

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 165 OF 2012

BETWEEN : **STATE**

AND : **NETANI BAINIBIAU [1ST ACCUSED]**

Counsel : **Ms F. Lacanivalu - for the State**
Accused in Person

Date of Sentence : **10th May 2013**

SENTENCE

- [1] The Accused above named is charged with one count of Act with intent to cause grievous harm punishable under Section 255 (2) of the Crimes Decree
- [2] When the matter was mentioned to take plea the Accused pleaded guilty to the charge and admitted the summary of facts.

- [3] According to the summary of facts on the 19th August 2012 the accused and group of men were loitering near the compound of the complainant Simone Turaga. Since they were drunk they were noisy and boisterous. Being disturbed by this the complainant had asked them to leave the place. There, an altercation started and the accused and others had assaulted the Complainant. The Accused at that time took a Rum and Cola bottle and swung at the complainant which landed on the jaw and resulted in loosing of two teeth along his upper mandible.
- [4] Section 255 (2) of the Crime Decree prescribes maximum penalty as imprisonment for life.
- [5] The tariff for the offence of acts with intent to cause grievous harm ranges from 6 months to 5 years imprisonment **State v Mokubula** [2003] FJHC 164; Haa0052J.2003S (23 December 2003)

The higher side of the range is reserved for pre-planned attack that results in serious injuries to the victim **Shiu Sami & Shiu Kumar v State** Crim App. AAU0007 of 1995).

- [6] In the case of **Raj v State** Cr. App. No. HAA4 of 2009 (27 May 2009), this Court stressed the following point about selecting a starting point for sentence;

“As a matter of principle, starting point should be picked up from within the range. A term outside the range should only be picked if exceptional or special circumstances are present”.

[7] Considering the nature of the offence in the light of above sentence I commence your sentence as 12 months imprisonment.

[8] Aggravating factors

- (a) You used a bottle as a weapon
- (b) The victim received serious and permanent injuries disfiguring his face.
- (c) Not concerned about the others privacy.

Considering the factors I increase your sentence by 3 months. Now your sentence is 15 months imprisonment.

[9] Mitigating Circumstance

- a) Your early plea.
- b) You are 1st offender
- c) You claim you are remorseful
- d) You are married and has a child
- e) Period in remand

Considering the above circumstances I reduce your sentence by 7 months. Now your sentence is 8 months imprisonment.

[10] You plead with Court to give you a Suspended Sentence. Considering your act I do not think this is a fit and proper case to impose a suspended sentence but considering your early plea and your age I act under Section 26 (1) of the Sentencing and Penalties Decree and impose the following sentence.

You will be serving 2 months in prison and the balance 6 months suspend for a period of 2 years.

Nature and the Gravity of the suspended sentence is explained.

[11] 30 days to appeal to the Court Appeal.

S. Thurairaja
Judge

At Lautoka

10th May 2013

Solicitors: The Office of the Director of Public Prosecution for the State.

Accused in Person.