

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION  
CRIMINAL CASE NO. HAC 182 OF 2016S

STATE

vs

JIUTA MOROCA

Counsels : Ms. S. Navia for State  
Ms. T. Kean for Accused

Hearings : 2 December 2016, 17 February 2017 and 24 August 2017

Sentence : 29 December, 2017

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**SENTENCE**

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1. On 2 December 2016, in the presence of your counsel, the following information was put to you:

***FIRST COUNT***  
***Statement of Offence***

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to section 255 (a) of the Crimes Act 2009.

***Particulars of Offence***

**JIUTA MOROCA** on the 9<sup>th</sup> day of May 2016 at Nasinu in the Central Division, with intend to do cause grievous harm to **Lin Li Sheng**, unlawfully wounded the said **Lin Li Sheng** by punching her head, face and mouth.

## **SECOND COUNT**

### **Statement of Offence**

**THEFT**: Contrary to section 291 (1) of the Crimes Act 2009.

### **Particulars of Offence**

**JIUTA MOROCA** on the 9<sup>th</sup> day of May 2016 at Nasinu in the Central Division, dishonestly appropriated \$2,000.00 cash, the property of **Lin Li Sheng** with the intention of permanently depriving **Lin Li Sheng** of the above mentioned property.

2. You pleaded guilty to count no. 1, but not guilty to count no. 2. Because count no. 1 was the more serious of the two offences, the prosecution was required to prepare the summary of facts on the same. On 17 February 2017, the prosecution read the summary of facts on count no. 1 in court.
3. The summary of facts were presented as follows:

*"On 9/5/16, Lin Sheng ("PW1") and her husband, Li Qiang ("PW2") opened their shop at 6:30am. At about 11:30am, Jiuta Moroca ("the accused") who is a baker at their shop reported in for work. PW1 opened the side grill door to let the accused in. The accused went straight into the baking area to start baking. At about 12pm, PW2 went upstairs to sleep as he was sick. The accused stayed in the shop with PW1.*

*At around 12:45pm, the accused called PW1 from the bakery side as he was asking about the mix so she went. As she entered the bakery side, the accused was standing inside the bakery near the table and holding a tray. They had an argument.*

*As a result of the argument, the accused took the tray he was holding and struck it on PW1's head more than three times. He punched her several times on her face, head and mouth. The accused kept punching PW1, she fell onto the floor near the mixture. PW1 felt a lot of blood coming out and could see the accused holding her neck. She heard customers coming into the shop calling her but the accused was holding her neck for her not to make any sound. She later became unconscious. The accused fled from the shop.*

*The matter was reported to police. And PW1 was then rushed to hospital after he was being found lying unconsciously on the floor of his shop by a customer.*

*She was admitted at the hospital on 09 May 2016 before being discharged on 19 May 2016.*

*PW1 was medically examined and the doctor's findings were as follows:*

- *Visible facial and frontal scalp injury;*
- *Bleeding profusely in both nostrils*
- *Blood in both ears*
- *Multiple scalp lacerations*
- *Left facial cheek and left upper lip laceration*
- *2 linear laceration on left and right anterior frontal scalp*
- *Posterior scalp-temporo occipital laceration*
- *Bilateral raccoon's eyes*

*The accused was arrested and caution interviewed on 12 May 2016 where he admitted punching PW1 on the face several times because he was angry at her. He admitted punching PW1 until she fell on the floor and became unconscious."*

4. The court then checked with defence counsel on whether or not the accused admitted the above summary of facts. Defence counsel, on behalf of her client, said that the accused admitted the prosecution's summary of facts and also admitted the particulars of the offence in count no. 1 in the information. On the basis of the above, the court found the accused guilty as charged on count no. 1 and convicted him accordingly on the same.
5. As far as count no. 2 was concerned, the accused, in the presence of his counsel, pleaded not guilty to the same on 2 December 2016. It would appear that the parties disagreed on the amount stolen, but not on the act of stealing in itself. Defence counsel submitted that the accused admitted stealing only \$550 cash, not \$2,000 cash. Defence counsel submitted that if the particulars on count no. 2 was amended to conform with their stated position, they would plead guilty to count no. 2. The matter was then adjourned to enable prosecution to consider the above.
6. On 24 August 2017, the prosecution presented the following amended information in court:

### ***Statement of Offence***

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to section 255 (a) of the Crimes Act 2009.

### ***Particulars of Offence***

**JIUTA MOROCA** on the 9<sup>th</sup> day of May 2016 at Nasinu in the Central Division, with intent to do cause grievous harm to **Lin Li Sheng**, unlawfully wounded the said **Lin Li Sheng** by punching her head, face and mouth.

### ***SECOND COUNT***

### ***Statement of Offence***

**THEFT:** Contrary to section 291 (1) of the Crimes Act 2009.

### ***Particulars of Offence***

**JIUTA MOROCA** on the 9<sup>th</sup> day of May 2016 at Nasinu in the Central Division, dishonestly appropriated \$550.00 cash, the property of **Lin Li Sheng** with the intention of permanently depriving **Lin Li Sheng** of the above mentioned property.

