B. Niudamu for the Respondent

Date of Judgment: **20 March 2014**

JUDGMENT

1. The appellant was convicted and sentenced by the learned Magistrate of Nadi on 19.8.2013. He was convicted on a charge of Indecently annoying and insulting any person contrary to Section 213 (a) of the Crimes Decree and was sentenced to 7 months imprisonment suspended for 3 years.
2. An appeal within time was filed by him on 6.9.2013. The grounds of appeal on the conviction are as follows:

Grounds

- (i) That the trial Magistrate erred in law and in fact by accepting the evidence of the complainant where in fact she did not give such facts in the statement to police.
- (ii) That the learned Magistrate erred in law and in fact by accepting the evidence of PW2 where as in fact she did not give such statement to the police.

3. Both parties have filed written submissions.
4. After the matter was taken up for hearing on 12.2.2014, the appellant moved to file further submissions. In further submissions filed, the appellant abandoned the appeal against the conviction and moved to consider his sentence on one ground.
 - (i) That taking in consideration of my previous good record and I being a first offender, the suspension of my sentence to 3 years is excessive
5. However, considering the fact that the appellant is not represented in this appeal by his own choice, the Court decided to inquire into grounds against the conviction as well to ascertain whether there is any merit in any of those grounds.

Grounds of conviction

6. The main ground against the conviction is that the learned Magistrate had accepted the evidence of the complainant and the PW2 where they have not given such facts in their statements to the police.
7. Careful perusal of the evidence reveals that no contradiction was marked in the evidence of these witnesses. Further no omission was brought to the attention of the learned Magistrate. Further it was not even suggested to the witnesses that they have not given same position to the police.
8. It is not the duty of the appellate court to consider the statements of the witnesses to ascertain whether there is any truth in the allegation by the appellant. Further learned Magistrate had the opportunity to witness the demeanor of both these witnesses and decide whether they are honest and reliable.
9. In **Prasad v The State** [2004] FJHC 63; HAA 0055J.2003S (23 February 2004), Hon. Madam. Justice Nazhat Shameem held that:

'Indeed there is no law that requires witnesses to give evidence strictly in accordance with their statements. Most witnesses give evidence in greater or lesser detail in court. Much depends on their memories, the skill of whoever took their statements and the way their evidence is led in court. Inconsistencies between statement and evidence may assist the court in weighing up reliability and credibility. However the out-of-court statements are not evidence. What is said in the witness box is evidence.'

In this case, the learned Magistrate clearly believed the witnesses despite lack of detail in their statements.'

10. There is no merit in the grounds of appeal against the conviction and those fails.

Ground on sentence

11. The appellant was sentenced for 7 months imprisonment suspended for 3 years on 19.8.2013. Appellant had submitted that considering his previous good record and he being a first offender, the suspension of his sentence to 3 years is excessive.

12. The suspension of a sentence is governed by Section 26 (1) of the Sentencing and Penalties Decree. There is no statutory given period for the suspension.

13. The reason for the operational period is, when a sentence is suspended, it gives time to rehabilitate the accused and to warn him that his sentence is hanging just above his head and if he commits any offence it will fall on him. This will prevent him of committing any further crime.

14. I am mindful that the accused is kept under certain bondage, but it is not a trauma because, the suspended period comes into operation only if he commits an offence, if not, he need not be worried. On the other hand, court should be mindful of the victims and the society at large. The common citizen would like to live in a crime free environment. The operational period is not imposed on an ordinary person but to a convicted person.

15. Therefore there is no merit in the argument that the period of suspension is harsh and aggressive and if fails.

16. For the reasons given the appeal against the conviction and sentence is dismissed.

Sudharshana De Silva
JUDGE

At Lautoka
20th March 2014

Solicitors : **Appellant in Person**
 Office of the Director of Public Prosecutions for Respondent