

IN THE HIGH COURT OF FIJI

AT LABASA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 48 of 2018

STATE

V

ISOA BOSEYACO

Counsel	:	Ms. Amelia Vavadakua with Mr. Inia Rakaria for the State Mr. Amrit Sen for the Accused
Dates of Trial	:	30 September & 1-3 October 2019
Summing Up	:	4 October 2019
Judgment	:	4 October 2019
Sentence Hearing	:	16 October 2019
Sentence	:	30 October 2019

SENTENCE

[1] Isoa Boseyaco you were charged with the following offences:

COUNT ONE

Statement of Offence (a)

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009.

Particulars of Offence (b)

ISOA BOSEYACO, on the 23rd day of June 2018, at Tarven Night Club, in Savusavu, in the Northern Division, with intent to do some grievous harm

to **TANIELA DELAI**, unlawfully wounded the said **TANIELA DELAI**, with a knife.

COUNT TWO

Statement of Offence (a)

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: Contrary to Section 255 (a) of the Crimes Act 2009:

Particulars of Offence (b)

ISOA BOSEYACO, on the 23rd day of June 2018, at Tarven Night Club, in Savusavu, in the Northern Division, with intent to do some grievous harm to **SAVENACA RATUDUGUCA**, unlawfully wounded the said **SAVENACA RATUDUGUCA**, with a knife.

- [2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the first count of Act with Intent to Cause Grievous Harm. By a unanimous decision, the three Assessors found you not guilty of the second count as charged. However, by a majority decision, the Assessors found you guilty of the alternative charge of Assault Causing Actual Bodily Harm.
- [4] Having reviewed all the evidence, this Court agreed with the unanimous opinion of the Assessors finding you guilty of Count One and the majority decision of the Assessors in finding you guilty for the alternative charge of Assault Causing Actual Bodily Harm for Count Two. Accordingly, you were convicted of Act with Intent to Cause Grievous Harm, in terms of Section 255 (a) of the Crimes Act No. 44 of 2009 (Crimes Act) in respect of Count One; and for Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act in respect of Count Two.
- [5] In support of their case, the prosecution called the two complainants, Taniela Delai and Savenaca Ratuduguca, witness Sairusi Ratusili, and two Medical Officers: Dr. Rayape Racaca and Dr. Maloni Bulanauca.
- [6] Both complainants testified as to the manner in which you attacked them with a knife, and thereby caused injuries to them, on 23 June 2018, at the Tarven Night Club, in Savusavu. Due to the injuries you caused on Taniela Delai's abdomen, a surgery had to be performed, under general anaesthesia, the next day.

[7] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the purposes for which sentencing may be imposed by a Court; and sets out the relevant factors that a Court should take into account during the sentencing process. I have duly considered these factors in determining the sentence to be imposed on you.

[8] In terms of Section 255 (a) of the Crimes Act “A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—

(a) *Unlawfully wounds or does any grievous harm to any person by any means.....”*

The prescribed penalty for this offence is imprisonment for life.

[9] The offence of Act with Intent to Cause Grievous Harm also existed under the Penal Code (Section 224 of the Penal Code), with the same prescribed penalty of life imprisonment.

[10] In *State v. Maba Mokubula* [2003] FJHC 164; HAA 52J.20035 (23 December 2003); Her Ladyship Madam Justice N. Shameem said:

“On the basis of these authorities, the tariff for sentences under section 224 of the 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.....”

- [11] His Lordship Justice Madigan in *State v. Emosi Taku Tuigulagula* [2011] FJHC 163; HAC 31.2010 (15 March 2011); stated thus:

"The maximum penalty for this offence is life imprisonment and the Court of Appeal has said in Shaukat Ali (1976) 22 FLR 87 that for this offence a custodial sentence is inevitable. The offence is akin to section 224 of the old Penal Code and so the authorities pertaining to that section are relevant. In the case of Mokubula (2003) FJHC 164, Shameem J set out several cases of assault intending to cause grievous bodily harm and came to the conclusion that the then prevailing "tariff" was between 6 months imprisonment to 5 years imprisonment, but stressing that where a weapon was used the starting point should be 2 years."

- [12] However, in the above case, Justice Madigan sentenced the accused, who pleaded guilty for striking his wife with a cane knife, severing her fingers in both hands, excluding the thumbs, and also injuring the head, to 6 years imprisonment.

- [13] In *State v. Asesela Rabia* [2012] FJHC 877; HAC074.2011 (22 February 2012); the Fiji High Court followed the tariff that had been adopted in *Mokubula and Tuigulagula* (*supra*).

- [14] In *State v. Seremaia Nalulu & 4 others* [2013] FJHC 358; HAC 155.2010 (23 July 2013); His Lordship Justice Paul Madigan, while adopting the above tariff held as follows:

"The maximum penalty for act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Decree 2009 is life imprisonment. Despite the accepted tariff being between 6 months and 5 years (as set by Shameem J in Mokubula (2003) FJHC 164) much higher sentences have been passed when the circumstances dictate. In Tuigulagula HAC 81 of 2010 this Court passed a sentence of six years on a husband who did very serious harm to his wife. The penalty being life imprisonment, it is to be regarded as a very serious offence indeed and sentences of up to 8 years would not be out of order."

