

IN THE HIGH COURT OF FIJI AT SUVA

[CRIMINAL JURISDICTION]

CASE NO: HAC. 226 of 2018

BETWEEN :

STATE

AND :

1. AVENAI YALAQITA

2. PERCY BUCKNELL

Counsel :

Mr. Komaibaba S. for State

:

Ms. David L. for the 1st Accused

:

Ms. Kean T. with Ms. Chand S. for the 2nd Accused

Hearing on :

17th September – 18th September 2019

Summing up on :

19th September 2019

Judgment :

16th October 2019

Sentence :

06th November 2019

SENTENCE

Mr. Avenai Yalaqita and Mr. Percy Bucknell, you stand convicted of the offence of Assault Causing Actual Bodily Harm and of the offence of Damaging Property after a full trial.

You were initially charged with the offences of Aggravated Robbery and Damaging Property. You pleaded not guilty to the alleged offences and the ensuing trial lasted

for 3 days. The PW1 Mr. Shivnesh Chand and PW2 Dr. Anushka Gounder, gave evidence for the prosecution while you being given your due rights remained silent exercising your constitutional right.

At the conclusion of the evidence and after the directions given in the summing up, the assessors came up with a divided opinion.

This Court having reviewed the evidence, by its judgment dated 16th October 2019 convicted you of the lesser count of Assault Causing Actual Bodily Harm and the alleged 2nd count of Damaging Property.

The maximum sentence for the offence of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act is 05 years of imprisonment. The recommended tariff for this offence is 3 to 12 months of imprisonment (Per His Lordship Hamza J. in **State v McPherson** [2017] FJHC 890).

The maximum punishment for the offence of Damaging Property under section 369(1) of the Crimes Act is 2 years of imprisonment. The recommended tariff for this offence is 3 to 12 months of imprisonment (**Anaiasa Naqialawa v State** [2017] FJHC 484).

The two offences you have committed form a series of offences and therefore as for section 17 of the Sentencing and Penalties Act, it is appropriate to impose an aggregate sentence upon you.

In consideration of the objective seriousness of the offence, and the best sentencing practices set out by the case of **Koroivuki v State** [2013] FJCA 15; I commence your sentence at 4 months of imprisonment for each of you.

Mr. Avenai Yalaqita, You are 31 years old and has no previous convictions. Mr. Percy Bucknell, you are 21 years old and you too have no previous convictions. Other than that, the rest pleaded on your behalf are your personal circumstances.

The aggravating factors submitted by the State have already considered in deciding the objective seriousness of the offences and I do not see any fresh ground to enhance your sentence. Therefore each of your final term remains at 4 months each.

Mr. Avenai Yalaqita, You have been in remand for a period of 83 days. That period of time has to be discounted treating as already served. The remainder of your sentence would be 37 days. In consideration of that you are a first time offender, I suspend that term for a period of 3 years. The consequences of a commission of another offence within the said period will be explained to you by the clerks.

Mr. Percy Bucknell, you were released on bail together with Mr. Yalaqita. But you failed to appear thereafter on the due date and accordingly, your bail was cancelled. Altogether you have been in remand for a period of about 410 days. Therefore, I consider that you have already served your sentence.

You will be given thirty (30) days to appeal to the Court of Appeal if you desire so.



At Suva

06th day of November 2019

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