

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC (FICAC) 01 OF 2014

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION (FICAC)

V

ROHINESH RANJAN PRASAD

Counsel: Ms. S. Datt for FICAC
Mr. M. Yunus for Accused

Date of Judgment: 11th May, 2018

Date of Sentence: 01st June, 2018

SENTENCE

1. Mr. Rohinesh Ranjana Prasad, this Court found you guilty of three counts of Bribery contrary to Section 4(2) (a) of the Prevention of Bribery Promulgation (Act) No 12 of 2007.
2. The Information on which you were convicted reads as follows:

COUNT ONE

Statement of Offence

BRIBERY: Contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No. 12 of 2007.

Particulars of Offence

ROHINESH RANJAN PRASAD on or about the 20th day of January 2014 at Nadi in the Western Division whilst being a public servant namely, a Special Constable in the Fiji Police Force without lawful authority or reasonable excuse accepted an advantage of FJ\$900 from Viveknand on account of his performing an act in his capacity as a public servant, namely to arrange bail for Viveknand, Elvin Avinesh Kumar and Riyaz Ali in the Criminal Case No. 60 of 2014 in Nadi Magistrates Court.

COUNT TWO

Statement of Offence

BRIBERY: Contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No. 12 of 2007

Particulars of Offence

ROHINESH RANJAN PRASAD on or about the 22nd day of January 2014 at Nadi in the Western Division being a public servant namely, a Special Constable of the Fiji Police Force without lawful authority or reasonable excuse solicited an advantage of FJ\$500 from Viveknand and Elvin Avinesh Kumar on account of his performing an act in his capacity as a public servant, namely to discharge the suspects in the Criminal Case No. 60 of 2014 in Nadi Magistrates Court.

COUNT THREE

Statement of Offence

BRIBERY: Contrary to Section 4 (2) (a) of the Prevention of Bribery Promulgation No. 12 of 2007

Particulars of Offence

ROHINESH RANJAN PRASAD on or about the 22nd day of January 2014 at Nadi in the Western Division being a public servant namely, a Special Constable of the Fiji Police Force without lawful authority or reasonable excuse accepted an advantage of FJ\$100 from Viveknand on account of his performing an act in his capacity as a public servant, namely to discharge the suspects in the Criminal Case No. 60 of 2014 in Nadi Magistrates Court.

3. Facts of the case were that when you were serving as a Special Constable attached to the Nadi Police Station, three suspects were being detained in the cell at Nadi Police Station, pending their court hearing. You approached the suspects and, having given the impression that they will be remanded for a long period, offered to arrange bail for them, and in return, you solicited an advantage of \$900, \$ 300 from each suspect. Suspects believed that, in your capacity as a police officer, you were capable of arranging bail for them.
4. You then released the suspects from the cell without seeking permission from the Unit IC and released their mobile phones to facilitate them to talk to their families to arrange money for bail. You then approached the prosecutor and informed her that there were recoveries in suspect's theft case and suggested that she should not object to bail.
5. In the following morning you knocked off from work and sent a taxi driver to collect money from the suspect. The taxi driver collected \$ 300 from a relative of one of the suspects and handed it over to you. When the suspects were released on bail, you collected the balance \$ 600 from one of the suspects.
6. After two days, you called two suspects and solicited an advantage of \$ 500 to reconcile the case. You then received \$100 from one of the suspects near the Total Service Station in Nadi.
7. The maximum penalty for Bribery under Section 12 (1) (a) (iii) of the Prevention of Bribery Promulgation (Bribery Act), No. 12 of 2007 is a fine of \$500,000 and to imprisonment for 7 years, a lesser penalty than that imposed under Sections 134 and 135 of the Crimes Act for bribery related offences. Moreover, the Court is mandated to order a restitution of any advantage received or such part thereof as the Court may specify to make for the loss sustained by the complainant.
8. The tariff for the crime of Bribery by a Public Official under the Bribery Act is not well settled. Therefore, I intend to look at the sentences passed in the past by this court for guidance.
9. In *Rizvi* HAC 003.2010Ltk, Thurairaj J. passed a sentence of 22 months (partially suspended) for a conviction of bribery under the Prevention of Bribery Promulgation. He did not purport to set any tariff. He passed rather a lenient sentence on the customs officer who had pleaded guilty. The bribe in that case was \$200 and there was no financial loss to FRCA.
10. In *Chen Xue Liang and De Chuan Zhao* HAC 50.2010, again a case under the Prevention of Bribery Promulgation, the bribe offered (but not accepted) was a box of

Chinese tea and an envelope stuffed with \$6,000. Temo J stated that the tariff was a sentence of imprisonment between 2 1/2 years and 4 years.

