

IN THE HIGH COURT OF FIJI
AT LABASA
[APPELLATE JURISDICTION]

CRIMINAL APPEAL CASE NO. HAA 01 OF 2020

(Magistrates' Court Case No. 506 of 2018)

BETWEEN: CHANDRIKA PRASAD SHARMA

APPELLANT

AND: THE STATE

RESPONDENT

Counsel: Ms S Devi for the Appellant
Ms A Vavadakua for the Respondent

Date of Hearing: 20 May 2020

Date of Judgment: 22 May 2020

JUDGMENT

[1] The appellant is a Hindu priest. He was accused of fondling the genitals of a twelve year old male child under his care at a temple in Vunika, Labasa. He was convicted of sexual assault after trial and sentenced to 4 years' imprisonment with a non-parole period of 3 years.

[2] Initially, the appellant appealed both conviction and sentence, but at the hearing, he abandoned his appeal against conviction and pursued his appeal against sentence only.

His only complaint is that his period in custody on remand was not taken into account by the learned magistrate. The State concedes this point.

- [3] The appellant had spent about 3 months in custody on remand before sentence. Section 24 of the Sentencing and Penalties Act requires the courts to take into account any remand period as term already served. In this case, the learned magistrate was informed of the remand period but she failed to take that into account when sentencing the appellant. There is an error in the exercise of the sentencing discretion.
- [4] The sentence of the appellant is set aside and substituted with a sentence of 3 years and 9 months imprisonment with a non-parole period of 2 years and 9 months. The appeal against sentence is allowed to that extent.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Legal Aid Commission for the Appellant
Office of the Director of Public Prosecutions for the Respondent

