

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 032 OF 2022

BETWEEN: **RAKESH CHANDRA** **APPELLANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Ms. R. Nabainivalu for Appellant
 Ms. N.Ali for Respondent

Date of Hearing: 06th March 2023

Date of Judgment: 30th March 2023

J U D G M E N T

1. The Appellant pleaded guilty to one count of Careless Driving contrary to Section 99 (1) and 114 of the Land Transport Act on the 15th of September 2022 before the Resident Magistrate of Nasinu. The learned Magistrate convicted and sentenced the Appellant imposing three months of imprisonment on the 6th of October 2022. Furthermore, the above sentence was ordered to be served with another sentence that the Appellant was serving at that time. Being aggrieved with the said sentence, the Appellant filed this Appeal against the sentence on the following two grounds:

Ground No. 1:

The Resident Magistrate erred in Law and in fact in sentencing the Appellant using the wrong principle of sentencing.

Ground 2:

That the sentence imposed by the learned Magistrate is harsh and excessive in all the circumstances of the case.

2. The learned Counsel for the Appellant informed the Court that the Appellant wished to abandon the first ground of Appeal and only proceed with the second.
3. In an appeal against the sentence, the Appellate Court will examine whether the sentencing Magistrate had fallen into error in exercising his/her sentencing discretion. In doing that, the Appellate Court would take into consideration the following factors that:
 - i) Whether the sentencing Magistrate acted upon a wrong principle;
 - ii) Whether the sentencing Magistrate allowed extraneous or irrelevant matters to guide or affect him;
 - iii) Whether the sentencing Judge mistook the facts;
 - iv) Whether the sentencing Judge failed to take into account some relevant consideration.
4. The errors in sentencing discretion may be apparent either from the reasons given in the sentence or by making inferences from the length of the sentence. (*vide; Saqainavalu v State [2015] FJCA 168; AAU0093.2010 (3 December 2015)*). In doing that, the Appellate Court will determine whether the sentence given by the lower Court is within the permissible range. Even if there has been an error in exercising the sentencing discretion, the Appellate Court will still dismiss the Appeal if the Appellate Court considers the sentence given by the lower Court comes within the permissible sentencing range. (*vide; Sharma v State [2015] FJCA 178; AAU48.2011 (3 December 2015)*)

5. According to section 114 of the Land Transport Act, the maximum punishment for this offence is a fine of up to \$500 or an imprisonment period of up to 3 months or both.
6. The summary of facts stated the Appellant's vehicle collided with a passenger bus from its back when it parked to pick up and drop off the passenger. The Appellant was driving his vehicle under the influence of alcohol and failed to control his vehicle.
7. The learned Magistrate had correctly considered Section 4 of the Sentencing and Penalties Act in his sentence. Though he had not mentioned it in the sentence, the fact that the Appellant was driving the vehicle under the influence of alcohol is a serious aggravating circumstance of this offence. Under such circumstances, a deterrence punishment was warranted for this offending. The Appellant was lucky to be charged with Careless Driving instead of any other serious offence. Therefore, the sentence imposed by the learned Magistrate is within the permissible sentencing range.
8. I, accordingly, make the following orders,
 - i) The Appeal is dismissed.
9. Thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

30th March 2023

Solicitors.

Office of the Director of Legal Aid Commission for Appellant.

Office of the Director of Public Prosecutions for the Respondent.