



2nd proof (30/09/09) - D1  
Znel ✓ (M)

**IN THE MAGISTRATE COURT  
AT SUVA**

**Crim. Case No. 015/08**

**STATE**

**-v-**

**SAMU SAUMASUE**

**The Accused**

<b>PRESIDING MAGISTRATE:</b>	J WAQAIVOLAVOLA (RM)
<b>WHERE HELD:</b>	Suva
<b>DATE OF HEARING:</b>	11.08.2008,
<b>DATE OF JUDGMENT:</b>	07.11.2008
<b>For Prosecution:</b>	Mr Daurewa
<b>For Defendant:</b>	Mr. S. Valenitabua

**Judgment**

**1. The Charge**

**Count 1**

***Act with intent to cause grievous harm: Contrary to Section 224 (a) of the Penal Code Act 17. It is alleged that Samu Saumasue, on the 29<sup>th</sup> of December, 2007 in Suva, with intent to do grievous harm to Etuate Naqau, struck the said Etuate Naqau with a wooden chair.***

**Count 2**

***Assaulting a police officer in the due execution of his duty:- contrary to section 247 (e) of the Penal Code Cap. 17. It is alleged that Samu Saumasue on 29.12.2007 at Suva, assaulted Special Constable No. 3096 Etuate Naqau, whilst in the due execution of his duty.***

### COUNT 3

**Criminal Intimidation:-** contrary to section 330(a) of the Penal Code. It is alleged that Samu Saumaisue on 29.12.2007 at Suva without lawful excuse and with intent to cause alarm, threatened WPC 3142 Arieta and WPC 3325 Kalisi with a crocodile teeth.

### Count 4

**Throwing Object:** contrary to section 105 of the Penal Code. It is alleged that Samu Saumaisue on 29.12.2007 at Suva willfully and unlawfully threw a Crocodile Teeth at WPC 3142 Arieta and WPC 3325 Kalisi .

## 2. The Law

### **Section 224 of the Penal Code states;**

“224. Any person who, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

(a) unlawfully wounds or does any grievous harm to any person by any means whatsoever; or...

is guilty of a felony, and is liable to imprisonment for life, with or without corporal punishment.”

### **Section 247(e) of the Penal Code States;**

“247. Any person who-.....

(e) assaults any person on account of any act done by him in the execution of any duty imposed on him by law,

is guilty of a misdemeanour, and is liable to imprisonment for five years.”

**Section 330 (a) of Penal Code states;**

**“330. Any person who without lawful excuse-**

- (a) threatens another person or other persons whether individually or collectively, with any injury to his or their person or persons, reputation or property, or to the person, reputation or property of anyone in whom that person is or those persons are interested, with intent to cause alarm to that person or those persons, or to cause that person or those persons to do any act which that person is or those persons are not legally bound to do, or to omit to do any act which that person is or those persons are legally entitled to do, as the means of avoiding the execution of such threat; or....**

**is guilty of a misdemeanour.”**

**Section 105 of Penal Code states;**

**“105. Any person who wilfully throws or in any other way projects any object, fluid or substance at any dwelling-house, vehicle or person is guilty of an offence and is liable to imprisonment for three years, with or without corporal punishment.**

**3. Analysis of the Evidence and the Law**

**1. Undisputed Facts**

**The following facts are not disputed;**

- a. That the material time is around 1 a.m. on 29.12.2007.
- b. That the material place is at the front of the Flagstaff Police Post and the kava shop located on the right side of the said police post.
- c. That the accused was intoxicated by alcohol that night as he started drinking from 6 p.m. on 28.12.07 until about 12:30 a.m.

**Count 1 : Act with intent to cause grievous harm**

In order for section 224 (a) of the Penal Code to stand, the law requires the following elements to be established by prosecution beyond any reasonable doubts;

- a. an act of unlawful wounding or inflicting injuries
- b. such injuries must be grievous; and
- c. the intent must be one of an intent to maim, disfigure/disable or to cause grievous harm.

The element of *unlawful wounding or inflicting injury* on any person is satisfied by the accused's action in punching, kicking and hitting PW1.

PW 1 gave evidence that the accused approached him that morning, asked him about the taxi number he caught earlier and he was told by PW 1 that they did not write the registration number of that taxi down. The accused was angry and punched his right eye which caused him to fall down the ground. This is consistent with his medical report which stated that PW1 had a *right periorbital swelling* (swelling around the right eye). He said when he fell, the accused then kicked him many times before hitting him with a plastic chair. PW 1 lost conscious for about 2 seconds and when he regained his consciousness he saw the accused approached the other two women police constables, took hold of the crocodile teeth from the road, dragged it towards the two women and threw it towards their directions. At this time he gained strength, stood up when the accused approached him again and punched him a few times breaking his tooth and he fell down again and afterwards he made his way to the back of the kava shop to hide as he feared for his life. The tendered medical certificate also confirms PW 1's broken tooth. These transactions that constitute the two sets of assault on PW1 and throwing of the crocodile teeth towards the women

constables, are supported by the evidence of the two female police officers.