11. In Niraj Singh HAC004.2010, P. Fernando J, again for an offence under the Prevention of Bribery Promulgation passed a sentence of 8 months' imprisonment plus a \$200 fine on a Court Officer who accepted a bribe of \$100 in return for expediting an Appeal.
12. In Blake (Criminal Review 005 of 2013) Madigan J set a tariff of 9 months to 3 years for bribery of public officials under the Crimes Decree when an incoming passenger at Nadi Airport had offered \$40 to a customs officer not to search his bags.
13. However, Madigan J in Fiji Independent Commission Against Corruption [FICAC] v Mohammed [2015] FJHC 479; HAC349.2013 (24 June 2015) decided not to follow the tariff set by him in Blake (*supra*) in respect of the Crimes Decree Bribery related offences and set a new tariff. In the process of setting the new tariff under the Crimes Decree, Madigan J observed:

“The first principle in aid of this exercise is to note that the maximum penalty for bribery under the Prevention of Bribery is a term of imprisonment of 7 years, while under the Crimes Decree 2009 it is 10 years. That being so, any tariff set previously under the Prevention of Bribery Promulgation would have to be enhanced by an additional 40%”.
14. Having considered the U.K. Sentencing Council guidelines and recommendations on bribery sentences, Madigan J classified bribery related offences into two categories. Accordingly, in cases of high culpability (Category1), sentences should be between 5 and 8 years.
15. An offender considered to be highly culpable would be one who:
 - Plays a leading role where there is group activity.
 - Involves others through pressure or influence.
 - Abuses a position of significant power or trust.
 - The intended corruption is of a senior Government Official performing a public function.
 - There is sophistication of the offence or substantial planning over a period of time.
 - Is motivated by the expectation of substantial financial commercial or political gain.
16. Sentences for Category 2 for lesser offending (Category 2) should be within the range of 18 months to 4 years.

Lesser offending (Category 2) would apply to an offender if he

- Is involved through coercion, intimidation or exploitation.
- Is not motivated by personal gain.
- Plays a peripheral roll.
- Is opportunistic, with a "one-off" offence with little or no planning.
- Has limited awareness or understanding of the extent of the corrupt activity.

17. In *Beranaliva v Fiji Independent Commission Against Corruption* (FICAC) [2017] FJHC 911; HAA30.2017 (1 December 2017) this Court in its appeal judgment had erroneously identified the tariff set by Madigan J in *State v Blake* [2014] FJHC 375 (29 May 2014) (as being between 9 months and 3 years). However, this tariff has now been discarded.

18. In *Maharaj* [2016] FJHC 114; HAC334.2013 (18 February 2016), the accused was charged with one count of Bribery contrary to Section 5 (2) (a) of the Promulgation, which carries maximum penalty of a fine of \$500000 and to imprisonment for 10 years. Having considered the guidelines for the determination of level of culpability as stipulated under UK Sentencing guidelines, the court set up the following tariff limits:

For category A,- 5-8 years imprisonment,
For category B, 3-6 years imprisonment and
For category C, 18 months - 04 years imprisonment,

Category A – High culpability

- A leading role where offending is part of a group activity
- Involvement of others through pressure, influence
- Abuse of position of significant power or trust or responsibility
- Intended corruption (directly or indirectly) of a senior official performing a public function
- Intended corruption (directly or indirectly) of a law enforcement officer
- Sophisticated nature of offence/significant planning

vii) Offending conducted over sustained period of time

viii) Motivated by expectation of substantial financial, commercial or political gain

Category B – Medium culpability

All other cases where characteristics for categories A or C are not present
A significant role where offending is part of a group activity

Category C – Lesser culpability

- Involved through coercion, intimidation or exploitation
- Not motivated by personal gain
- Peripheral role in organised activity
- Opportunistic 'one-off' offence; very little or no planning
- Limited awareness or understanding of extent of corrupt

