

**IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
APPELLATE JURISDICTION**

Criminal Appeal Case no. HAA 70 of 2018  
(on appeal from Sigatoka CC488 of 2016)

**MAHA LATCHMI PILLAY**

Appellant

V

**STATE**

Respondent

Miss N. Koila for the Appellant

Mr S. Babitu for the Respondent

Date of Hearing : 8 November 2018

Date of Judgment : 13 November 2018

**JUDGMENT**

- [1] The Appellant appeared in the Magistrates Court at Sigatoka charged with assault causing actual bodily harm. After trial she was found guilty in a properly reasoned judgment by the Magistrate sitting at Sigatoka at the time. Although finding the appellant guilty, the Magistrate stated that he would reserve his decision on whether to enter a conviction against her or not.

- [2] In the meantime that Magistrate was posted elsewhere and a new Magistrate was posted to Sigatoka.
- [3] The second Magistrate took up the unfinished case and proceeded to convict the accused and sentence her to a binding over order for 12 months in the sum of \$500.
- [4] The Appellant by her Counsel appeals those orders on the grounds that:
1. The second sentencing Magistrate erred in entering a conviction against her without having heard the trial, and
  2. That the same second Magistrate erred in convicting the accused without seeing her and assessing her demeanour.
- [5] These two grounds can be easily distilled into one, that is that the second Magistrate exceeded his authority in entering a conviction and in doing so he exercised his discretion without being appraised of the facts or mitigation.
- [6] The unusual and pathetic facts are as follows.
- [7] The Appellant's husband suddenly took ill and was admitted to the Sigatoka District Hospital for observation and assessment. The assaulted victim in this case is the sister of the patient. Both women were extremely worried about the prognosis of the patient. The sister (victim) had gone to a priest of her faith and had obtained from him some powder or ash which she was told had miraculous healing powers.
- [8] This sister was at the bedside feeding this substance to her brother when the wife (Appellant) arrived and losing her temper

hit the sisters feeding hand away thereby causing injury to the sisters wrist. (Medical certificate produced).

[9] Having read in detail the evidence of the two ladies at trial, it is obvious that the scene at the hospital was chaotic with many family friends and neighbours crowding around the bed side. There is no doubt that there was “bad blood” between the two women with evidence of swearing, threats and past disputes and the evidence of the wife shows her to be vindictive, over bearing and argumentative.

[10] It was against this background of evidence that the second Magistrate proceeded to sentence.

[11] Changes to postings of judicial officers in the courts of Fiji occur rather frequently be they for logistical reasons, retirement, resignations or even non-renewal of contracts.

[12] Perhaps it is for these reasons that the Criminal Procedure Act 2009 provides for such eventualities.

[13] Section 139 of that Act provides:

*“Subject to sub-sections (1) and (2) whenever any Magistrate after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction in the case and is succeeded .....by another Magistrate , the second Magistrate may act on the evidence recorded by his or her predecessor, or partly recorded by the predecessor and partly by the second Magistrate, or the second Magistrate may resummons the witnesses and recommence the proceeding or trial.”*

[14] That being the law of criminal procedure in the Magistrates Court, it is not now open to the Appellant to say that the second Magistrate in this case was exceeding his powers. He was perfectly entitled to act on the finding of guilty and to then proceed to entering a conviction.

[15] Section 16 of the Sentencing and Penalties Act 2009 provides guidelines for the exercise of discretion whether to enter a conviction or not. The learned Magistrate did indeed turn his mind to that section (16) at para 14 of his reasoned sentence, as well as following the dicta of Gates C.J. in *Batiratu* HAR001.2012 who discussed discharges without conviction.

[16] The second sentencing Magistrate was mindful of the close family relationships between the parties in this case and was of the view, quite properly, that conviction for offences of Domestic Violence cannot be visited with discharges without conviction.

[17] The Magistrate acting lawfully exercised a discretion quite properly. It is not a decision that an Appellate Court would interfere with.

[18] The appeal is dismissed.



**At Lautoka**  
**13<sup>th</sup> November, 2018**

**P.K. Madigan**  
**Judge**