

**IN THE HIGH COURT OF FIJI AT SUVA**  
**CRIMINAL JURISDICTION**

**Criminal Case No. HAC 234 of 2024**

**The State -v- Atelaite Raikusa**

**For the State: Mr. Takalaivuna A.**

**For the Accused: Ms. Narayan S.**

**Date of the Plea: 26<sup>th</sup> November 2024**

**Sentence Hearing: 6<sup>th</sup> February 2025**

**Date of sentence: 11<sup>th</sup> March 2025**

**SENTENCE**

1. The Accused has pleaded guilty to the following offences on the Information: -

**First Count**

*Statement of Offence*

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

*Particulars of Offence*

**ATELAITE RAIKUSA** on the 13<sup>th</sup> day of September 2024 at Nasinu in the Central Division, with intent to cause some grievous harm to **JOVECI CAGILEVU** poured hot water on him.

**Second Count**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM:** Contrary to section 275 of the Crimes Act 2009

*Particulars of Offence*

**ATELAITE RAIKUSA** on the 13<sup>th</sup> day of September 2024 at Nasinu in the Central Division, assaulted **JOVECI CAGILEVU** by burning him with a hot iron, thereby causing him actual bodily harm.

2. The Accused Atelaite Raikusa was first produced at the Nasinu Magistrate's Court on the 18<sup>th</sup> of September 2024
3. She was arraigned in the High Court on the 3<sup>rd</sup> of October 2024 and direction were given for the Information and disclosures to be served on the Accused.

4. Counsel advised the Court that she wished to take a progressive approach She pleaded guilty to both counts on the 26<sup>th</sup> of November 2024 and the matter was adjourned to the 6<sup>th</sup> of February 2025 for the Summary of Facts to be outlined to the Accused.
5. The summary of facts
  - a) The victim in this matter is Joveci Cagilevu, 44 years resident of Tamole Street, Newtown.
  - b) The Accused is Atelaita Raikusa, 32 years of age, resident of Tamole Street, Newtown.
  - c) The victim is the de facto partner of the Accused.
  - d) On the 13<sup>th</sup> of September 2024, at about 10 am, the complainant Joveci Cagilevu arrived home drunk. The accused was at home preparing for work and they had an argument. The complainant then went to the room to sleep.
  - e) The Accused, still irritated, followed him into the room and poured a cup filled with hot water on the complainant.
  - f) In shock, the complainant jumped out of the bed and screamed as he could not bear the pain. The complainant then reported the incident to the Valelevu Police Station on the same day.
  - g) The complainant was examined the same day at the Valelevu Health Centre, and Dr. Irene Kazoudi noted a total of 7.5 %superficial burn on the left side of his chest. Dr. Irene Kazoudi also noted a 2.5% burn on the complainant's right arm which was estimated to be a week older than the rest of the burns (the Police medical examination form was tendered as an exhibit.)
  - h) The accused was then arrested, interviewed under caution where she made full admissions. She also admitted to burning the complainant with a clothes iron on the 7<sup>th</sup> of September 2024 (the record of the interview under caution was also tendered.)
6. The Accused was charged with the following offences:
  - a) Count 1: Act with Intent to cause grievous harm contrary to section 255 (a) of the Crimes Act 2009.

- b) Count 2: Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009.
7. On the 26<sup>th</sup> of November 2024, the Accused pleaded guilty to both counts.
  8. The Accused indicated that she has understood and admits the summary of the facts.
  9. I am satisfied that the summary of the facts sets out all the elements of the two counts in the Information.
  10. I have also carefully examined the Accused and her demeanour in Court, and I find that she has fully understood the nature of the plea and the ramifications of the same. I find that the plea is unequivocal therefore Atelaite Raikusa is convicted as charged on both counts in the Information.
  11. According to the State, the Accused is a first offender, therefore she is a person of previous good conduct.

