

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA 93 of 2018**

**DANIEL JITENDRA PRASAD**

VS

**STATE**

**Mr. M. Anthony** for the Appellant  
**Ms. Alvin Singh** for the State

**Date of Hearing** : 14 February 2019  
**Date of Judgment** : 20 February 2019

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**JUDGMENT**

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- 1.] On the 9<sup>th</sup> October 2018, the Appellant was convicted after trial in the Magistrates Court at Lautoka of one charge of assault occasioning actual bodily harm and was sentenced to a term of imprisonment of 10 months suspended for a period of 5 years.
- 2.] The appellant ("accused") appeals the sentence out of time on the grounds that it is harsh and excessive.
- 3.] The State not objecting, this Court granted leave to the Appellant to appeal on 4<sup>th</sup> February 2019. The facts of the case elicited at trial were that the accused and the complainant had a dispute over some soil

transfer by the complainant from the accused's adjoining land. The Police were called and the dispute was seemingly settled, however after the Police left, the accused approached the complainant and threw a stone at his forehead. This caused a bruising and swelling to his forehead.

- 4.] The maximum penalty for this offence is 5 years imprisonment and the tariff has been held to be from a suspended sentence to a term of 12 months' imprisonment. (Ratubalavu HAC 214.2018S)
- 5.] Counsel for the appellant is correct in his submission that a ten-month starting point is high within this range.
- 6.] The Court of Appeal said in Koroivuki AAU 0018.2010,  
  
*"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 stage. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff."*
- 7.] This Court does not agree with the defence submissions that it was a careless act resulting in injuries that were "not at all serious".
- 8.] What is serious in this case is the potential danger from the utterly reckless act in throwing a solid object (the stone) at another's head. Such recklessness can be visited in sentencing by adding time for the serious aggravating feature or by adopting a higher starting point (of course not both). In this case, the learned Magistrate has taken a high starting point, which this Court would not interfere with.
- 9.] The other defence claims that not enough credit was given for his previous clear record and that the sentence is harsh and excessive are negated by the passing of a suspended sentence on the appellant.
- 10.] This Court however is of the view that to suspend a ten-month sentence for a period of five years is excessive and harsh. To have the

consequences of this foolish escapade hanging over the appellant for so long is unfair.

11.] The appeal against the suspended sentence is verging on the frivolous. Although not a ground made, this Court would reduce the suspension period from 5 to 3 years.

12.] Order

1. The appeal is dismissed.
2. Pursuant to section 256(2) (a) the period of suspension is varied from 5 years to 3 years.



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Paul .K. Madigan

Judge

20<sup>th</sup> February, 2019  
At High Court Lautoka