

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO. HAC 145 OF 2022

BETWEEN : STATE

AND : MESULAME TUIWARU

Counsel : Ms N Ali for the State
Ms N Ali for the Accused

Date of Hearing : 24 March 2023

Date of Sentence : 2 May 2023

SENTENCE

- [1] The accused has pleaded guilty to a charge of act with intent to cause grievous bodily harm.
- [2] The complainant is the accused's 29 year old cousin. She is a Pharmacist by profession. The accused was living with the victim's family when the incident occurred.
- [3] The incident occurred at the victim's home on 7 April 2022. On this day the accused returned home drunk early in the morning.
- [4] The accused approached the complainant and confronted her with an allegation that she had been gossiping about him. At the time the complainant was having her breakfast at the dining table. A heated argument ensued between them and the accused lost his temper. He grabbed the wooden chair with steel frame and struck the complainant on her left arm.

- [5] When the complainant was hit with the chair her arm was numbed. She quickly ran outside for her own safety. The matter was reported and she was medically examined. She sustained a fracture and dislocated shoulder.
- [6] The accused was arrested and interviewed under caution. He confessed to the crime to police.
- [7] The maximum sentence for the offence of act with intent to cause grievous harm is life imprisonment. The tariff range from 6 months imprisonment to 5 years imprisonment and in a case where the attack is by a weapon, the starting point is 2 years imprisonment (*State v Mokubula* FJHC 164; Criminal Appeal No. HAA 52 of 2003s (22 December 2003)).
- [8] In this case, the victim was struck with a wooden and steel chair with considerable force. I consider 2 years imprisonment as an appropriate starting point. The physical injuries sustained by the victim were serious. The victim suffered considerable physical pain. Further, the victim was the accused's cousin. She was assaulted in her home where she should have felt safe. The accused breached her trust. He was drunk when he committed the crime. For these aggravating factors, I enhance the sentence by 1 year.
- [9] The accused pleaded guilty at the first opportunity. He cooperated with the police and confessed to the crime. I consider he is genuinely remorseful. He is 38 years old. He lost his employment as a school teacher. He now earns a living by farming and supports his elderly father and two younger siblings in school. He is a first time offender. His early guilty plea has saved court's time and resources. For these mitigating factors I give him a discount of 2 years.
- [10] The accused is convicted and sentenced to 12 months imprisonment.

- [11] The accused has already served 4 months in custody on remand. The remaining sentence for him to serve is 8 months imprisonment. I have considered suspension and have decided against it.
- [12] An immediate custodial sentence is inevitable where the victim is seriously injured in a domestic violence case. The purpose of sentence is to deter the offender and others from committing family violence.
- [13] The DVRO with standard non-molestation condition is made permanent in this case.



A handwritten signature in black ink, appearing to read "Daniel Goundar", is written above 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