Mitigation

12. In mitigation, counsel offers the following plea in mitigation: -
  - (a) The Accused is 32 years of age, and she resides in Newtown with her family.
  - (b) She is in a de facto relationship with the complainant and they have three children.
  - (c) She is employed as a Controller and earns \$207 per week.
  - (d) She is a first offender and a person of previous good conduct. Counsel cites the case of Prasad vs The State [1994] FJHC 132; HAA 321 of 1994 (30 September 1994).
  - (e) She states that she has reconciled with the complainant, and they have agreed to resume living together as a family.
  - (f) She has taken an early guilty plea and has thus saved the Court's time.

- (g) She is remorseful for her actions and seeks forgiveness.
- (h) She was remanded for 30 days and counsel submits that this period be deducted from her sentence as time served.
- (i) Counsel submits that the Court ought to consider the spirit and objectives of the Sentencing and Penalties Act in preparing the sentence. Counsel further submits that making a person repent within the 4 walls of prison will not rehabilitate that person.
- (j) Counsel therefore asks for the Court's mercy and leniency.

13. The maximum punishment for the offence of Act with intent to cause Grievous Harm is life imprisonment.

14. The tariff was set in the case of State -v- Maba Mokubula [2003] FJHC 164; HAA 52 of 2003 (23<sup>rd</sup> December 2003), where Justice Nazhat Shameem said as follows:-

*“On the basis of these authorities, the tariff for the sentences under section 224 of the Penal Code is between 6 months imprisonment to 5 years imprisonment. In the 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.*

Aggravating factors would be:

1. Seriousness of the injuries;
2. Evidence of premeditation or planning;
3. Length and nature of the attack
4. Special vulnerability of the victim.

Mitigating factors would be:

1. Previous good character;
2. Guilty plea;
3. Provocation by the victim;
4. Apology, reparation or compensation.

In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm.”

15. Later in the case of State -v- Vakalaca HAC 027 of 2018 (31<sup>st</sup> May 2018); [2018] FJHC 455, Justice Goundar stated as follows: -

*“The offence of Act with intent to cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this 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.*

*Thus Mokubula provides general sentencing guidance that tariff for cases under section 255 of the Crimes Act 2009, committed by any means other than a weapon, is between 6 months to 5 years imprisonment but if the attack is by a weapon the starting point should range from 2 to 5 years which means that the final sentence could be over 5 years depending on the nature of the weapon and the other aggravating circumstances. As stated by the Court of Appeal in Vosa -v- State [2019] FJCA 89; AAU 84 of 2015 (6<sup>th</sup> June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive.”*

16. Counsel submits that the Court takes the lower end of the tariff which is 2 years as the starting point of the sentence. The Court is also urged to take into consideration the Accused’s remorse and the fact that she has saved the Court’s time by pleading guilty at the earliest opportunity.
17. The maximum sentence for the offence of Assault Causing Actual Bodily Harm is 5 years imprisonment and the tariff was set in the case of Jonetani Sereka vs State [2008] FJHC 88; HAA 27 of 2008 (25April 2008). The tariff 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.
18. In Elizabeth Joseph vs The State [2004] HAA 30 of 2004S stated that it is the extent of the injuries which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalisation and with no reconciliation a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld.

19. Counsel submits that looking at the facts and circumstances of the offending, that a suspended sentence is the most appropriate sanction bearing in mind the mitigating factors set out above.

#### Sentencing Submissions

20. The State submits that the maximum penalty for this offence is life imprisonment, and the same offence was also proscribed in the now repealed Penal Code at section 224 with the same penalty of life imprisonment.

21. The State also cites the authorities of Mokubula and Vakalaca as cited by the Accused and the State emphasises that the above authorities are very clear that “as a matter of principle, a suspended sentence is not appropriate for a case of act with intent to cause grievous harm...”

22. The State also submits that the Court adopt the tariff set out in State –v- Maba Mokubula [2003] FJHC 164; HAA 52/2003 (23<sup>rd</sup> December 2003) – a starting point of 2 years.

23. For the second count of Assault Causing Actual Bodily Harm, the State submits that this is a domestic violence offence therefore the tariff ranges from 9 months to 18 months imprisonment.

24. The State identifies the following aggravating factors in this case: -

- (a) The parties are in a domestic relationship
- (b) The Accused used a weapon on two different occasions and caused injuries to the complainant.
- (c) These types of domestic violence offences are more prevalent now.

