

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 247 - 2015

STATE

-v-

HERMANT LAL

For Prosecution : Inspector Lenaitasi and WPC Chand [Police Prosecution]
Accused : Mr Samy A. [Legal Aid Commission]
Voir Dire and Trial Proper : 9th, 23rd and 26th November 2018
Date of Judgment : 26th day of February 2019
Date of Sentence : 15th day of April 2019

SENTENCE

BACKGROUND

1. **HERMANT LAL**, after trial which was preceded by your ' not guilty ' plea, I have found you guilty and I have convicted you of the following offence:

Statement of Offence

CRIMINAL TRESPASS: Contrary to section 387 (1) (a) of the *Crimes Act of 2009*.

Particulars of Offence

HERMANT LAL on the 29th day of October, 2015 at Malele, Tavua in the Western Division entered into the property of **Roshan Lal** with intent to annoy.

2. The victim here is an uncle of and a neighbour to the defendant. They reside about 150 meters away from each other. The victim does not have a fence around his property. The victim was at home with his wife around midnight. A dog barked and the victim went to make a check around the house. He found the light outside his house missing or removed. The victim had installed cameras earlier around his house and when he checked the footage, he saw the defendant in it and the defendant was seen moving around the outside of the house. The victim is not sure why the defendant is hostile towards him.

3. The defendant has not spent any time in remand but spent 2 days in police custody.
4. He is a first offender.
5. Written and oral mitigation has been offered in his support. A statutory declaration has been tendered authored by the advisory councillor of the area where the defendant resides reflecting amongst other things that he is a helpful person.
6. The defendant is 52 years old. His wife passed away in 2013. He has 4 daughters and he provides for them. The defendant explains that he was not there at the material time with any criminal intention. He went there with the hope of putting an end to the rift existing between him and his uncle, the victim. The loss of his wife has taken a toll on the defendant. The defendant is diabetic and experiences having short breaths at time. He has been faithfully complying with his bail conditions since being granted bail. It is pleaded if the defendant could be discharged without any conviction being recorded.

LAW

7. The maximum sentence that is imposable by law for the offence of criminal trespass can be up to 3 months imprisonment. If for example, the offence was committed in a building used as a human dwelling, then the maximum a court can impose is up to 1 year imprisonment.
8. There is no evidence that the defendant actually entered the house of the victim.
9. As can be seen from the video, the defendant tried the entrance of the house but it was secured. The defendant was at all times, at the periphery of the house.
10. The defendant still entered the compound or property of the victim which was his home. I consider this sufficient for the court to consider the maximum 1 year imprisonment term as applicable when sentencing the defendant.

TARIFF

11. Sentences between 4 months to 9 months imprisonment maybe appropriate [The State v Basilio Nukumate HAC 184 of 2010 (4th February 2011)] .

STARTING POINT

12. Considering the circumstance of the case, a 5 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. There is a domestic relationship in existence. The victim is the defendant's uncle.
14. As I have explained in my judgment, I have found that the defendant removed the light outside the house.
15. This was at midnight.
16. Your sentence is increased to 8 months imprisonment.

MITIGATION

17. You will get some reduction for having a past good history.
18. Your attempt to explain away your presence at the victim's house as being there with the intention to mend the difference between you and the victim is pathetic. This is inconsistent with your position taken at trial where you denied being at the victim's place. You also denied being the one seen in the video footage. Furthermore, normal people do not remove outside lights and lurk around their neighbours' home at midnight with the intention to mend differences. It implies a sinister intention. You will not get any reduction in sentence for being remorseful.
19. I don't think you have any serious health condition to worry about.
20. I accept though that you have a family to look after.
21. I accept that this case looming over you since October 2015 would have affected your life in some way.
22. I reduce your sentence to 3 months imprisonment.

SUSPENSION

23. I can suspend your 3 months imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the Sentencing and Penalties Act 2009.
24. I also take into account the factors outlined in section 4 of the Sentencing and Penalties Act 2009 when deciding whether or not to suspend your sentence.
25. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

26. You are sentenced to 3 months imprisonment.
27. I will consider the 2 days you have spent in police custody as punishment and I deem this as time already served.
28. You have 2 months and 26 days remaining.
29. I will suspend 2 months and 19 days imprisonment for the next 18 months.
30. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
31. You will serve 7 days imprisonment immediately.
32. I am not inclined to grant your plea for a discharge without any conviction. The circumstance of this case certainly calls for a conviction and adequate punishment.
33. I impose a Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions on you. You are to behave towards your uncle. Breach any of those conditions which will also be given to you in writing hereafter and you may be charged and prosecuted for another offence. This DVRO is to protect your uncle and his wife, indefinitely.
34. Prosecution is to advise the victim and his wife of the DVRO in place.
35. I also order the destruction of **prosecution exhibit 5** the lead wire and bulb holder at a later date to be determined by the court registry, if it is not re-claimed by the victim and there is no appeal. Preference is to be made first to the victim if he wishes

to reclaim his property if there is no appeal. This order is made pursuant to section 155 (1) (b) and (c) of the Criminal Procedure Act 2009.

36. 28 days to appeal.



.....
Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 15th day of April 2019