7. In the presence of his counsel, the accused pleaded guilty to both counts. Prosecution and defence counsel did not advise the court that the accused had already been convicted of count no. 1. On preparing and writing the sentence, the court confirmed the above. As far as count no. 1 was concerned, on the issue of conviction, the court was "functus officio", that is, it cannot re-visit the matter. It had been decided on 17 February 2017. Thus any purported dealing with count no. 1 after 17 February 2017 was null and void.
8. The prosecution presented their summary of facts on count no. 2. They said, on 9 May 2016, at Nasinu in the Central Division, the accused stole \$550 cash from the complainant. Defence counsel, on behalf of the accused, admitted the above. The court then found the accused guilty as charged on count no. 2, and convicted him accordingly on that count.
9. The offence of "act intended to cause grievous harm", is an indictable offence and carried a maximum sentence of life imprisonment. Parliament views the offence seriously (see section 255 (a) of the Crimes Act 2009). The offence replaced the offence of "acts intended to cause grievous harm" in section 224 (a) of the repealed Penal Code, chapter 17. In **State v Maba Mokubula**, Criminal Appeal

Case No. HAA 0052 of 2003S, High Court, Suva, Her Ladyship Madam Justice Nazhat Shameem, while reviewing several case authorities on the above offence, said the following:

*“On the basis of these authorities, the tariff for sentences under section 224 of the 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).”*

10. I adopt what Her Ladyship said above, as it applied to section 255 (a) of the Crimes Act 2009. The offence in section 255 (a) of the Crimes Act 2009 is virtually the same as section 224 (a) of the repealed Penal Code, and there was no logical reason why the authorities applicable to section 224 (a) of the Penal Code should not apply to section 255 (a) of the Crimes Act 2009.
11. The maximum sentence for theft (section 291 (1) of the Crimes Act 2009) is 10 years imprisonment.
12. The aggravating factors, in this case, were as follows:
  - (i) **Serious Breach of Employer’s Trust.** On 9 May 2016, you were an employee of the complainant. You were 31 years old, the complainant was 34 years. Jobs are difficult to get

in Fiji, and the complainant was prepared to pay you to bake bread to sell to the public. As an employee, you owe a duty to work hard and be honest to your employer. Instead of doing the above, you did exactly the opposite. You attacked and seriously injured your employer complainant. Then you stole \$550 cash from her. You fled from the shop, without calling for medical assistance. You do realize that your liberty will have to be taken away to pay for your crime, and you should not complain about the same.

- (ii) **Excessive Use of Violence.** In your caution interview, you admitted to police repeatedly punching the lady complainant on the face. You threw several punches on her face. She repeatedly fell on the floor and got up again. Then you repeatedly punched her again until she fell unconscious on the bakery floor. You virtually treated the lady as a punching bag. Not only this, she could not retaliate against you, as you were physically stronger than her. I am sure you wouldn't like the same treatment been metered out against you. You are lucky she did not die, otherwise you would be facing a murder charge today.
- (iii) By offending against the complainant, you caused heart ache and sadness to her family. You showed no regard to her right as human being, no regard to her right not to be harmed and no regard to her right for a happy and peaceful life.

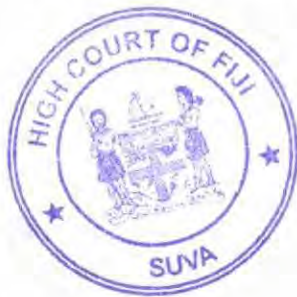
13. The mitigating factors were as follows:

- (i) At the age of 31 years, this is your first offence.
- (ii) You had been remanded in custody for approximately 1 year 7 months 15 days.
- (iii) You pleaded guilty to count no. 1, 6 months 5 days after first call in the High Court, and pleaded guilty to count no. 2, 1 year 2 months 28 days after first call in the High Court. To some extent, you saved the court's time.

14. I will start with count no. 1, as it is the more serious offence of the two. I start with a sentence of 4 years imprisonment. I add 4 years for the aggravating factors, making a total of 8 years imprisonment. For time already served while remanded in custody, I deduct 1 year 8 months, leaving a balance of 6 years 4 months. For being a first offender at the age of 31 years, I deduct 1 year, leaving a balance of 5 years 4 months. Your guilty plea was not an early guilty plea, entitling you to a major discount. On count no. 1, you pleaded guilty 6 months 5 days after first call and on count no. 2, 1 year 2 months 28 days after first call. I deduct 10 months for your guilty plea, leaving a balance of 4 ½ year imprisonment.

15. On count no. 2, I sentence you to 6 months imprisonment.

16. The summary of your sentences are as follows:
- (i) Count no. 1 : Act with Intent to Cause Grievous Harm - 4 ½ years imprisonment
  - (ii) Count no. 2 : Theft - 6 months imprisonment
17. Given the brutal nature of your attack on the complainant, and then the indignity of stealing \$550 from her, while she lay unconscious and bleeding on her bakery floor, after been assaulted by you, I direct that the above sentences be made consecutive to each other, making a final sentence of 5 years imprisonment.
18. Mr. Jiuta Moroca, for violently assaulting and stealing from the complainant on 9 May 2016, at Nasinu in the Central Division, I sentence you to 5 years imprisonment, with a non-parole period of 4 years imprisonment, effective forthwith.
19. Pursuant to section 4 (1) of the Sentencing and Penalties Act 2009, the above sentence is designed to punish you in a manner that is just in all the circumstances, to protect the community from people like you, to deter other would-be offenders and to signify that the court and community denounce what you did to the complainant on 9 May 2016.
20. You have 30 days to appeal to the Court of Appeal.



  
**Salesi Temo**  
**JUDGE**

Solicitor for State : Office of the Director of Public Prosecution, Suva  
Solicitor for Accused : Legal Aid Commission, Suva