

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 280 of 2024

STATE

v

ZOEER ALTAF HUSSEIN

Counsel: Ms. Y. Sautu for the State
Ms. S. Narayan for the Accused

Date of Mitigation/Sentencing Hearing: 25 April 2025

Date of Sentencing: 8 May 2025

SENTENCE

1. **Zoeer Altaf Hussein**, the accused, is indicted with the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009, laid out as follows in the Amended Information by the Director of Public Prosecutions dated and filed on 26 February 2025:

COUNT ONE

Statement of Offence

ACTS INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255(a)

of the Crimes Act 2009.

Particulars of Offence

ZOEER ALTAF HUSSEIN, on the 26th day of October 2024 at Nasinu in the Central Division, with intent to cause grievous harm to **ANIT SHIWAN SAHAI** unlawfully wounded the said **ANIT SHIWAN SAHAI** by continuously punching him on his face, kicking him on his chest and striking him with a Ballpeen Hammer.

2. On 27 February 2025 Zoeer Altaf Hussein pleaded *guilty* voluntarily and unequivocally to the charge of *Acts intended to cause grievous harm*, confirmed by his LAC counsel Ms. A. Bilivalu, followed by the prosecutor reading out the *Summary of facts* and submitting the *Antecedent report*, to which the accused's counsel Ms. Bilivalu then asked for further time to consider the prosecution's *Summary of facts*.
3. On 1 April 2025 the accused Zoeer Altaf Hussein voluntarily admitted the *Summary of facts* and the *Antecedent report*, confirmed by his LAC counsel Ms. A. Bilivalu. The Court then formally convicted Zoeer Altaf Hussein of the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009 as per the indictment.
4. Plea in mitigation and sentencing hearing was held on 25 April 2025, and this is the Courts finding on sentence.

Brief facts for *Acts intended to cause grievous harm*

5. The complainant Anit Shivan Sahai (PW1) is 32 years, hairdresser and resides at Lot 3 Vatoa Road, Narere, Nasinu. On 26 October 2024 at around 10.30am, PW1 was at Eric Amish Raj's (PW2) house at Lot 18 Kasari Street, Narere, Nasinu, playing games on his phone whilst

sitting on the floor leaning against the wall on the right side of the room. In that same room were PW2 and Ashneel Aniket Kumar (PW3), 25 years of Lot 36 Luke Street, Narere, Nasinu, who also played games on the phone whilst sitting on the bed. After a few hours, PW1 saw the accused Zoer Altaf Hussein enter the house and came via the sitting room, wearing a black winter jacket, long black pants and a pair of black Puma canvas, and carrying two bags on his back. As the accused reached the bedroom door, PW1 looked up at him and continued playing games on his phone. PW1 also observed that upon entering the room, the accused did not speak to anyone in that room, he then put down his bags on the floor and began saying, “*I’m going to break this one*”, and immediately after uttering that, the accused started forcefully kicking PW1 with his right leg landing on PW1’s left chest. The accused then kicked PW1 again twice, and PW1 reacted by dropping his phone and covered his head and face with both hands. The accused then threw punches at PW1’s face and head using both hands causing PW1 injuries. At that particular moment, PW1 also felt an object hit the back of the left side of his chest, which object felt like a hammer that the accused had used to hit PW1 with. PW1 felt weak and pain as he was severely injured from being punched and hit with a ball-peen hammer by the accused. After a few minutes, PW2’s sister then came to assist PW1 and stopped the accused by removing the ball-peen hammer from the accused’s hand. The accused Zoer Altaf Hussein was interviewed under caution on 2 November 2024 by DC.4651 Vakuru, and subsequently charged with the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009. In his caution interview statement, the accused admitted kicking and punching PW1 several times and using a ball-peen hammer with a wooden handle to hit PW1. PW1 was medically examined at CWM hospital on 26 October 2024 by Dr. Ifereimi Waqainabete who found that PW1 had sustained multiple blunt trauma, splenic injury and left abdominal pain, and opined that the injury was acute due to blunt trauma. The accused has no prior conviction.

Sentencing analysis for Acts intended to cause grievous harm

6. Section 255(a) of the Crimes Act 2009 state:

255. A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

(a) unlawfully wounds or does any grievous harm to any person by any means; ...

Penalty – Imprisonment for life.

7. The maximum sentence for the offence of Acts intended to cause grievous harm contrary to section 255(a) of the Crimes Act 2009 is life imprisonment.

8. In State v Kavneel Kishant Lal [2020] FJCA 44; AAU001.2017 (28 April 2020), the Fiji Court of Appeal held at paragraph 17:

[17] Thus, Mokubula [2003] FJHC 164; HAA0052J.2003S (23 December 2003) provide 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 of 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 other aggravating circumstances. As stated by the Court of Appeal in Vosa v State [2019] FJCA 89; AAU0084.2015 (6 June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive.

9. Based on the above case authority, I rely on the tariff of 2 to 5 years imprisonment justified by the fact that the accused Zoer Atlaf Hussein struck Anit Shiwan Sahai (PW1) with a ball-peen hammer, hitting the back of the left side of PW1's chest.

10. I choose a **starting point** of 3 years, and enhance it by 3 years for the **aggravating factors** bearing in mind the extent of injury sustained by PW1 including the emotional and psychological trauma having being physically assaulted and struck with a ball-peen hammer by the accused in a confined space substantiated by Dr. Ifereimi Waqainabete's medical report of PW1 dated 26 October 2024.

11. For the **mitigating factors** of having no prior conviction, 25 years, self-employed and cooperating with the police, I reduce the sentence by 1 year, thus arriving at 5 years imprisonment.
12. Of the 5 years thus far, further deductions of 2 years for the **early guilty plea**, and 175 days i.e. 5 months 23 days for **time spent on remand** are rendered, thus arriving at 2 years 6 months 7 days imprisonment.
13. Thus, the head sentence for *Acts intended to cause grievous harm* in this instant is a custodial term of 2 years 6 months 7 days.

Suspended sentence

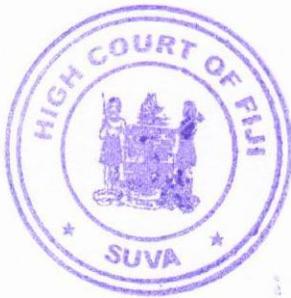
14. Given the circumstances of this particular case and pursuant to section 26 of the Sentencing and Penalties Act 2009, I have decided to **partly suspend** [s.26(1) & (5)] the custodial term of 2 years 6 months 7 days, to the effect that the accused Zoer Altaf Hussein must serve an imprisonment term of 1 year 6 months 7 days, and the remaining 1 year is to be suspended for 2 years.

CONCLUSION

15. Zoer Altaf Hussein, the accused, stands convicted of the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009, and I hereby sentence the accused to an imprisonment term of 2 years 6 months 7 days, but **partly suspended** to the effect that the accused actually serve a custodial term of 1 year 6 months 7 days, and the remaining 1 year is suspended for 2 years.
16. Zoer Altaf Hussein is hereby notified and reminded that in the event he commits another offence punishable by imprisonment during the 2 years operational period of the suspended

sentence of 1 year imprisonment, he may be charged with an offence under section 28(1) of the Sentencing and Penalties Act 2009, and if found guilty of the said latter offence, the Court may, in accordance with section 28(4), impose a fine not exceeding 100 penalty units and restore the sentence held in suspense (i.e. 1 year) and order the accused to serve it.

17. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice Pita Bulamainivalu
PUISNE JUDGE

At Suva

8 May 2025

Solicitors

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