

IN THE HIGH COURT OF FIJI
AT LAUTOKA
[CRIMINAL JURISDICTION]
CASE NO: HAC. 035 of 2020

BETWEEN : **STATE**

AND : **JOSEFA BACA**

Counsel : **Ms. Latu L. for the State**
: **Ms. Radrole E. for the Accused**

Date of Hearing : *04th of June 2020*
Date of Ruling : *23rd of June 2020*

RULING

1. This case is transferred to this court by the learned magistrate of Tavua, for the purpose of determining the accused as a habitual offender and for sentencing him accordingly.
2. The accused was charged in the Magistrates' Court of Tavua on;

COUNT 1

Statement of Offence

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

Particulars of Offence

Josefa Baca on the 3rd day of December, 2019 at Tavua in the Western Division assaulted Venina Adi Loloma thereby causing her actual bodily harm.

COUNT 2

Statement of Offence

DAMAGING PROPERTY: Contrary to Section 369 (1) of the Crimes Act of 2009

Particulars of Offence

Josefa Baca on the 3rd day of December, 2019 at Tavua in the Western Division willfully and unlawfully damaged a mobile phone coloured brown with touch screen branded "HUAWEI" valued at \$500.00 the property of Venina Adi Loloma.

Law

3. The law provides a maximum sentence of 5 years of imprisonment for the 1st Count and a maximum sentence of 2 years for the 2nd Count.
4. The law applicable in declaring a person as a habitual offender is found in Sections 10 to 14 in the sentencing and Penalties Act.

10. *This Part applies to a court when sentencing a person determined under section 11 to be a habitual offender for —*

- (a) *a sexual offence;*
- (b) *offences involving violence;*
- (c) *offences involving robbery or housebreaking;*
- (d) *a serious drug offence; or*
- (e) *an arson offence.*

11. — (1) *A judge may determine that an offender is a habitual offender for the purposes of this Part—*

- (a) *when sentencing the offender for an offence or offences of the nature described in section 10;*
- (b) *having regard to the offender's previous convictions for offences of a like nature committed inside or outside Fiji; and*
- (c) *if the court is satisfied that the offender constitutes a threat to the community.*

(2) *The powers under this Part may be exercised by the Court of Appeal and the Supreme Court when hearing an appeal against sentence.*

12. *Where any court is proposing to impose a sentence of imprisonment on a person who has been determined to be a habitual offender under section 11 for an*

offence of a nature stated in section 10, the court, in determining the length of the sentence —

- (a) shall regard the protection of the community from the offender as the principal purpose for which the sentence is imposed; and*
- (b) may, in order to achieve that purpose, impose a sentence longer than that which is proportionate to the gravity of the offence.*

13. Every term of imprisonment imposed by a court on a person determined to be a habitual offender under section 11 for an offence of a nature stated in section 10 shall, unless otherwise ordered by the court, be served consecutively on any uncompleted sentences or any other sentence imposed on the offender.

14. A court that sentences a habitual offender for an offence of a nature stated in section 10 must, at the time of doing so, cause to be entered in the records of the court in respect of that offence the fact that the offender was sentenced for it as a habitual offender.

5. As for the record before me, the accused has two previous convictions of the same nature falling under Section 2 (b) of the Sentencing and Penalties Act. On perusal, it is apparent that the accused is sentenced before on the 18th of June 2019 for both these previous offences. Therefore, by committing the present alleged act, he has re-offended once only. I am of the view that it is insufficient to declare the accused as a habitual offender. Therefore I decline to consider him as a habitual offender. The learned Magistrate should take into consideration the appropriate sentencing practices and decide on a suitable sentence to be imposed on the accused.

6. Since the accused has been in remand since his arrest on the 18th of December 2019, I order that the accused be released immediately on \$500.00 non-cash bail with two sureties for him to appear in the Magistrate Court of Tavua, until the conclusion of the matter.

7. The file is remitted to the Tavua Magistrates Court and the accused is warned to appear in Tavua Magistrates Court on 30th June, 2020 at 9.30 am



AT LAUTOKA
This 23rd June 2020.

Chamath S. Morais
JUDGE