- [15] In *State v. Vakalaca* [2018] FJHC 455; HAC027 of 2018 (31 May 2018); Justice Goundar while adopting the above tariff said:

"[13] The offence of Act with Intent to Cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (State v Mokubula [2003] FJHC 164; HAA0052J.2003S (23 December 2003)."

- [16] In *Vosa v. State* [2019] FJCA 89; AAU0084.2015 (6 June 2019); the Fiji Court of Appeal while making reference to the tariff range and the sentences imposed in the above mentioned cases said that they provide some form of guidance in sentencing

offenders for the offence of Act with Intent to Cause Grievous Harm, subject of course to the different aggravating and mitigating circumstances prevalent in those cases.

[17] Having regard to the above authorities, and since a weapon (a knife) had been used to commit the offence, I consider the tariff for the offence of Act with Intent to Cause Grievous Harm in the instant case to be between 2 years to 5 years imprisonment.

[18] 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."

[19] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 2 years imprisonment for Count One.

[20] The aggravating factors in this case are as follows:

- (i) The complainant was unarmed and the attack was unprovoked and sudden that the complainant did not even have time to defend himself.
- (ii) The attack happened at the complainant's own work place. You showed no regard to the complainant's rights and his personal safety.
- (iii) The complainant Taniela Delai and you were close family friends. However, by your act and subsequently causing injury to the complainant, you have breached the trust expected from you.
- (iv) You caused serious injuries to the complainant. A surgery had to be performed to treat the injury you caused to the complainant's abdomen. Furthermore, the complainant had to be hospitalised for over a week at the Labasa Hospital.

[21] In mitigation it is submitted that you are a first offender. This has been confirmed by the State. It is also submitted that you deeply regret your acts and seek the mercy and forgiveness of Court. You have submitted that you are remorseful of your actions. It is

also stated that you have apologised to the complainant, Taniela Delai, and that he has accepted your apology. Therefore, you and the complainant have now reconciled.

- [22] Isoa Boseyaco, you are said to be 43 years of age and married with three children. You are said to be residing with your family at Yaroi Village in Savusavu and you are the sole breadwinner of your family. However, it is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.
- [23] Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years. Now your sentence is 6 years. For your previous good character and for the other mitigating circumstances, I reduce 3 years from your sentence. Now your sentence is 3 years' imprisonment.
- [24] 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.
- [25] In **State v. Tugalala** [2008] FJHC 78; HAC 25S 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)."*

- [26] 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.)."*

- [27] His Lordship Justice Vincent Perera in **Anaiasa 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."

- [28] In *State v McPherson* [2017] FJHC 890; HAC 42 of 2016 (22 November 2017); this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.
- [29] Having regard to the above authorities, I consider the tariff for the offence of Assault Causing Actual Bodily Harm in the instant case too to range from 3 months to 12 months imprisonment.
- [30] Accordingly, considering the objective seriousness of the offence and taking into consideration all other factors relevant to this case, I impose a sentence of 10 months imprisonment for Count Two.
- [31] In the circumstances, your sentences are as follows:

Count One - Act with Intent to Cause Grievous Harm, contrary to Section 255(a) of the Crimes Act – 3 years' imprisonment.

Count Two - Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act – 10 months imprisonment.

I order that both sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 3 years.

- [32] Considering all the facts and circumstances of this case, I am of the opinion that a custodial sentence should be imposed on you. Therefore, I am not inclined to act in terms of the provisions of Section 26 of the Sentencing and Penalties Act and suspend any part of your sentence.

[33] However, considering the fact that you are first offender and also the fact that you have now reconciled with the complainant, Taniela Delai, pursuant to the provisions of Section 18 (2) of the Sentencing and Penalties Act, I will not impose or fix a non-parole to be served by you.

[34] Accordingly, I sentence you to a term of 3 years' imprisonment.

[35] Section 24 of the Sentencing and Penalties Act reads thus:

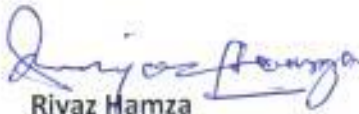
"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[36] You have been in remand custody since your arrest for this case from 23 June 2018 until 30 July 2018, the day on which you were granted bail by this Court. This is a period of just over 1 month. Thereafter, you have been in remand since 4 October 2019, the date on which the Judgment was delivered in this case. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 2 months be considered as served by you in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[37] In the result, you are sentenced to a term of imprisonment of 3 years. Considering the time you have spent in remand, the time remaining to be served by you would be 2 years and 10 months imprisonment.

[38] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 30th Day of October 2019

Solicitors for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the Accused : Maqbool & Company, Labasa.