

**IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION**

CRIMINAL CASE NO: HAC 032/2013

BETWEEN : STATE

AND : SUBASH CHAND

COUNSELS: Mr L Koto for the State

Mr S Waqainabete Accused

Date of Hearing : 09th July 2013

Date of Sentence : 07th August 2013

SENTENCE

01. The Director of Public Prosecution had preferred the following charge against the accused above named.

Statement of Offence

ACT WITH INTEND TO CAUSE GRIEVOUS HARM: Contrary to Section 255(a) of the Crimes Decree No: 44 of 2009.

Particulars of Offence

SUBASH CHAND on the 15th day of January 2013 at Tamavua, in the Central Division, with intend to cause grievous harm to JAYANTHI LINGAM unlawfully wounded the said JAYANTHI LINGAM with a rubbing stone.

02. When the Plea was taken on the 04th day of April, 2013 the accused had pleaded guilty to the charge against him. Accepting the Plea to be unequivocal this court found him guilty and convicted him under Section 255(a) of Crimes Decree No: 44 of 2009.
03. State Counsel submitted following summary of facts of which the accused admitted.

On the 15th of January 2013 at about 9am, Jayanti Lingam (Complainant) a construction worker was using a sand paper to rub the walls at the construction site while workmate Subash Chand the accused was using a rubbing stone to do the same.

Jayanti Lingam then turned to Subash Chand and told him “to be fast because the boss is about to come and check their work”. Subash Chand who was standing next to Jayanti Lingam in turn swore at Jayanti Lingam and scolded in filth. Jayanti Lingam after hearing this pushed the accused and told him not to swear before continuing with work again.

Accused then with rubbing stone in hand hit Jayanti Lingam’s face (right side). Jayanti Lingam fell down on the ground after being hit, bleeding heavily.

The company driver Vili, later rushed Jayanti Lingam to the hospital. After being released from hospital, Jayanti Lingam went to lodge a report with the police. The accused was arrested and caution interviewed whereby he admitted the allegation put to him.

Medical report states- right eye swelling and laceration, laceration on upper lip and broken tooth. Injuries sustained could have caused the patient to lose his eye sight. Permanent scarring will result in the eye region. The accused is a first offender.

TARIFF

04. **ACT WITH INTEND TO CAUSE GRIEVOUS HARM** attracts a maximum sentence of life imprisonment Pursuant to Section 255 of the Crimes Decree.
05. The Tariff for **ACT WITH INTEND TO CAUSE GRIEVOUS HARM** was discussed in the recent case of **The State v Imraz Khan** Criminal Case No: HAA 022 of 2010. The court held the following:
“The tariff for the offence of Act With Intend To Cause Grievous Harm is between 6 months to 5 years imprisonment (**State v Makobula** [2003]FJHC 164; HAA0052J.2003S 23 December 2003). Wounding another person

with a weapon should, almost always, be visited with immediate imprisonment sentence to deter the offender and the others. (**State v Dinesh Chand** Crim. App. No. AAU007 of 2000S).”

06. In the case of **State v Mokubula** HAA0052 of 2003S, Madam Shameem J set the tariff for sentence for offence of Act With Intent to Cause Grievous Harm to be 6 months to 5 years imprisonment. In a case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years depending on the weapon used.
07. The accused is 39 years of age. When arrested he co-operated with the police and made confession in his Record of Interview. He supports his family and works as a part time labourer. He is married and blessed with a daughter. The victim and the accused are close relations.
08. I have carefully considered these submissions in light of the provisions of the Sentencing and Penalties Decree No: 42 of 2009 especially those of the section set out below in order to determine the appropriate sentence.
09. Section 15(3) of the Sentencing Decree provides that:
“as a general principle of sentencing, a court may not impose a more serious sentence unless it is satisfied that a lesser or alternative sentence will not meet the objectives of sentencing stated in Section 4, and sentence of imprisonment should be regarded as the sanction of last resort taking into account all matters stated in the General Sentencing Provisions of the Decree”.
10. The objectives of sentencing, as found in section 4(1) of the Decree, are as follows:
 1. To punish offenders to an extent and a manner, which is just in all the circumstances;
 2. To protect the community from offenders;
 3. To deter offenders or other persons from committing offences of the same or similar nature;
 4. To establish conditions so that rehabilitation of offenders may be promoted or facilitated;
 5. To signify that the court and the community denounce the commission of such offences; or
 6. Any combination of these purposes.

11. Section 4(2) of the Decree further provides that in sentencing offenders, a Court must have regarded to:
 - (a) The maximum penalty prescribed for the offence;
 - (b) Current sentencing practice and the terms of any applicable and guideline Judgments;
 - (c) The nature and gravity of the particular offence;
 - (d) The defender's culpability and degree of responsibility for the offence;
 - (e) The impact of the offence on any victim of the offence and the injury, loss or damage resulting from the offence;
 - (f) Whether the offender pleaded guilty to the offence, and if so, the stage in the proceedings at which the offender did so or indicated an intention to do so;

12. Now I consider the aggravating factors:
 - (a) The victim sustained serious injuries. Lacerations on right eye and upper lip. His teeth were broken.
 - (b) The accused hit the victim with a rubbing stone.
 - (c) Permanent scarring will occur in right eye region.

13. Now I consider the mitigating circumstances:
 - (a) The accused pleaded guilty before the commencement of the trial.
 - (b) Accused is 39 years old and reasonably a young offender.
 - (d) He co-operated with the Police and made confession in his record of interview.
 - (e) He is the sole bread winner of the family.
 - (f) He has a two year old daughter.
 - (e) He is remorseful.
 - (f) He has no previous convictions.
 - (g) He admits that he made a careless wrong decision.

14. Considering facts of this case I take 02 years as starting point. I add 02 years for aggravating factors to reach the sentence 04 years. I deduct 02 years for mitigating factors. Now your sentence is 02 years imprisonment.

15. Now I consider whether the above sentence of 02 years should be suspended.

16. In the case of **Pita Seruvatu v State** Crim. App. No.85 of 1992 where Hon. Justice Jesuratnam stated that:

“It has been emphasized by this court that when the accused is a first offender it should be the endeavor of the sentence to keep him away from prison as far as possible”

17. In the case of **Mosese Nariva v the State** [2006] FJHC;HAA 0148J.2005S (9 February 2006) Hon.Madam Shameem J state:

“...the court must always make every effort to keep young offenders out of prison. Prisons do not always rehabilitate the young offenders. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measure in preference to imprisonment”

18. In this case the accused is a first offender and is relatively young. He pleaded guilty thus saved court time. The accused and the victim are close relations.
19. Considering above factors in to account I find this an appropriate case to impose a suspended sentence. Hence I suspend 02 years imprisonment for a period of two years. Suspended sentence explained.
20. 30 days to appeal.

P Kumararatnam
JUDGE

At Suva

7th August, 2013