

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 197 OF 2013S

STATE

vs

ASALUSI DENI

Counsels : Ms. S. Naidu for State
Ms. L. Raisua for Accused
Hearings : 5 and 25 November, 2013, 12 and 24 February and 10 March 2014
Sentence : 11 June, 2014

SENTENCE

1. On 5 November, 2013, in the presence of your counsel, you pleaded guilty to the following information:

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: *Contrary to section 255(a) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

ASALUSI DENI on the 11th day of May 2013 at Nasinu, in the Central Division, with intent to do grievous harm to **ASALUSI BUAKULA DENI** unlawfully wounded the said **ASALUSI BUAKULA DENI** with a spear.

2. On 25 November 2013, the prosecution read their summary of facts in court. Briefly, they were as follows. On 11 May 2013, the accused was 60 years old, married with three children aged

27 years, 23 years and 10 years old. The family lived in a family house at Newtown Nasinu. The eldest child in the family was the complainant. He was his father's namesake.

3. On 10 May 2013 (Friday), the complainant and his wife were drinking grog with a neighbor and his wife. At 10.30pm, the complainant and his friends went to a nightclub in town. They returned in the morning (ie. 11 May 2013 – a Saturday), and continued drinking liquor until 11am. The complainant then went to his father's house to ask for food. The father said there was no food. An argument erupted. The complainant swore at his father, and other members of the family.
4. He then got some stones and threw them on his father's rooftop. The father (accused) ran to the complainant, and the two exchanged punches. The accused then went and got a fishing spear from under his house. He then went and speared the complainant's neck with the same. The complainant was injured in the neck, as shown in his medical report. He was later rushed to the hospital for treatment. He spent one month at CWM Hospital.
5. The above facts were admitted by the accused's counsel, on 25 November 2013. The court found him guilty as charged, and convicted him accordingly. He admitted one previous conviction of "assault occasioning actual bodily harm" in the last 10 years. In his plea in mitigation, he said he was provoked by his son, the complainant. He said, he co-operated with the police during their investigation, and admitted the offence when interviewed by police. He said, he had reconciled with his son, the complainant.
6. The court checked with the complainant and the accused's wife to see whether or not the family had really reconciled. In an affidavit dated 20 February 2014, the complainant said, he had reconciled with his father. He admitted, he caused the problem by making his father angry on 11 May 2013.
7. The accused's wife swore an affidavit on 20 February 2014. Although, she said, she had reconciled with the accused, she said, she still feared for her life. Previously, the accused had threatened to kill her, if he was released from custody. On 7 March 2014, she repeated the above position in detail in an affidavit.

8. In **State v Semi Waqawai**, Criminal Case No. HAC 007 of 2012S, High Court, Suva, I said the following:

“...5 I will deal first with counts nos. 2, 4 and 5, because they involved the more serious offence of “act intended to cause grievous harm”, contrary to section 255(a) of the Crimes Decree 2009. The law makers have treated this offence as a very serious matter, and have prescribed the maximum penalty of life imprisonment. This is somewhat similar to the view expressed by Parliament when they passed the equivalent offence in section 224 of the repealed Penal Code, Chapter 17, wherein they also prescribed a maximum penalty of life imprisonment.

6 In **State v Maba Mokubula**, Criminal Appeal No. HAA 0052 of 2003S, Her Ladyship Madam Justice N. Shameem had reviewed several Court of Appeal and High Court cases, on the offence and said as follows:

“...On the basis of these authorities, the tariff for sentences under section 224 of Penal Code, is between 6 months imprisonment 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 nature of the weapon. Aggravating factors would be:

1. seriousness of the injuries;
2. evidence of premeditation or planning;
3. length and nature of the attack;
4. special vulnerability of the victim.

Mitigating factors would be:

1. previous good character;
2. guilty plea
3. provocation by the victim;
4. apology, reparation or compensation.

In general terms, the more serious and permanent the injuries, the higher the sentences should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm not only because it is contrary to the accepted tariff, but also because section 29(3)(a) of the Penal Code contains a legislative

fetter to the section 29 powers to impose a suspended sentence for crimes of violence (DPP-v-Saviriano Radovu Crim. App. No. HAA 0006 of 1996; State-v-Senitiki Naqa and Others Crim. App. No. HAA 0023 of 2003S)..."

7. *I would hold that Her Ladyship Madam Justice N. Shameem's view above mentioned, also applied to section 255 (a) of the Crimes Decree 2009..."*

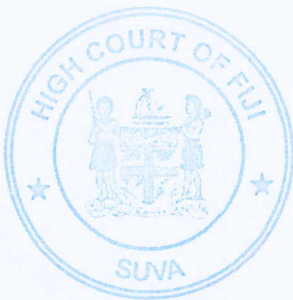
9. The aggravating factors, in this case, were as follows:
 - (i) The nature of the attack. Using a spear to resolve a family dispute is not appropriate, and should be discouraged. This was a father-son dispute, and the use of a spear to settle a family problem is simply not right. The accused should have called the police to take his disobedient son away, rather than sticking a spear in his neck;
 - (ii) Seriousness of the Injuries. The spear injury to the complainant's neck was very serious, and could have easily caused his death. He lost consciousness, was admitted into the Intensive Care Unit and was hospitalized for a month.

10. The mitigating factors were as follows:
 - (i) The accused pleaded guilty to the charge 5 months after the first call, and therefore saved the court's time;
 - (ii) The accused was obviously provoked by his drunken and disobedient son. It was obvious the son (complainant) started the commotion;
 - (iii) The accused had reconciled with his son and his wife, although his wife is still frightened of him;
 - (iv) Accused had been remanded in custody for approximately 1 year 1 month.

11. I start with a sentence of 2 years imprisonment. I add 3 years for the aggravating factors, making a total of 5 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 2 years imprisonment.

12. Asalusi Deni, for spearing your son in the neck, I sentence you to 2 years imprisonment, with a non-parole period of 1 year imprisonment, effective forthwith.

13. In addition to the above, and for the protection of your children and your wife, I issue the following non-molestation orders:
- (i) You must not physically assault or abuse your children and wife;
 - (ii) You must not threaten to physically assault or abuse the above persons;
 - (iii) You must not damage or threaten to damage any property of the above persons;
 - (iv) You must not threaten, intimidate or harass the above persons;
 - (v) You must not behave in an abusive, provocative or offensive manner towards the above persons;
 - (vi) You must not encourage any person to engage in behaviours against the above persons, which are prohibited by the above orders.
14. Any breach of the above orders, may on the application of your children and/or your wife, be brought before the Court, for you to be dealt with accordingly.



Salesi Temo
JUDGE

Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**
Solicitor for the Accused : **Legal Aid Commission, Suva.**