25. The Accused was remanded from the 17<sup>th</sup> of September 2024, and she was bailed on the 17<sup>th</sup> of October 2024 therefore she has spent 30 days in remand and this period of one month will be deducted as time already served by her.

26. The State also recommends that the interim DVRO that is in place be made a permanent order of the Court.

27. The State therefore recommends that the Court must consider all the circumstances of this case and impose a sentence that is commensurate with the offending in this case. Condign punishment must be imposed on the Accused and the overall sentence must affect reflect the gravity of offending.

### Analysis

28. The facts of this case indicate that this is a domestic violence offence, therefore section 4 (3) of the Sentencing and Penalties Act requires the Court to consider the following factors: -

“4 (3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological, or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender's —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.

28. In this case the Accused's personal culpability is high as she had attacked the complainant with a hot iron the previous week prior to the attack with the cup of hot water. Her actions are serious and the only proper sanction is a sentence of imprisonment.

29. In sentencing the Accused, the Court adopts the tariff in State -v- Maba Mokubula [2003] FJHC 164; HAA 52 of 2003 (23<sup>rd</sup> December 2003), where Justice Nazhat Shameem said as follows: -

*“On the basis of these authorities, the tariff for the sentences under section 224 of the Penal Code is between 6 months imprisonment to 5 years imprisonment. In the 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.*

30. This authority is still good law and applying the same to this case I find that the offending in this case lies at the lower to middle end of such offences and two separate offensive weapons were used – the hot kettle containing boiling water and the attack with the hot iron the week before.

31. The two offences were committed as part of one transaction, even though they were committed one week apart. I therefore impose an aggregate sentence on you pursuant to section 17 of the Sentencing and Penalties Act 2009.



32. I commence the sentence at 2 years imprisonment. I add 1 year for the aggravating factor identified above.
33. The major mitigating factors in this case is the guilty plea and your previous good conduct as a first offender.
34. I deduct 6 months for the guilty plea and 6 months for your previous good conduct as a first offender.
35. This leaves the interim sentence at 2 years imprisonment. The Accused has been in remand for 1 month therefore this period will be deducted as time already served leaving the final sentence at 1 year 11 months' imprisonment.
36. This is a sentence under 3 years therefore it may be suspended pursuant to section 26 of the Sentencing and Penalties Act.
37. In considering whether to suspend the sentence, the Court notes the provisions of section 4 (3) and 26 of the Sentencing and Penalties Act as this is a domestic violence offence and the following factors are relevant: -
- You are a young offender, and you have pleaded guilty at an early stage of this case, saving the complainant from having to relive his ordeal at the trial.
  - You are a first offender and a person of previous good conduct.
  - Your personal culpability in the offending is high and at the time of the offending your actions were aggressive and escalated up to the two separate acts as set out in the charge.
  - You have taken responsibility for your actions, including your cooperation with the police in their investigations culminating in your guilty plea in Court.
  - The Court finds that you are remorseful now and you have spent time in remand therefore this period has hopefully given you an opportunity to reassess your decision making and the consequences of your bad choices.
38. After considering the above factors, the Court finds that it will promote the sentencing principle of denouncing your violent actions that day however, as you have shown your remorse by your subsequent actions, the Court will also promote your rehabilitation. The Court therefore finds that the most appropriate sentence for you is a suspended sentence.

**Atelaite Raikusa this is your sentence: -**

1. For the first count of **Act with Intent to cause Grievous Harm** and the second count of **Assault Causing Actual Bodily Harm I** impose an aggregate sentence on you of 1 year 11 months' imprisonment, suspended for 3 years.
2. The interim Domestic Violence Restraining Order – Standard Non-Molestation Conditions for the protection of the complainant, is hereby made a final order of this Court. You are hereby put on notice that any breach of this Order constitutes a criminal offence, and you may be subject to prosecution for the same.
3. The clerk will explain the suspended sentence and the final DVRO.

**30 days to appeal.**



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**Mr. Justice U. Ratuveli**  
**Puisne Judge**

**cc: - Office of the Director of Public Prosecutions**  
**- Legal Aid Commission**