

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 007 OF 2012S

STATE

VS

SEMI WAQAWAI

Counsels : **Ms. A. Vavadakua for the State**
Mr. A. Vakaloloma for Accused

Hearings : **26th August, 2013**

Sentence : **29th August, 2013**

SENTENCE

1. On 26th August, 2013, the first day of the trial, the accused, in the presence of his counsel, pleaded guilty to the following counts:

FIRST COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM:

Contrary to Section 275 of the Crimes Decree 2009.

Particulars of Offence

SEMI WAQAWAI on the 8th day of January 2012 at Sarava Settlement, Wainibuku in the Central Division, assaulted **L. R** thereby causing her actual bodily harm.

SECOND COUNT

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM:

Contrary to Section 255 (a) of the Crimes Decree 2009.

Particulars of Offence

SEMI WAQAWAI on the 8th day of January 2012, at Sarava Settlement, Wainibuku in the Central Division, with intent to do some grievous harm to **L. R** unlawfully wounded the said **L. R** by hitting her buttocks with a stick.

FOURTH COUNT

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM:

Contrary to Section 255 (a) of the Crimes Decree 2009.

Particulars of Offence

SEMI WAQAWAI on the 9th day of January, 2012 at Sarava Settlement, Wainibuku in the Central Division, with intent to do some grievous harm to **L. R** unlawfully wounded the said **L. R** by stabbing her with a pair of scissors.

FIFTH COUNT

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM:

Contrary to section 255 (a) of the Crimes Decree 2009.

Particulars of Offence

SEMI WAQAWAI on the 9th of January 2012, at Sarava Settlement, Wainibuku in the Central Division, with intent to do some grievous harm to **L. R** unlawfully wounded the said **L. R** by hitting her with a mirror.

2. The prosecution presented her summary of facts. They were as follows. The accused and the complainant were in a defacto relationship. The female complainant was 21 years old, while the accused was 25 years old. They had been living together for about 6 months. On 8th January 2012, the accused blamed the complainant of having an affair with someone. The two argued, and he repeatedly punched her eyes, and when she fell to the ground, delivered some kicks to her body. Then he broke a branch from a nearby tree, told her to pull her pants down, and repeatedly struck her bare buttocks. The complainant suffered injuries, as a result of the above assaults.
3. On 9th January 2012, the complainant was talking to her sister-in-law in the family house's kitchen. Her brother-in-law was nearby when the two were conversing. The accused, who was in a bedroom, felt suspicious and called the complainant to their bedroom. The accused then repeatedly swore at the complainant, and accused her of having an affair with her brother-in-law. He grabbed a pair of scissors and repeatedly stabbed the complainant in the finger, arm and thighs. Later the accused grabbed a mirror and smashed the same on the complainant's face. She lost consciousness, as a result. Because of the above, the complainant suffered multiple injuries, as reported in her 12th January 2012 medical report.
4. The court checked with defence counsel to see that the accused had admitted all the elements of the offence in counts nos. 1, 2, 4 and 5. Through his counsel, the accused admitted all the elements of the offences in counts nos. 1, 2, 4 and 5. As a result, the court found the accused guilty as charged on counts nos. 1, 2, 4 and 5, and convicted him accordingly on those counts.

5. I will deal first with counts nos. 2, 4 and 5, because they involved the more serious offence of “act intended to cause grievous harm”, contrary to section 255(a) of the Crimes Decree 2009. The law makers have treated this offence as a very serious matter, and have prescribed the maximum penalty of life imprisonment. This is somewhat similar to the view expressed by Parliament when they passed the equivalent offence in section 224 of the repealed Penal Code, Chapter 17, wherein they also prescribed a maximum penalty of life imprisonment.
6. In **State v Maba Mokubula**, Criminal Appeal No. HAA 0052 of 2003S, Her Ladyship Madam Justice N. Shameem had reviewed several Court of Appeal and High Court cases, on the offence and said as follows:

