

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 296 of 2019

STATE

V

TIMOCI KURUKUVUI

Counsel : Ms. Bhavna Kantharia for the State  
Ms. Lavinia David for the Accused

Dates of Trial : 18-21 January 2021

Summing Up : 22 January 2021

Judgment : 25 January 2021

Sentence Hearing : 3 February 2021

Sentence : 24 February 2021

## SENTENCE

- [1] Timoci Kurukuvui, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offence:

### *Statement of Offence*

**ACTS INTENDED TO CAUSE GRIEVOUS HARM:** Contrary to Section 255 (a) of the Crimes Act 2009.

### *Particulars of Offence*

**TIMOCI KURUKUVUI**, on 12<sup>th</sup> August 2019, at Wairua, Tamavua-I-Wai, Suva, in the Central Division, with intent to do some grievous harm to **SOTIA SEREKI**, unlawfully wounded **SOTIA SEREKI** with a broken beer bottle.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 4 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a majority decision, the Assessors found you not guilty of the charge. However, by their majority decision, the same two Assessors found you guilty of the alternative charge of Assault Causing Actual Bodily Harm.
- [4] Having reviewed all the evidence, this Court agreed with the majority opinion of the Assessors finding you guilty of the alternative charge of Assault Causing Actual Bodily Harm. Accordingly, you were convicted of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act No. 44 of 2009 (Crimes Act).
- [5] In support of their case, the prosecution called the complainant, Sotia Sereki, Detective Constable 5359 Viliame and Dr. Isaac Vijend Singh. The Medical Examination Report of Sotia Sereki was tendered to Court as Prosecution Exhibit PE1.
- [6] You testified on your own behalf.
- [7] The complainant, who is your older brother, clearly testified as to the manner in which you had caused injuries to him in the afternoon of 12 August 2019, at your mother's home in Wairua, Tamavua-I-Wai, Suva, by striking him on the right side of his chest with a broken beer bottle.
- [8] In the Medical Examination Report of the complainant it is recorded that there was a superficial laceration on the base of the neck measuring approximately 3 cm and a jagged wound on the anterior right chest wall measuring approximately 2 to 3 cm. The latter wound was a penetrating injury. The said wound needed to be cleaned and closed or sutured in the operating theatre.
- [9] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 ("Sentencing and Penalties Act") stipulates the purposes for which sentencing may be imposed by a Court; and sets out the relevant factors that a Court should take into account during the sentencing process.
- [10] In particular, Section 4 (3) of the Sentencing and Penalties Act provides as follows:

*"(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —*

*(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —*

*(i) the age of the victim;*

*(ii) whether the victim was pregnant; and*

*(iii) whether the victim suffered any disability;*

*(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;*

*(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;*

*(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;*

*(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —*

*(i) accepts responsibility for the offence and its consequences;*

*(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;*

*(iii) may pose any further threat to a victim;*

*(f) evidence revealing the offender's —*

*(i) attitude to the offence;*

*(ii) intention to address the offending behaviour; and*

*(iii) likelihood of continuing to pose a threat to a victim; and*

*(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance."*

[11] I have duly considered these factors in determining the sentence to be imposed on you.

[12] In terms of Section 275 of the Crimes Act "A person commits a summary offence if he or she commits an Assault Causing Actual Bodily Harm." The prescribed penalty for this offence is a term of imprisonment for 5 years.

[13] In *State v. Tugalala* [2008] FJHC 78; HAC 25S of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem said:

*"The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in Elizabeth Joseph v. The State [2004] HAA 030/04S and State v. Tevita Alafi [2004] HAA073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a*

*deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld (**Amasai Korovata v. The State** [2006] HAA 115/065)."*

- [14] 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.)."*

- [15] His Lordship Justice Vincent Perera in **Anaiasa Naqialawa v. State** [2017] FJHC 484; HAA 15 of 2017 (29 June 2017); stated thus:

*"It is pertinent to note that 12 months is only a one fifth of a 5 year imprisonment which is the maximum sentence for the offence of assault causing actual bodily harm under section 275 of the Crimes Act. All in all, I am of the view that it is appropriate to have 12 months imprisonment as the higher end of the tariff for the said offence.*

*Needless to say, the selecting of a starting point is not that difficult where the relevant sentencing tariff indicates the lower end of the imprisonment term applicable to a particular offence as opposed to other sentencing options that may be considered.*

