

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

Crim. Case No: HAC 43 of 2019

STATE

vs.

IFEREMI BUA

Counsel : Ms. N. Ali with Ms. A. Devi for Prosecution
Mr. K. Chang for Defence

Date of Judgment : 3 August 2022

Date of Sentence Hearing : 5 August 2022

Date of Sentence : 5 August 2022

SENTENCE

1. Mr. Iferemi Bua, you were charged with one count of Act with Intent to Cause Grievous Harm on the following information.

COUNT ONE

Statement of Offence

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

Particular of Offence

IFEREMI BUA on the 1st day of August, 2018 at Moala, Lau in the Eastern Division, with intent to cause grievous harm to MOSESE TIKOISUVA, unlawfully wounded the said MOSESE TIKOISUVA by striking him with a stick.

2. You pleaded not guilty to the charge. At the ensuing trial, the Court found you guilty as charged and convicted. You now come before this Court to receive the sentence.

Having considered the mitigation submission filed through your counsel and the sentencing submissions filed by the State, I proceed to sentence you as follows:

3. The facts briefly are that the victim is your nephew, a farmer by profession. On 1st day of October, 2018, the victim went early in the morning to his farm to do farming. He took with him a cane knife and a woven basket. Being agitated with the suspicion that your wife is in an extra marital affair with the victim, you decided to go to the farm to confront the victim. You hid behind a mango tree and confronted the victim with a *vaivai* stick and a cane knife. After an exchange of words over the extra marital affair, you started hitting the victim with a *vaivai* stick which is used for planting *dalo*. It was 2 m long and 2 - 3 inches thick with sharp edges.
4. You beat his knees, left hand elbow, right knee, ribs and his ankles with the *vaivai* stick. According to the medical report the victim had received bruise over left posterior forearm with a swelling, a swelling on left hand with tenderness and a swelling over his left leg. You then struck him with a cane knife causing deep laceration on his left scalp 7cm in length and 1.5cm in depth with excessive bleeding and cuts on his third and fourth right fingers.
5. An Act with Intent to Cause Grievous Harm is a serious offence. The seriousness of the offence is reflected in the maximum sentence prescribed by the legislature. According to Section 255(a) of the Crimes Act 2009, the maximum sentence is life imprisonment. The harm caused to the victim in terms the seriousness of the injuries and the type of the weapon used should be taken in to account in setting the starting point.
6. The offence is akin to the offence defined in Section 224 of the repealed Penal Code and the Courts have applied the tariff set out under the Penal Code offence. In the case of *Mokubula* (2003) FJHC 164, Shameem J observed several past 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. 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. Her Ladyship identified seriousness of the injuries, evidence of premeditation or planning, length and nature of the attack and special vulnerability of the victim as aggravating factors. The previous good character, guilty plea, provocation by the victim, apology, reparation or compensation as mitigating factors. Her Ladyship further observed that in general terms, the more serious and permanent the injuries are, the higher the sentence should be. It was emphasised that, as a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm.

7. In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 3 years' imprisonment.
8. I have identified the following aggravating factors in your offending. The victim is your nephew, therefore, you are in a domestic relationship with the victim. There is evidence of premeditation and the attack took place for a considerable length of time with multiple strikes. All these features aggravate your offence.
9. I find compelling mitigating features in this case. The State has confirmed that you have no previous convictions. You cooperated with the police and you admitted certain features of your offending. When the victim was bleeding from his head you grabbed some herbal medicine and applied it on his wounds. I find you are genuinely remorseful of your actions. Although you were suspicious of the victim that he was having an affair with your wife, you have not laid any foundation for that suspicion. Therefore, I do not think the victim had offered any sort of provocation. You are 44 years of age and a single parent of four children. You feed the children and provide special care for the daughter who is said to be deaf and dumb. I have considered all these factors to mitigate your sentence.
10. Considering the aforementioned aggravating factors, I increase your sentence by 3 years to arrive at a sentence of 6 years' imprisonment. I deduct 3 years for the mitigating features to arrive at a sentence of 3 years' imprisonment.

11. Since your sentence has not exceeded 3 years, I should consider if your sentence should be suspended under Section 26 of the Sentencing and Penalties Act. In *Mokubula* (2003) FJHC 164, Shameem J emphasised that, as a matter of principle, a fully suspended sentence is not appropriate for a case of act with intent to cause grievous harm. However, each case must be decided on its own facts and circumstances. The victim in this case has fully recovered and there was no brain damage or any permanent disfigurement. The remorseful conduct you have demonstrated soon after the offence indicates that you have realized your mistake and genuinely repent your action. You have maintained a clear record over a period of 44 years in your life. It is submitted that you have sought forgiveness from the complainant and mended the relationship. Your potential for rehabilitation is very high.

12. Taking into consideration all these factors, a partially suspended sentence is warranted in this case. In the result, Eferemi Bua, your final sentence of 3 years' imprisonment is partially suspended. Accordingly you are to serve only 12 month in the correction facility and the balance 24 months to be suspended for a period of three years. If you are found guilty for another offence during the suspended period, you are liable to be punished for the violation.

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



5 August 2022

At Suva

Counsel:

- Office of the Director of Public Prosecution for Prosecution
- Legal Aid Commission for Defence

Aruna Aluthge

Judge