

IN THE HIGH COURT OF FIJI
AT LAUTOKA
APPELLATE JURISDICTION

CRIMINAL APPEAL NO. HAA 77 OF 2019

BETWEEN : **ALIVERETI KUNAVELI**
APPELLANT

A N D : **STATE**
RESPONDENT

Counsel : ***Mr. M. Yunus for the Appellant.***
: ***Ms. L. Latu for the Respondent.***

Date of Hearing : ***18th of May, 2020***
Date of Judgment : ***09th of June, 2020***

JUDGMENT

Background

- a). The Appellant (will be referred to as the accused sometimes) was charged with three different counts in three different cases, in the Magistrates' Court of Ba. The accused had unequivocally pleaded guilty to the said counts. The Learned Magistrate of Ba has sentenced him on 19.12 2019, in all 3 cases in the following manner.
 - i. In Ba Criminal case No. 582/2014, for the offence of Breach of Bail Conditions, a term of 5 months and 26 days imprisonment.

- ii. In Ba Criminal case No. 599/2014, for the offence of Breach of Bail Conditions, a term of 5 months imprisonment.
- iii. In Ba Criminal case No. 275/2019, for the offence of Breach of Bail Conditions, a term of 5 months and 16 days imprisonment.

All sentences to run consecutively.

- b). Being aggrieved by the said sentence, the accused appeals on the following grounds;
1. The Learned trial Magistrate erred in law when he failed to consider section 22 (1) of the Sentencing and Penalties Decree and to order a concurrent sentence; and
 2. The Learned trial Magistrate erred in law and in principle when he failed to consider the totality principle when making the sentence consecutive.
 3. That the sentence is harsh and excessive taking all the circumstances of the matter.
- c). The petition of appeal is filed within the allowed time, through a counsel and the said counsel has represented him throughout the hearing of this appeal. However the appellant has later filed certain additional grounds in person which were neither contended nor supported by his counsel. Furthermore, if I allow the appellant to file additional grounds in person that would be conflicting with the instructions given to the counsel. Therefore the said additional grounds would not be considered.
- d). When looked at the first ground urged above, section 22 (1) of the Sentencing and Penalties Decree states;

22 – (1) Subject to sub-section (2), every term of imprisonment imposed on a person by a court must, unless otherwise directed by the court, be served concurrently with any uncompleted sentence or sentences of imprisonment.

Therefore, the application of section 22 (1) is subjected to the section 22 (2). Section 22 (2) states;

22 - (2) Sub-section (1) does not apply to a term of imprisonment imposed—
(a) in default of payment of a fine or sum of money;

- (b) *on a prisoner in respect of a prison offence or as a result of an escape from custody;*
- (c) *on a habitual offender under Part III;*
- (d) *on any person for an offence committed while released on parole; or*
- (e) *on any person for an offence committed while released on bail in relation to another offence.*

The three alleged offences were committed while the appellant was on bail. Therefore, as for section 22 (2) (e), section 22 (1) will not be applicable. In result, the urged 1st ground lacks any merit.

- e). The second ground is on the totality principal. The relevant section would be the section 17 of the sentencing and Penalties Act. It states;

17. If an offender is convicted of more than one offence founded on the same facts, or which form a series of offences of the same or a similar character, the court may impose an aggregate sentence of imprisonment in respect of those offences that does not exceed the total effective period of imprisonment that could be imposed if the court had imposed a separate term of imprisonment for each of them.

The maximum term prescribed for the offence of 'Breach of Bail conditions' is 12 months of imprisonment. Accordingly, as for the section 17 mentioned above, for the three offences the maximum, the learned Magistrate could order was 36 months of imprisonment. The aggregate of the consecutive sentences ordered by the learned magistrate is 16 months and 12 days. Therefore, I do not find any error in the learned Magistrate's sentence either in law or in principle.

- f). The third ground urged by the appellant is that the sentence imposed is harsh and excessive when all the circumstances of the matter are taken in to consideration. The sentencing tariff for the alleged offence is between 1 to 9 months of imprisonment. The learned Magistrate has sentenced him toward the middle of the recommended tariff, which is the recommended practice of our courts. He has not considered appellant's shady character to enhance it. Therefore, I find that instead of the sentence being harsh and excessive, it is in fact lenient. Further, the sentence

is within the recommended tariff and I do not see any reason for intervention. Therefore this ground of appeal too would fail.

g). Accordingly, I make the following orders.

- (1) The appeal is dismissed as it lacks any merit.
- (2) The sentences imposed by the learned magistrate are confirmed and affirmed.



Chamath S. Morais
Judge

At Lautoka
09th of June, 2020

Solicitors: *M.Y. Law, Ganga Singh Street, Ba, for the appellant*
Office of the Director of Public Prosecutions, Lautoka, for the Respondent