

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 157 OF 2018

BETWEEN : **STATE**

AND : **ROKO LENAITASI GUCAKE**

Counsels : Ms. Wakesa Elo for the State
Ms. Lavinia David for the Accused

Hearings : 23rd July, 2018
Sentence : 14th September, 2018

SENTENCE

1. On 23rd of July, 2018, the first day of the trial, Mr. Roko Lenaitasi Gucake, the accused, in the presence of his counsel, pleaded guilty to the following count:

COUNT ONE

Statement of Offence

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

Particulars of Offence

Roko Lenaitasi Gucake, on the 8th day of April 2018 at Grantham Road in the Central Division, with intent to cause grievous harm to Karalaini Saubuli

unlawfully wounded the said Karalaini Saubuli with hitting her back, hands and eyebrow areas with a hammer, an unopened can of corned beef and a rolling pin.

2. The summary of facts presented by the prosecution was as follows.
 - a) The Complainant is Karalaini Saubulu ("PW1") 26 years, self-employed of Grantham Court, behind MPI Building.
 - b) The accused is Roko Gucake Lenaitasi ("Accused") 32 years, Self-employed residing at Raiwaqa.
 - c) The Accused is PW1's de facto partner.
 - d) On 08/04/2018 at about midday, PW1 was at home with the Accused and their baby when the incident occurred.
 - e) The Accused began questioning PW1 about a particular photo of hers on Facebook where she was pictured with her cousin brothers which was not known to the Accused. The Accused continued to probe PW1 whilst holding on to a hammer and continued with his questions.
 - f) Later, the Accused took hold of a can of corned beef which hadn't been opened and threw it at PW1. However, the questioned continued until the Accused grabbed hold of a rolling pin and began hitting PW1 on her arms, hands and also above her eyebrow area which began to bleed as a result. PW1 fell unconscious as an effect of one of the blows.
 - g) She was later woken up by the Accused who then told her to go and have her shower. After the shower, the Accused told PW1 to drop his brother's lunch next door. PW1 then dropped off the Accused's brother's lunch and the Accused's brother told PW1 to report the matter to the Police upon seeing PW1.
 - h) The matter was then reported to the Police and PW1 was medically examined on the same day. The following injuries were noted on the said report and the same is attached herewith:-
 - i. Deep laceration on her face and scalp with multiple bruises and swelling of the forehead;
 - ii. Multiple bruises along both arms and hands with extensive swelling along left arm and both hands; and
 - iii. Multiple bruises and swelling on her back with superficial lacerations.
 - i) The Accused was arrested and caution interviewed where he fully admitted to the offence put to him during his caution interview (Q/A 17-26). He was later charged with 1 Count of Act with Intent to Cause Grievous Harm contrary to section 255 of the Crimes Act 2009.
3. Though the Accused entered an unequivocal plea of guilty to the offence charged with, it is the duty of the Court to scrutinize and see whether the accused had

admitted all the elements of the offence in the count. In result, this Court find the 'Intent' to cause grievous harm which is an essential ingredient of the offence is not proved by the submitted facts.

4. Yet, I find that prosecution has adduced sufficient evidence, by way of summary of facts and also being admitted by the Accused too, in proof of the offence of "Assault causing actual bodily harm" contrary to section 275 of the Crimes Act, 2009.
5. Therefore, I convict the accused for the offence of Assault causing actual bodily harm contrary to section 275 of the Crimes Act of 2009.
6. The maximum punishment prescribed for the said offence of Assault causing actual bodily harm is 5 years imprisonment.
7. In **Matai v State** [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) Justice Madigan said that the tariff for assault causing actual bodily harm where domestic violence is involved is from 6 to 18 months imprisonment.
8. In adopting the sentencing guidelines set out by the Court of Appeal in **Koroivuki v State** [2013] FJCA 15; AAU0018.2010 (5 March 2013), I pick 12 months as the starting point of your sentence.
9. The aggravating factors to be considered are;
 - (i) The complainant suffered serious injuries as a result of the Accused's offending.
 - (ii) Breach of trust. The accused was living with the complainant in a *de facto* relationship. Although marital disputes are common, violence as exhibited by the accused in this case, must be discouraged. Instead of treating the complainant with respect, the accused treated her as if she was his property.
 - (iii) Inability to control his anger.
10. The mitigating factors to be considered are;
 - (i) The Accused is remorseful
 - (ii) He pleaded guilty at the first opportunity
 - (iii) Was co-operative with the police
11. In consideration of above aggravating factors I enhance the above sentence of 12 months imprisonment by further 3 months, and in consideration of above

mitigating factors I reduce it by 3 months to come back to 12 months imprisonment.

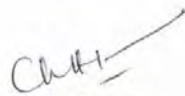
12. As for the material available before the Court, the Accused has been in remand for a period of about a month. That period should be considered as period served and rightfully be deducted from the 12 months stated above and the remainder would be 11 months.
13. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act.

26. — (1) On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.
14. In consideration of whether it is appropriate to so, Court should consider the provisions of section 4 of the sentencing and penalties Act.

4. — (1) The only purposes for which sentencing may be imposed by a court are-

 - (a) to punish offenders to an extent and in a manner which is just in all the circumstances;
 - (b) to protect the community from offenders;
 - (c) to deter offenders or other persons from committing offences of the same or similar nature;
 - (d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;
 - (e) to signify that the court and the community denounce the commission of such offences; or
 - (f) any combination of these purposes.
15. Next, it should be considered whether a custodial sentence or a non-custodial sentence together with non-molestation DVRO would serve the above said purposes best. Considering all the facts and circumstances of this case, my view is the latter would serve them best.
16. Therefore, the Accused's sentence of 11 months would be suspended for a period of 5 years and in addition a permanent domestic violence restraining order with standard non-molestation conditions is issued for the safety and wellbeing of the PW1 and her children. This DVRO will remain in place until vacated by this Court on an application by the PW1.

17. The effects of suspended term and the non-molestation DVRO are explained to the Accused.


Chamath S. Morais
JUDGE



*Solicitors: Office of the Director of Public Prosecutions for the State
Legal Aid Commission, Suva for the Accused*