

IN THE HIGH COURT OF FIJI

AT LABASA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 043 OF 2018LAB

STATE

VS

JOSEVA QIO

Counsels : Ms. A. Vavadakua for State
Ms. R. Boseiwaqa for Accused

Hearings : 28 and 29 November, 2018

Sentence : 30 November, 2018

SENTENCE

1. On 28 November 2018, in the presence of your counsel, you pleaded guilty to the following information:

Statement of Offence

ACTS NTENDED TO CAUSE GRIEVOUS HARM: Contrary to Section 255(a) of the Crimes Act 2009.

Particulars of Offence

JOSEVA QIO, on 7 May 2018, at Nabouwalu in the Northern Division, with intent to do grievous harm to **EPI KOLINIVAU** unlawfully wounded the said **EPI KOLINIVAU** by striking him with a torch.

2. The prosecution then presented the following summary of facts:

BACKGROUND

- 1.1 The complainant is Epi Kolinivalu, 30 years, Diver of Navave Village, Bua.
- 1.2 The accused is Joseva Qio, 35 years, Diver also of Navave Village, Bua.
- 1.3 They both work for Tony Kean as divers.

OFFENCE

- 2.1 On 7 May 2018, at about 4.30pm, the complainant was sitting in a carrier truck with Gabrieli and Sete when the accused entered the truck and hit his mouth with a diver's torch.
- 2.2 The complainant fell and became unconscious. After a while he awoke and felt dizzy. He was bleeding from his mouth and nose.
- 2.3 Gabrieli saw the accused who was looking for his torch entered the truck and asked the complainant if he had swapped his torch. He saw the accused was seen to have swing the torch and then punching the complainant.

MEDICAL REPORT

- 3.1 The complainant was taken to the Nabouwalu Hospital by Viliame where he was admitted for 3 days.
- 3.2 The medical report showed:
 - (i) A laceration on the upper lip extending through left nostril and into the mouth.
 - (ii) Broken nasal bridge.
 - (iii) Mandibular instability and loose tooth.
 - (iv) Laceration on left ear.
 - (v) Bruise on bilateral shoulder and chest.
 - (vi) Excoriation [scrapped skin] on both thighs.
- 3.3 A skull x-ray showed:
 - (i) micro fractures in incisor roots of maxillary bone
 - (ii) septum deviated
- 3.4 The lacerations were sutured and pain relief and antibiotics were given. The dental review was ongoing.
- 3.5 In summary and conclusions, the Doctor said that the injuries were potentially life threatening.

CAUTION INTERVIEW AND CHARGE

- 4.1 On 16 May 2018, the accused was arrested and interviewed under caution in which he said that he hit the complainant with a Toshiba diver's torch on his nose while the complainant was sitting inside the vehicle.
 - 4.2 He also punched the complainant twice. He said he found the lens of his torch in the complainant's bucket and when he asked about it, the complainant lied and said he didn't know.
 - 4.3 He was also angry with the complainant for giving away fish to a villager which was supposed to be for their Sunday lunch.
 - 4.4 The accused was formally charged with one count of acts intended to cause grievous harm. He does not have PC's.
3. The court then checked with your counsel to see whether or not you had admitted the above summary of facts and the elements of the offence. Your counsel said, on your behalf, that you admitted the above prosecution's summary of facts, and the particulars of the offence in the information. On the basis of your admission, the court found you guilty as charged and convicted you accordingly.
 4. The prosecution said, you were a first offender. No antecedent nor victim impact report was filed by the prosecution. You then submitted verbally your plea in mitigation. It was noted that you are 35 years old, married with two young children aged 5 and 3 years old. You said, your wife is 8 months pregnant. You pleaded guilty 5 months 8 days after first call in the High Court. You said, this is the fourth time the complainant had stolen from you. You said, first, he stole your family's pot of curry and dalo for your Sunday meal. Then, he later stole your Samsung J2 mobile phone. Third, he stole 3 bundles of fish that belonged to you. Lastly, he stole your diving torch. You said, you couldn't take it any longer and you assaulted him. You said, you had been in custody for approximately 3 months.
 5. The offence "Act intended to cause grievous harm," contrary to section 255 (a) of the Crimes Act 2009, carries a maximum sentence of life imprisonment. 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 sentence 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. HAA0006 of 1996; State -v- Senitiki Naga and Others Crim. App. No. HAA0023 of 2003S)..."

6. I would hold that Her Ladyship Madam Justice N. Shameem's view abovementioned, also applied to section 255 (a) of the Crimes Act 2009.

7. The aggravating factors in this case were as follows:

- (i) **The use of violence to resolve a problem.** In his plea in mitigation, the accused said, he committed the offence against the complainant because he had stolen from him four times. He said, first, he stole his family's Sunday pot of chicken curry and dalo. Then he said, the complainant later stole his Samsung J2 mobile phone and 3 bundles of fish. He said, when he stole his diving torch, that was the last straw and he assaulted the complainant. While his anger was understandable, the proper thing for him to do, was to report the matter to police. He should not use violence to resolve his problem.
- (ii) **Complainant's Injuries.** According to the complainant's medical report, he received serious injuries as a result of the offending.

8. The mitigating factors were as follows:

- (i) At the age of 35 years, this is your first offence;
- (ii) Although you pleaded guilty to the offence 5 months and 8 days after first call in the High Court, you nevertheless saved the court's time;
- (iii) You had been remanded in custody for approximately 3 months.

9. I start with a sentence of 2 years imprisonment. I add 3 years for the aggravating factors, making a total of 5 years imprisonment. For time already served while remanded in custody, I deduct 3 months, leaving a balance of 4 years 9 months. For pleaded guilty, I deduct 1 year 9 months, leaving a balance of 3 years imprisonment. For being a 1st offender, I deduct 2 years, leaving a balance of 1 year imprisonment.

10. Mr. Joseva Qio, for offending against Mr. Epi Kolinivau, at Nabouwalu in the Northern Division on 7 May 2018, I sentence you to 12 months imprisonment.

11. You have 30 days to appeal to the Court of Appeal.




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JUDGE

Solicitor for State : Office of the Director of Public Prosecution, Labasa
Solicitor for Accused : Office of Legal Aid Commission, Labasa