19. On the basis of these guidelines, Rajasinghe J, in *Fiji Independent Commission Against Corruption (FICAC) v Naulu* [2016] FJHC 934; HAC FICAC 2.2014 (17 October 2016) picked a starting point of three years for high culpability offence under Section 4 (2) (a) of Bribery Promulgation.
20. The maximum penalty for bribery under Section 12(1) (a) (3) of the Bribery Promulgation is a term of imprisonment of 7 years. Having considered the case authorities discussed above, I identify the tariff for the offence of Bribery under Section 12(1) (a) (iii) of the Prevention of Bribery Promulgation (Act) as follows:
- for category A, 3-5 years imprisonment,
for category B, 2-4 years imprisonment and
for category C, 12 months - 03 years imprisonment
21. It would be in exceptional circumstances that sentences could be suspended and probably never for breach of trust and Category A cases.
22. Bearing in mind Section 11(1) of the Constitution and Section 4, and 15(3) of the Sentencing and Penalties Act, I now proceed to craft your sentence to punish you to an extent which is just in all the circumstances of this case.
23. You were a Special Constable in the Fiji Police Force. The evidence led in trial proved that you were engaged in a well thought-out plan. The events took place between 20th to 22nd January 2014, indicate the degree of persistence and manipulation endured by you in committing these offences. Your offending also involves exploitation of vulnerable suspects in police custody. By promising to secure bail for suspects you have interfered with the administration of justice. In view of these reasons, I identify the level of culpability of your offending under Category B above.
24. Having considered the level of culpability, the seriousness of the offence, and principles laid down in *Koroivuki v State* [2013] FJCA 15; AAU0018.2010 (5 March 2013), I select two (02) years as the starting point for each of the three counts.
25. In committing these crimes, you have betrayed the trust and confidence reposed in you by the Fiji Police Force and your fellow officers. You also abused your position

and trust placed on you by the public as a public servant. I consider these grounds as aggravating circumstances of this case.

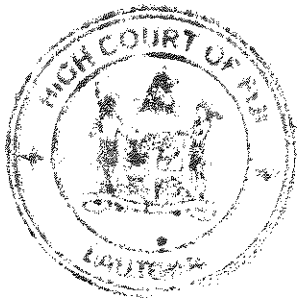
26. Your counsel in his submissions in mitigation has submitted your personal and family circumstances. You are 35 years old, married and a father of a six-year-old child. You are the sole breadwinner of the family.
27. The character references submitted by your Counsel show that you are a religious person. You had maintained a good character before committing these offences. Unfortunately, offenders who have betrayed the trust in office are not given concessions on account of good character. Hence your previous good character will not be counted in giving concessions in this sentence.
28. Having considered the above discussed aggravating circumstances, I increase your sentence by two (02) years to reach a sentence of four (04) years imprisonment. Having considered the mitigating circumstances mentioned above, I reduce your sentence by one year to reach a final sentence of three (03) years imprisonment. Your final sentence of imprisonment for each count of Bribery is three (3) years' imprisonment.
29. Apart from the term of imprisonment, you are liable to be fined up to \$ 500,000. I have considered your financial situation in light of evidence led in trial. I impose a fine of \$ 1,000 to be paid immediately. In default of which you are to serve 100 days imprisonment, consecutive to the main sentence of imprisonment.
30. Your Counsel has urged this court to consider a suspend sentence in view of your chances of rehabilitation and good character. There are no exceptional circumstances in this case to suspend the sentence. As a matter of public policy, in bribery and corruption cases, the fact that a person had a good character will normally count for little and even less in the cases of bribery offence which involves a breach of trust by a public servant, because the offender is unlikely to have breached that position of trust before. In view of the seriousness of this offence and the principle adopted in this sentence, I do not find any compelling reasons to suspend your sentence.
31. Having considered your age, your determination to rehabilitate yourself by starting a new business and the fact that you have lost your job, it is my opinion that fixing a non-parole period of 18 months would serve the purpose of rehabilitation.
32. Considering Section 18 (1) of the Sentencing and Penalties Act, and principles enunciated in *Tora v State* [2015] FJSC 23; CAV11.2015 (22 October 2015), I order that you are eligible for parole after serving 18 months in prison.
33. Bribery of public officials attacks the integrity of Government, it injures the good name of Government officials and if it succeeds, it serves to disadvantage the un-

derprivileged and the poor: *Blake* (Supra). This sentence is meant to discourage the practice by sending the message that it will be punished severely.

34. *Summary*

- a. You are sentenced to three (03) years imprisonment for each count of Bribery.
- b. Having considered the totality and one transaction principles, I order the sentences to be served concurrently.
- c. You are eligible for parole after serving 18 months in prison.
- d. I impose a fine of One Thousand Fijian Dollars (1,000) to be paid immediately, in default of which Hundred (100) days' imprisonment to be served consecutive to the main sentence.
- e. I order that you pay One Thousand Fijian Dollars (1,000) to the Complainants (\$ 400 to the 1st Complainant Viveknand and \$300 each to the other two complainants) in restitution within one month from today and in default one month imprisonment consecutive to the main sentence.

35. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge
Judge

At Lautoka
01st June, 2018

Counsel: -Fiji Independent Commission Against Corruption for Prosecution
- M. Y. Law for Accused