**Grievous Harm** is defined in **section 4 of the CPC** to mean "*any harm which amounts to a maim or dangerous harm, or seriously harm, or permanently injures to health or which is likely so to injure health or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense*".

In my view, the above denote "**very serious injuries**" which either has a *serious permanent effect* on the victim, or results in some *apparent physical deform*.

However, as noted under the first element, injuries caused to PW 1 are of the nature of periorbital swelling and a broken tooth. Therefore I am satisfied that the harm done to PW 1 as the result of the accused's actions, does not constitute "grievous harm".

The "Intent to maim" could be inferred from the exchange of words that transpired during the incident, and the accused person's actions at the material time. It is apparent that the accused by his action did not intend to maim but to assault or inflict common injuries on PW1, venting his frustrations that night.

Given the above analysis, I am satisfied that the evidence is not sufficient to support the charge of '*Act with Intent to Cause Grievous Bodily Harm*' contrary to section 224 (a) of the Penal Code, Cap17.

The fact that a wooden chair was alleged or contained in the particulars of offence in count 1, but a plastic chair was exhibited and referred to in

evidence, does not raise any reasonable doubt to the fact that PW 1 was hit with a chair by the accused at the material time.

Given the above analysis, I convict the accused on the lesser charge of **Assault Occasioning Actual Bodily Harm** contrary to **section 245** of the **Penal Code**. There is no doubt on the evidence that accused assaulted PW1 which caused<sup>d</sup> him actual bodily harm i.e. falling short of being "grievous" in nature.

**Count 2: Assaulting a member of Special Constabulary in Due execution of his Duty.**

The offence of 'Assault' was defined in Fagin v Metropolitan Police Commissioner [1968] 3 All ER 442, as an act by which a defendant intentionally or recklessly causes a person to apprehend immediate and unlawful personal violence.

PW 1 stated in evidence which was not disputed by the defense that he is a special constable, on duty at all material times, as the duty officer manning the Flagstaff police post and was seated outside to assist the two lady police officers who were on duty at the roadblock in front of the said police post. A special constable when on duty is given by section 55(1) of the Police Act the same powers, privileges and protection as a police officer<sup>1</sup>.

By PW 1's evidence (as stated above in support of Count 1) and in conjunction with his evidence relating to this count, I am satisfied that he was indeed on duty when he was assaulted.

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<sup>1</sup> Parshu Ram -v- Reginam (1983) 29 FLR 65.

**Count 3: Criminal Intimidation.**

The elements that are to be established beyond any reasonable doubts are;

- i. without lawful excuse,
- ii. with intent to cause alarm, and
- iii. threatened.

As per per MacDuff, CJ in *Attorney-General –v- Asgar Ali* (1965) 11 FLR 23, the threat to cause alarm can be inferred from the type of the threat itself and any other relevant facts and consequences. It is also a requirement in *Mateo Rokovesa Tusega –v- Reginam* (1966) 12 FLR 168 per Mills-Owens, CJ, that such threat should be communicated.

I am satisfied that the accused had the intention to cause alarm to the women police officers and he communicated this threat by way of clenching his fists, walking towards the said police officers after throwing the metal crocodile teeth towards them, which according to them, it could have hit them if the lamp post was not on the way. This is also supported by the fact that he was hurling insulting abusive and vulgar words whilst approaching them.

This was indeed unlawful even if done to any member of the community, let alone such police officers who were on duty.

I am satisfied that Count 3 have been proved by the prosecution beyond any reasonable doubt.

**Count 4: Throwing Object**

It is the requirement of the law that the following elements must be proved by prosecution;

- i. throwing of an object
- ii. act is unlawful.

The prosecution evidence above has sufficiently satisfied me that by the act of the accused throwing the crocodile teeth towards the women constables who were on police duty is indeed unlawful.

Given the above, on Count 1, I convict the accused on the lesser charge of *Assault Occasioning Actual Bodily Harm* contrary to section 245 of the Penal Code. Upon the above analysis, I am satisfied that the prosecution has also proved the charge against the accused beyond any reasonable doubt and I convict him on the three other counts as charged.

28 days to appeal.

Dated



November, 2008.

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J. Waqaivolavola

Resident Magistrate, Suva