*If the sentencer decides that an imprisonment term is the appropriate punishment for an offender who is convicted of the offence of assault causing actual bodily harm under section 275 of the Crimes Act and not to opt for an absolute or conditional discharge, it is important for the sentencer to have a clear opinion on the minimum imprisonment term the offence should attract considering its objective seriousness. In my view, an imprisonment term of 3 months would appropriately reflect the objective seriousness of the offence of assault causing actual bodily harm under section 275 of the Crimes Act."*

- [16] In **State v McPherson** [2017] FJHC 890; HAC 42.2016 (22 November 2017); **State v Naimoso** [2018] FJHC 345; HAC 95.2016 (27 April 2018); and **State v Qalobula** [2020] FJHC 255; HAC 100.2018 (3 April 2020) this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.

- [17] Even in the case of **State v Marama** [2020] FJHC 629; HAC 174.2019 (7 August 2020); which was a domestic violence case (where the complainant/injured was the sister-in-

law of the accused), this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. The Court considered the domestic relationship between the parties as an aggravating factor.

[18] Having regard to the above authorities, I consider the tariff for the offence of Assault Causing Actual Bodily Harm in the instant case too to range from 3 months to 12 months imprisonment.

[19] In determining the starting point within the said tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

[20] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 3 months imprisonment.

[21] The aggravating factors in this case are as follows:

- (i) The complainant was your older brother. Thus there was a domestic relationship between you and the complainant.
- (ii) The complainant was unarmed at the time of the assault.
- (iii) You used a broken beer bottle to attack the complainant.
- (iv) As stated before the actual bodily harm you caused to the complainant was serious. The injuries sustained by the complainant are permanent with visible scars on the base of his neck and anterior right chest wall.

[22] In mitigation it is submitted that you are a person of previous good character. The State too has confirmed that you are first offender and has no previous convictions. It is also submitted that you fully co-operated with the police in this matter.

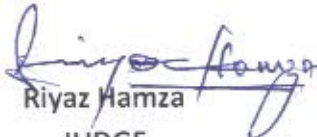
[23] It has been further submitted in mitigation that you have apologized to the complainant and sought forgiveness from him. The complainant too has confirmed that

he has now reconciled with you. You have also assured Court that you will be of best behaviour in the future and not re-offend.

- [24] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating circumstances relevant to this case, I impose on you a sentence of 12 months imprisonment.
- [25] The next issue for consideration is whether your sentence should be suspended in terms of Section 26 of the Sentencing and Penalties Act.
- [26] Section 26 of the Sentencing and Penalties Act provides as follows:
- (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.*
  - (2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*
    - (a) does not exceed 3 years in the case of the High Court; or*
    - (b) does not exceed 2 years in the case of the Magistrate's Court.*
- [27] Timoci Kurukuvui, you are now 25 years of age (Your date of birth is 19 November 1995). You are said to be married with 3 children (a 5 year old son, a 20 month old son and a 5 month old daughter). You are said to be a Market Vendor and the sole bread winner of your family. You are also said to be taking care of your sickly mother.
- [28] You were arrested for this case on 12 August 2019 and remanded in custody. You were granted bail by the Suva High Court on 28 August 2019. Therefore, you have been in remand custody for this case for two weeks.
- [29] It is clear from the evidence in this case that the injury to the complainant had been caused during the course of an argument between you and the complainant. In fact, even in the Admitted Facts it has been agreed by the parties that you and the complainant had an argument with each other about a mobile phone and that during the said argument a physical confrontation had occurred between the two of you. It is during the said physical confrontation that injuries had been caused to the complainant.

- [30] With regard to the circumstances surrounding the commission of the offence, you have submitted that you committed the offence without full appreciation of the gravity of the crime. You have stated that ever since you were charged for the offence that you have come to realise that committing such unlawful acts will not be tolerated by society and by any Court of law. You have acknowledged that what you did was wrong and inexcusable.
- [31] Considering all the above factors, especially the fact that you are a person of previous good character, that you have fully co-operated with the Police in this matter, that you have now reconciled with the complainant, that you have assured Court that you will not re-offend and also the fact that you have spent over two weeks in remand custody for this case, I deem it appropriate to suspend your sentence.
- [32] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.
- [33] In the result, Timoci Kurukuvui your final sentence of 12 months imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.
- [34] You have 30 days to appeal to the Court of Appeal if you so wish.



  
Riyaz Hamza  
JUDGE  
HIGH COURT OF FIJI

AT SUVA

Dated this 24<sup>th</sup> Day of February 2021

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