

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 147 OF 2019

STATE

v

SAMHIR KUMAR

Counsel: Ms. S. Komaibaba for State
Ms. K. Chang for Accused

Date of Hearing: 13 November 2019

Date of Sentence : 20 November 2019

SENTENCE

1. Samhir Kumar, you stand convicted of one count of Assault Causing Actual Bodily Harm and one count of Act with Intent to Cause Grievous Bodily Harm.
2. You voluntarily pleaded guilty to the charges read to you as per the following information.

Count 1

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to section 275 of the Crimes Act, 2009.

Particulars of Offence

SAMHIR KUMAR, on the 3rd day of April, 2019, at Baulevu Road in the Eastern Division, unlawfully assaulted **MOSESE TIKOMAISAINAI** thereby causing actual bodily harm.

Count 2
Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255(1)(a) of the Crimes Act, 2009.

Particulars of Offence

SAMHIR KUMAR, on the 3rd day of April, 2019, at Baulevu Road in the Eastern Division, unlawfully wound **MOSESE TIKOMAISAINAI** with a cane knife, with intent to do some grievous harm to **MOSESE TIKOMAISAINAI**.

3. You agreed with the following summary of facts read in Court. Having been satisfied that all the elements of each offence have been satisfied, the Court found you guilty on both counts and convicted accordingly.
 - I. The complainant in this matter is one Mosese Tikomaisainai, 31 years old of Calia Road, Davuilevu.
 - II. That on the 3rd day of April, 2019 at about 3pm to 3.30pm the complainant went to the residence of the accused to pick up his mobile phone which was being charged, as there was no electricity at the complainants house.
 - III. The complainant was accompanied by his wife namely Laisani Vakayatuyatu, 26 years old of Calia Road, Davuilevu.
 - IV. The complainant and the accused person had an argument and the accused person punched the complainant on the mouth.
 - V. The accused person struck the complainant once with a double edged cane knife which caused two lacerations on the neck.

VI. The complainant went for medical examination on the same day, in which the doctor noted that the complainant had swollen upper left lip and also two 1 x 3cm lacerations on the back of the neck.

VII. On the 9th day of April 2019, the accused was arrested and escorted to Nausori Police Station, interviewed under caution and he fully admitted to the allegations. He was later charged for the offence of Assaulting Causing Actual Bodily Harm contrary to section 275 and Act with Intent to Cause Grievous Harm contrary to section 255(1)(a) of the Crimes Act 2009.

4. The maximum sentence for Assault Causing Actual Bodily Harm is an imprisonment term of 5 years and the tariff ranges from 3 months to 12 months' imprisonment. The offence of Act with Intent to Cause Grievous Harm is punishable with life imprisonment. The tariff for this offence ranges from 6 months to 5 years' imprisonment. 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. Further, the offence may be aggravated by the seriousness of the injuries, premeditation or planning, length and nature of the attack and special vulnerability of the victim. [*State v Mokubula* [\[2003\] FJHC 164](#); HAA0052J.2003S (23 December 2003)].
5. In terms of section 17 of the Sentencing and Penalties Act, I would impose an aggregate sentence for both counts in view that you were convicted based on the same facts arising out of a single transaction.
6. In selecting the starting point, I bear in mind the objective seriousness of your offending. The objective seriousness is assessed on the basis of the degree of culpability and the harm caused to the complainant.
7. In relation to the circumstances of the offending, your Counsel has submitted that on the particular date of the offending, you have invited the complainant who is your brother-in-law to consume alcohol at your in law's place. Whilst consuming alcohol, an argument ensued between you and the complainant and you say it was started by the complainant. You removed yourself from the situation and returned home. After a while, the complainant had come with his wife to your place in a van and resumed the argument. The incident has occurred when the complainant started swearing at you and your family. Although these facts are not reflected in the facts you have agreed, the State has not disputed those facts.

8. You have agreed that you struck the complainant with a double edged cane knife, causing him minor injuries on his neck and punching on the lips. The injuries sustained upon being struck by the cane knife have been highlighted in the medical report. Accordingly, the complainant has received two lacerations on the neck 1x3 cm and 1x4-5 cm in length and 0.3 cm in depth. The punch has resulted in a swollen lip.
9. The cane knife has landed on the complainant's neck although you have struck the knife only once. There had been only a single slap. It is submitted that your intention was merely to intimidate the complainant into leaving your house.
10. The injuries have not left permanent scares or disfigurement. There is no evidence of planning or premeditation. Fortunately, the victim was not seriously injured. It appears that a degree of provocation has been offered by the complainant. The seriousness of your conduct falls in the lower range of the tariff for the offence of Act with Intent to Cause Grievous Harm. Having considered all these factors, I have decided to start your sentence with an imprisonment term of 2 years.
11. It is aggravating that you committed these offences under influence of alcohol. You were in a position of mutual trust with the complainant who is your brother-in-law. You breached that trust by inflicting physical violence on him. I increase your sentence by 1 year to reflect all these aggravating features.
12. There are compelling mitigating factors in your favour. You have realised the mistake and have mended the broken relationship with your brother-in-law. You are genuinely remorseful. You have no active previous convictions and I consider you to be a first offender. You have cooperated with police investigations. By pleading guilty to both counts at the first available opportunity, you have saved court time and resources and relieved the complainant from the stress of giving evidence. I deduct your sentence by 2 years to arrive at a sentence of 1 years' imprisonment.
13. Your remand period is less than a month. I make a downward adjustment to your sentence to reflect your remand period to arrive at a sentence of 11 month's imprisonment.
14. Although you have used a double edged cane knife, it was struck once and, given the minimal injuries complainant has suffered, I accept that you have used the cane knife to intimi-

date the complainant into leaving your house. However, the use of a cane knife and the place it had landed (neck) are viewed as features of a serious offending and the Fijian society expects the courts to come down harsh on offenders who use cane knives. Therefore an immediate custodial sentence is inevitable in this case. In order to strike a balance between two purposes of sentencing, namely rehabilitation and public denunciation, I sentence you to an imprisonment term of 11 months.

15. Samhir Kumar, you are sentenced to an imprisonment term of 11 months.

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



At Suva

20 November 2019

Counsel: Office of the Director of Public Prosecution for Prosecution
Legal Aid Commission for Accused