“...On the basis of these authorities, the tariff for sentences under section 224 of Penal Code, is between 6 months imprisonment to 5 years imprisonment. In a case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon. Aggravating factors would be:

- 1. Seriousness of the injuries;**
- 2. Evidence of premeditation or planning;**
- 3. Length and nature of the attack;**
- 4. Special vulnerability of the victim;**

Mitigating factors would be:

- 1. Previous good character;**
- 2. Guilty plea;**
- 3. Provocation by the victim;**
- 4. Apology, reparation or compensation.**

In general terms, the more serious and permanent the injuries, the higher the sentence should be. As a matter of principle, a suspended

sentence is not appropriate for a case of act with intent to cause grievous harm not only because it is contrary to the accepted tariff, but also because section 29(3)(a) of the Penal Code contains a legislative fetter to the section 29 powers to impose a suspended sentence for crimes of violence (DPP –v- Saviriano Radovu Crim. App. No. HAA0006 of 1996; State –v- Senitiki Naqa and Others Crim. App. No. HAA0023 of 2003S)…”

7. I would hold that Her Ladyship Madam Justice N. Shameem’s view abovementioned, also applied to section 255 (a) of the Crimes Decree 2009.
8. As for count no. 1, ie. “Assault Causing Actual Bodily Harm”, the maximum penalty is 5 years imprisonment. The accepted tariff is a sentence between 6 to 9 months imprisonment.
9. The aggravating factors, in this case, were as follows:
 - (i) The complainant suffered serious injuries as a result of the accused’s offending. These injuries are described in the complainant’s medical report, dated 12th January 2012. The injuries showed that the accused was unconcerned about the complainant’s general physical welfare when he committed the crime.
 - (ii) Breach of trust. The accused was living with the complainant in a defacto relationship. Although marital disputes are common in Fiji, but violence as exhibited by the accused in this case, must be discouraged. Instead of treating the complainant with respect, the accused treated her as if she was his property. This attitude had to change; otherwise the accused will find himself visiting the prison more often.
 - (iii) Inability to control his anger and jealousy. The accused had to re-think the way he treated women, if he has to stop seeing the courts. He must learn to control his anger in a more manageable way.
10. The mitigating factors were as follows:
 - (i) At the age of 25 years, this is his first offences;

- (ii) Although he pleaded guilty to the offences 1 year 7 months after first call in the High Court, he nevertheless saved the court's time;
 - (iii) He had been remanded in custody from 13th January 2012 to November 2012, and from April 2013 to August 2013, a period of approximately 1 year 3 months.
11. On count no. 2, I start with a sentence of 3 years imprisonment. For the aggravating factors, I add 3 years, making a total of 6 years imprisonment. I deduct 3 years for the mitigating factors, leaving a balance of 3 years imprisonment.
12. On count no. 4 and 5, I repeat the above process and sentence.
13. On count no. 1, I sentence the accused to 7 months imprisonment.
14. In summary, your sentences are as follows:
- (i) Count No. 1 : 7 months imprisonment
 - (ii) Count No. 2 : 3 years imprisonment
 - (iii) Count No. 4 : 3 years imprisonment
 - (iv) Count No. 5 : 3 years imprisonment.
15. Because of the principle of totality of sentences, I direct the above sentences to be concurrent to each other, that is, a total sentence of 3 years imprisonment.
16. For violently assaulting your defacto wife, Semi Waqawai, I sentence you to 3 years imprisonment, with a non-parole period of 2 ½ years. This sentence is to serve as a warning to males who are violent to their wives and/or defacto wives. A prison sentence awaits you if you resolve your marital disputes violently. A suspended sentence is not appropriate, in these types of cases. An immediate prison sentence should be given, as a warning to would be offenders.

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JUDGE

Solicitor for the State : **Office of the Director of Public Prosecutions, Suva.**
Solicitor for Accused : **A. Vakaloloma, Barrister and Solicitor, Suva.**