

IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION

Criminal Case No. 538/2022

BETWEEN: **STATE**

PROSECUTION

AND: **RUDHRA NAND**

ACCUSED

Counsel: WCPL 3443 Vaciseva Mararwa for Police Prosecution
 Mr. R. Prakash for the Accused.

Date of Trial – Prosecution's Case: 12 November 2024
Date of Trial – Defence's Case: 13 November 2024
Date of Judgment: 27 December 2024
Date of Sentence: 6 January 2025

SENTENCE

Introduction

1. Mr. Rudhra Nand ('the Accused') was found guilty for 1 count of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009. The particulars of the offence are:

Statement of Offence

Assault Causing Actual Bodily Harm: *Contrary to Section 275 of the Crimes Act 2009.*

Particulars of Offence

Rudra Nand on the 16th day of November, 2022 at Miha Mahajan Road, Yalalevu, Ba in the Western Division assaulted **Anand Abel Nagan** thereby causing him actual bodily harm.

2. I now convict the Accused for Assault causing Actual Bodily Harm and proceed to sentence him for the offence.
3. The brief facts were as follows:
 - a. In the early hours of the evening of 16 November 2022, the Complainant had been drinking and had been under the impression that the Accused who was his neighbour with his guests had been talking about him.
 - b. The Complainant became confrontational a few times and at around 11pm, the Complainant left his compound and stood on the road near the Accused's home and started yelling out and swearing at the Accused.
 - c. All of a sudden people came out of the Accused's property and assaulted him – the Complainant. One of those people was the Accused.
 - d. The Accused was seen by Piya Nagan and Sammi Ravinesh Ram holding a piece of wood/stick and attacking the Complainant.
 - e. The Complainant was attacked on his chest and felt a bang on his knee which led him to fall to the ground.

- f. Priya Nagan saw the Accused using the piece of wood/stick and hitting the Complainant on his knee which led to the Complainant falling to the ground.
- g. Sammi Ravinesh Ram saw the Accused assault the Complainant with the piece of wood/stick and then throw it into his- the Accused's compound.
- h. The Complainant was medically examined on 17 November 2022 and it established that the Complainant had multiple small abrasions on his right mid-back, with an abrasion measuring 2cm x 15cm noted on the anterior abdomen, with a superficial abrasion and deformity noted on his right knee leading to him being unable to extend his right knee and a small abrasion measuring 1cm x 1cm on the medial aspect of the left ankle.
- i. The Doctor's professional opinion as per the Medical Examination Form was that the knee trauma was likely to have been inflicted by flunk force trauma of high force.

Sentencing Regime

4. The maximum penalty for this offence of Assault causing Actual Bodily Harm is 5 years imprisonment.
5. In ***Jonetani Sereka v. The State*** [2008] FJHC 88; HAA 27 of 2008 (25 April 2008) His Lordship Justice Daniel Gounder held:

"The tariff for assault occasioning actual bodily harm 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 (State v Anjula Devi, Criminal Case No. 04 of 1998 Lab.)."

6. Thus, the tariff applicable in this matter where there is no domestic violence is a suspended sentence where there is a degree of provocation and no weapon used to 9 months imprisonment for more serious cases.

Mitigating and Aggravating Factors

7. The Court notes the mitigation offered by the Accused's counsel on the Accused's behalf.
8. The Court was informed that the Accused was a first offender.
9. The aggravating factor in this matter is that the Accused's reaction was not proportionate to the Complainant's provocation when he had shouted and yelled at the Accused. Further, at the time of committing the offence, the Accused had used a weapon (piece of wood/stick) against the Complainant.

Sentence

10. In sentencing the Accused, the Court has taken into account the factors outlined in section 4(1)-(2) of the Sentencing and Penalties Act 2009.
11. Considering the tariff, I take a starting point of 12 months. I will then add 6 months for the aggravating factors, making it a total of 18 months imprisonment. For the Accused's mitigating circumstances which is the Accused being 60 years with no prior convictions, I will deduct 8 months leaving the Accused with a balance of 10 months imprisonment.
12. Section 26(1) of the Sentencing and Penalties Act allows a court to make an order suspending the whole or part of the sentence if it is satisfied that it is appropriate to do so in the circumstances whilst section 26(2)(b) provides the Magistrates Court with the discretion to suspend a sentence where the sentence does not exceed 2 years.

13. Thus, considering the circumstances in which this offending took place in conjunction with the Accused being a first offender, I am of the view that this is a case that can be suspended as the final sentence does not exceed 2 years. I will suspend the 10 months imprisonment term for a period of 3 years.
14. If you commit any crime during the 3 years, you are liable to be charged and prosecuted for an offending pursuant to section 28 of the Sentencing and Penalties Act.
15. Any party aggrieved with the Court's decision has 28 days to appeal to the High Court.



N. Mishra
Resident Magistrate

