

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 42 of 2016

STATE

V

WILLIAM MCPHERSON

Counsel : Mr. Lisiata Fotofili for the State  
Ms. Christina Choy for the Accused

Dates of Trial : 23-25 October 2017

Summing Up : 27 October 2017

Judgment : 27 October 2017

Sentence : 22 November 2017

## SENTENCE

[1] William McPherson you were charged with the following offence:

### FIRST COUNT

#### *Statement of offence*

MANSLAUGHTER : Contrary to Section 239 (a), (b) & (c) (ii) of the Crimes Decree No. 44 of 2009.

#### *Particulars of the Offence*

**WILLIAM MCPHERSON**, on the 10<sup>th</sup> day of February 2015 at Savusavu, in the Northern Division, unlawfully assaulted **PARMA NAND**, which caused the

death of the said **PARMA NAND** and at the time of the assault was reckless as to the risk that his conduct would cause serious harm to **PARMA NAND**.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a majority decision, two of the three Assessors found you not guilty of Manslaughter, while one Assessor found you guilty of Manslaughter. However, the said two Assessors found you guilty of the lesser or the alternative charge of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act No. 44 of 2009 (Crimes Act).
- [4] Having reviewed all the evidence, this Court agreed with the majority opinion of the Assessors finding you guilty of the lesser or the alternative charge of Assault Causing Actual Bodily Harm. Accordingly, you were convicted of Assault Causing Actual Bodily Harm.
- [5] In support of their case, the prosecution called Dewa Nand, Dominiko Wainiu, Dr. Praneel Kumar (a Forensic Pathologist) and Detective Inspector Beiatau Enota.
- [6] In this case it is admitted facts, and as such proved, that you, on the 10 February 2015, at Savusavu Town (in the Northern Division), punched the deceased Parma Nand several times.
- [7] In terms of Section 275 of the Crimes Act "A person commits a summary offence if he or she commits an Assault Causing Actual Bodily Harm." The prescribed penalty for this offence is a term of imprisonment for 5 years.
- [8] In *State v. Tugalala* [2008] FJHC 78; HAC 255 of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem said:

*"The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in Elizabeth Joseph v. The State [2004] HAA 030/04S and State v. Tevita Alafi [2004] HAA073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld (Amasai Korovata v. The State [2006] HAA 115/06S)."*

- [9] In *Jonetani Sereka v. The State* [2008] FJHC 88; HAA 27 of 2008 (25 April 2008); His Lordship Justice Daniel Gounder held:

*"The tariff for assault occasioning actual bodily harm ranges from a suspended sentence where there is a degree of provocation and no weapon used, to 9 months imprisonment for the more serious cases of assault (State v Anjula Devi, Criminal Case No. 04 of 1998 Lab.)."*

- [10] His Lordship Justice Vincent Perera in *Anaisa Naqialawa v. State* [2017] FJHC 484; HAA 15 of 2017 (29 June 2017); stated thus:

*"It is pertinent to note that 12 months is only a one fifth of a 5 year imprisonment which is the maximum sentence for the offence of assault causing actual bodily harm under section 275 of the Crimes Act. All in all, I am of the view that it is appropriate to have 12 months imprisonment as the higher end of the tariff for the said offence.*

*Needless to say, the selecting of a starting point is not that difficult where the relevant sentencing tariff indicates the lower end of the imprisonment term applicable to a particular offence as opposed to other sentencing options that may be considered.*

*If the sentencer decides that an imprisonment term is the appropriate punishment for an offender who is convicted of the offence of assault causing actual bodily harm under section 275 of the Crimes Act and not to opt for an absolute or conditional discharge, it is important for the sentencer to have a clear opinion on the minimum imprisonment term the offence should attract considering its objective seriousness. In my view, an imprisonment term of 3 months would appropriately reflect the objective seriousness of the offence of assault causing actual bodily harm under section 275 of the Crimes Act."*

- [11] Considering the above authorities, I consider the tariff for the instant case to range from 3 months to 12 months imprisonment.
- [12] In determining the starting point within the said tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*"In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range."*

- [13] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 3 months imprisonment.
- [14] The aggravating factors in this case are as follows:
- (i) The offence took place in a public place and in the presence of many bystanders.
  - (ii) The deceased in this case was an elderly person, who was 57 years at the time.
  - (iii) You dealt repeated punches/blows on the said deceased person.
- [15] The mitigating factors in this case are as follows:
- (i) You have cooperated with the Police during the investigation, and during the trial you admitted your caution interview statement.
  - (ii) You appeared remorseful for your actions. Your conduct in Court during the trial demonstrated the fact that you are truly remorseful of the incident.
  - (iii) As per the previous conviction report filed in Court, there is a previous conviction recorded against you for Common Assault, on 23 February 2001. This conviction was recorded against you more than 10 years ago. As such, I consider you as a person of good character.
- [16] You are now 42 years of age. You are married and have 5 children, aged 17, 12, 10, 9 and 8 years. All your children are currently attending school. You are employed as a Sales and Marketing Officer for Namina Divers.
- [17] Your Counsel has informed that a serious injury was caused to your leg during cyclone Winston. As a result, you can longer go diving and you find it difficult to sit for too long and also find it difficult to walk for too long.
- [18] However, the above are your personal circumstances and cannot be considered as mitigating circumstances.

[19] Considering the totality of the aforementioned aggravating factors and the mitigating factors, I sentence you to a term of 12 months imprisonment.

[20] Section 26 of the Sentencing and Penalties Decree No. 42 of 2009 provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

*(a) does not exceed 3 years in the case of the High Court; or*

*(b) does not exceed 2 years in the case of the Magistrate's Court.*

[21] Considering all the facts and circumstances of this case, I am of the view that this is an appropriate case for a suspended sentence to be imposed on you. Accordingly, I suspend the 12 months term of imprisonment for a period of 3 years.



Riyaz Hamza

JUDGE

HIGH COURT OF FIJI



Solicitor for the State  
Solicitor for the Accused

: Office of the Director of Public Prosecutions, Labasa.  
: Office of the Legal Aid Commission, Labasa.