

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 100 of 2018

STATE

V

AKAPUSI QALOBULA

Counsel : Mr. Eoghn Samisoni for the State
Mr. Mathew Young for the Accused

Dates of Trial : 23-24 March 2020

Summing Up : 25 March 2020

Judgment : 30 March 2020

Sentence Hearing : 2 April 2020

Sentence : 3 April 2020

SENTENCE

[1] Akapusi Qalobula, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

Statement of Offence

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

Particulars of Offence

AKAPUSI QALOBULA, on the 21st day of February 2018, at Vanuabalavu, Lau, in the Southern Division, with intent to cause grievous harm to **ILIESA**

TIKOMAINIUMEA, unlawfully wounded the said **ILIESA TIKOMAINIUMEA**, by striking him on the face with a cane knife.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 2 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 not guilty of the charge. However, by a unanimous 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 the alternative charge of Assault Causing Actual Bodily Harm. Accordingly, you were convicted of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act No. 44 of 2009 (Crimes Act).
- [5] In support of their case, the prosecution called the complainant, Iliesa Tikomainiumea. You testified on your own behalf and also called a witness, Ropate Lopeti Vosavakadua, in support of your case.
- [6] The complainant clearly testified as to the manner in which you had caused injury to him around 6.00 in the morning, on 21 February 2018, by striking him on his face with a cane knife. The complainant described that he was struck on the right side of his cheek, below his right eye, and the cut extended right across to the edge of his nose. He was bleeding profusely as a result of the injury.
- [7] The complainant had to spend 2 days and 2 nights at the Lomaloma Hospital. He had been medically examined by Doctor Luke Ravula at the Lomaloma Hospital. In the Medical Examination Report it is stated that there was a laceration on the right maxillary region from the right eye to the right nostril. The wound had required 5 stiches.
- [8] 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.
- [9] 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.
- [10] 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)."*

- [11] 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.)."*

- [12] 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."

- [13] 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.

[14] 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.

[15] 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.”

[16] 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.

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

- (i) The complainant was unarmed at the time of the assault.
- (ii) The accused used a cane knife to attack the complainant.
- (iii) The actual bodily harm caused to the complainant was serious. A laceration was caused on the right maxillary region from the right eye to the right nostril of the complainant. The injury caused had required 5 stiches.

[18] In mitigation it is submitted that you are a person of recent good character. This has been confirmed by the State. It is also submitted that you are deeply remorseful of your actions. It is also stated that you had even attempted to apologise to the complainant and seek his forgiveness, but the complainant had refused to accept your apology. It is further submitted that you had co-operated with the police during the course of the investigations without attempting to subvert the course of justice.

[19] It is an admitted fact that on the date of the incident, 21 February 2018, an argument had occurred between you and the complainant concerning the dispute of a land boundary. The injury to the complainant had been caused during the course of the said argument. You had dealt a single blow on the accused’s face with the cane knife.

[20] Accordingly, considering the objective seriousness of the offence and taking into consideration all the above factors, including the aggravating factors and mitigating

circumstances relevant to this case, I impose on you a sentence of 9 months imprisonment.

[21] The next issue for consideration is whether your sentence should be suspended in terms of Section 26 of the Sentencing and Penalties Act.

[22] Section 26 of the Sentencing and Penalties Act 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.

[23] Akapusi Qalobula, you are now 34 years of age (Your date of birth is 10 July 1985). You are said to be married with three children. You are said to be the sole breadwinner of your family.

[24] You were arrested for this case on 24 February 2018 and remanded in custody. You were granted bail by the Suva Magistrate's Court on 5 March 2018. Thereafter, you were remanded into custody on 30 March 2020, the day on which you were found guilty by this Court and convicted. Therefore, you have been in remand custody for this case for nearly two weeks.

[25] I have considered the following circumstances:

- You are a person of recent good character;
- You have fully co-operated with the Police during the course of the investigations;
- You submit that you are deeply remorseful of your actions;
- You had attempted to apologize to the complainant and seek his forgiveness, but the complainant had refused to accept your apology;
- You have spent nearly two weeks in remand custody for this case.

Accordingly, it is my opinion that the chances for your rehabilitation is high. Therefore, I deem it appropriate to suspend your sentence.

[26] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.

[27] In the result, Akapusi Qalobula your final sentence of 9 months imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.

[28] 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 03rd Day of April 2020

Solicitors for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitors for the Accused : **Chand & Young Lawyers, Barristers & Solicitors, Suva.**