

**IN THE MAGISTRATES' COURT OF FIJI**  
**AT NAUSORI**

Criminal Case No: - 738/2016

HAC No: 398/2016

**STATE**

**V**

**JAINESH KARAN SINGH**

For the prosecution: Cpl Gandhi

For the accused: Mr.N.Sharma

Date of Judgment: 22<sup>nd</sup> February 2019

Date of mitigation: 08<sup>th</sup> of March 2019

Date of Sentence: 11<sup>th</sup> of March 2019

**SENTENCE**

1. **JAINESH KARAN SINGH**, you were initially charged with one count of Act with intend to cause grievous harm contrary to section 255(a) of the Crimes Act No 44 of 2009("Crimes Act").
2. The High Court gave the extended jurisdiction to hear your charge and on 20<sup>th</sup> April 2017, the prosecution filed the amended charge for one count of Assault Occasioning Actual Bodily Harm contrary to section 275 of the Crimes Act.
3. You pleaded not guilty and after a hearing, I found you guilty this amended charge.
4. During the hearing the prosecution proved that you on 15<sup>th</sup> October 2016 assaulted the complainant with a beer bottle on his head causing injuries.
5. Your counsel in his written mitigation is asking for a non-conviction. The counsel submitted that a conviction would affect your employment. You are presently working as a mechanic in Carpenters Motors.
6. Section 16 of the Sentencing and Penalties Act deals with non-conviction and states :

“In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including —

(a) the nature of the offence;

(b) the character and past history of the offender; and

(c) the impact of a conviction on the offender’s economic or social well-being, and on his or her employment prospects.”

7. In Botaki v State [2012] FJHC 1250; HAA015.2012 (1 August 2012) his Lordship Justice Madigan said:

“The operative word in this section is "discretion". Just because an offender will lose his job, and just because he will be affected economically does not mean that it is mandatory for a Magistrate to invoke the provisions of this Section. Where a Magistrate has exercised his discretion within the bounds of his power that it would be in a very exceptional circumstances that an appellate court would interfere with that exercise.”

8. Further it has been held that non-conviction would be given only for morally blameless people or technical breaches (State v Nayacalagilagi (2009) FJHC 73; HAC165.2007 (17th March 2009), Guidelines by his Lordship Chief Justice Gates in State v Batiratu [2012] FJHC 864; HAR001.2012 (13 February 2012). You do not fall in to any of these categories also.
9. Accordingly I find there are no compelling reasons to exercise my discretion and convict you for this charge.
10. The maximum penalty for Assault Occasioning Actual Bodily Harm under the Crimes Act is 05 years imprisonment.
11. In Khan v State [2017] FJHC 746; HAA68.2017 (6 October 2017) his Lordship Justice Aluthge said:

“It was held in State v Tugalala [2008] FJHC 78; HAC025S.2008S (29 April 2008), that the tariff for this offence should range from an absolute or conditional discharge to 12 months’ imprisonment. As noted in earlier cases, Elizabeth Joseph v. The State [2004] HAA 030/04S and State v Tevita Alafi [2004] HAA073/04S, 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 in *Amasai Korovata v. The State* [2006] HAA 115/06S."

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

"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."

13. Considering the objective seriousness, I select 03 months as the starting point for your sentence.
14. The aggravating factors are assaulting the head of the victim which is a vulnerable place in the body and using a beer bottle for the assault. For these, I add 06 months to your sentence to reach 09 months imprisonment.
15. In mitigation your counsel submitted that you are 31 years old, supporting the elderly parents, first offender. For these personal mitigating factors I deduct 03 months to reach 06 months imprisonment.

16. Now I have to consider whether to suspend this sentence pursuant to section 26(2) (b) of the Sentencing and Penalties Act.
17. You are a first offender and supporting your elderly parents financially. The facts in this case also showed there was some provocation from the part of the victim and his friend which ultimately led to this offence. Hence I find a non-custodial sentence is suitable to allow you the chance to reform.
18. Accordingly I suspend your 06 months imprisonment to 02 years.
19. Suspended sentence is explained to the accused.
20. In State v Prasad [2019] FJCA 18; AAU123.2014 (7 March 2019) his Lordship Justice Goundar said :
- “When the charge was amended to a summary offence, it was reduced to writing in a form prescribed by the Criminal Procedure Act for filing of complaints in the Magistrates’ Court. At this point the extended jurisdiction that was granted to the Magistrates’ Court had ceased and the court acquired original jurisdiction to deal with the summary offence contained in a charge sheet. The proceedings that followed after the amendment were in the exercise of the original summary jurisdiction of the Magistrates’ Court. The sentence was pronounced in the exercise of the summary jurisdiction and not in the exercise of an extended jurisdiction.”**
21. Hence the parties can appeal to the High Court within 28 days.



  
Shageeth Somaratne  
Resident Magistrate