

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 151 OF 2021

BETWEEN : STATE

AND : JOPE KOTOBALAVU

**Counsel : Mr. Z Zunaid for the State
Mr. T Varena for the Accused**

Date of Hearing : 08 October 2021

Date of Sentence : 13 October 2021

SENTENCE

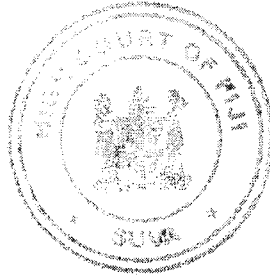
- [1] The Accused has pleaded guilty to a charge of act with intent to cause grievous harm at the first opportunity.
- [2] The facts are that the Accused with the intent to cause grievous harm to Jemesa Vakawekani unlawfully wounded him by setting him alight after pouring benzene on him.
- [3] The Accused and the victim are cousins. Both reside at Tubou village, Lakeba. The Accused is 42 years old and is a farmer. The victim is 27 years old and he is also a farmer.

- [4] The incident occurred on the night of 24 July 2021. On this night the Accused and another villager saw the victim at the outskirts of their village holding a bottle. They suspected that the victim was sniffing benzene. When they confronted the victim he threw the bottle away. The Accused retrieved the bottle and when he realized it contained benzene he confronted the victim by grabbing his T-shirt from the back. He then poured the benzene on the victim and took out a lighter from his pocket and flicked it on the edge of the victim's T-shirt which was covered in benzene. When the victim's T-shirt started burning, the Accused released him from his grip. The victim ran and was able to take off his T-shirt but not his vest as it was too late. He then rolled on the ground and was able to extinguish the flames. At that moment, the Accused realized the harm he had caused to the victim. Both the Accused and the fellow villager who witnessed the incident then took the victim to his home which was about 20 meters away.
- [5] The victim's father reported the incident to the police when the victim's condition was not improving. The victim was medically examined on 26 July 2021. The injuries noted on his medical report are as follows:
- Patient's back (posterior) on the left noted to have blisters, red and very painful to touch.
- The posterior aspect of his left arm/forearm also noted to have blisters, red and painful to touch.
- [6] In his caution interview, the Accused admitted setting the victim alight but he also tried to downplay his conduct by suggesting that he did not intend to cause serious harm to the victim.
- [7] An act with intent to cause grievous harm is a serious offence. The maximum penalty prescribed for the offence is discretionary life imprisonment. The tariff for the 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)).

- [8] The conduct of setting a person alight after pouring benzene on him is objectively serious to justify a starting point of 2 years. The Accused may have thought that he was disciplining a younger cousin for sniffing benzene, but the method employed was dangerous and wrong. The aggravating factors are that the victim's trust was breached and that the incident had caused him painful physical injuries to his body. For these factors, I increase the sentence by 6 months.
- [9] Fortunately the injuries sustained by the victim are not life threatening. Immediately after the incident, the Accused regretted his actions. He was shocked and took the victim to his home. Counsel for the Accused has informed the court that the Accused had offered his apology to the victim and his family.
- [10] The Accused pleaded guilty at the first opportunity and expressed remorse. His remorse is genuine. He has saved court's time and resources by taking responsibility for his crime. For these factors I reduce the sentence by 12 months.
- [11] The Accused has some spent convictions. His last conviction was in 2002. Thereafter he had lived a decent life. He is married with a child. His spouse is a police officer. The court has received letters from his church minister and his Turaga-ni-Koro, vouching for his good character. He had spent about 1 month and 5 days in custody on remand before he was granted bail. For these factors I reduce the sentence by 6 months.
- [12] I do not think suspension of the sentence is appropriate due to the gravity of the offence. I place importance to general deterrence in order to impose an immediate prison sentence.

[13] After taking all these factors into account the Accused is convicted and sentenced to 12 months imprisonment.



A handwritten signature in black ink, appearing to read "Daniel Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for the Accused