

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 214 of 2018

STATE

V

- 1. TIMOCI MOTOKULA RATUBALAVU**
- 2. MANUELI NAKUREKURE**

Counsel : *Ms. P. Lata for the State*
Ms. Hazelman S. for the 1st Accused
Mr. Prasad K. for the 2nd Accused

Sentence Hearing: *19 July 2018*

Sentence : *20 July 2018*

SENTENCE

1. 1st accused Mr. Timoci Motokula Ratubalavu, you are charged with the following offence:

FIRST COUNT

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act 2009.

Particulars of Offence

TIMOCI MOTOKULA RATUBALAVU on the 19th day of May, 2018, at Nasinu, in the Central Division, assaulted MELE KOTO thereby causing her actual bodily harm.

2. This matter was first called before the High Court on 1st of June 2018. On that day as for your request, bail was granted and State was given time to file Information and Disclosures, and the matter was adjourned for 06th of July 2018.
3. When this matter was mentioned, before His Lordship Justice Daniel Goundar, on 06th of July 2018, the Director of Public Prosecutions (DPP) filed Information and Disclosures and the charge was read over and explained to you. Having understood the charge you pleaded guilty to the charge, on your own free will, without any threat or intimidation and the Court was pleased to fix this matter before me for sentencing on 16th of July.
4. The matter came up before me on 16th of July 2018, your plea was taken again and you pleaded guilty to the 1st count in the Information, which was the only charge against you. I am satisfied that you fully understood the nature of the charge against you and the consequences of your plea.
5. Thereafter, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you and you understood and agreed to the same subject to one detail being corrected. State moved to reconsider the said summary of facts and was granted time till 19th of July.
6. On 19th of July (yesterday), when this was taken up before me, state submitted an amended summary of facts, which was read over to you and explained to you in I-taukei, and you having understood the same admitted them to be true and correct. Your counsel on your behalf, made an oral submission and a written submission was tendered on behalf of the State as sentencing submissions and this matter was fixed for today for sentencing.
7. Having retaken your plea and having duly considered the material before me, I find your guilty plea to be unequivocal and made with your own free will. I also find that the facts support all elements of the charge in the Information, and find the charge

proved on the Summary of Facts agreed by you. Accordingly, I find you guilty on your own plea and I convict you of the count as charged.

8. I now proceed to sentence you.
9. The Summary of Facts filed by the State discloses that:

Complainant –Mel Kito (age 30) (hereinafter "PW1")

Harry Koroitamana (age 20) (hereinafter "PW2")

Lynda Albert (age 30) (hereinafter "PW3")

1stAccused – Timocic Motokula Ratubalavu (age 23) (hereinafter "A1")

2ndAccused – Manueli Nakurekure(age 26) hereinafter "A2")

Location of Offence – Nasinu Road, Central Division.

On 19th May 2018, PW1, PW2 and PW3, at about 4.30 am came on to the Nasinu Road, after a drinking party, and were waiting for a cab. An I-Taukei youth approached them and asked for a cigarette roll and having told him that they have none, he swore at them, he the I-Taukei youth started an argument with PW2 and when PW1 tried to stop them, a group of I-Taukei youth including A1 came and A1 attacked PW1 and PW2. A1 punched PW1 on the forehead and she fell on the ground.

After a while, Valelevu police vehicle came and taken the PW1 to the hospital. PW1, being medically examined, had a laceration on the forehead, periodical swelling in left eye and tenderness over the jaw.

A1 was arrested and A1 in his caution interview admits assaulting PW1 by punching on her forehead.

10. You have admitted to the above Summary of Facts and taken full responsibility for your actions.

11. Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (*"Sentencing and Penalties Act"*) stipulates the relevant factors that a Court should take into account during the sentencing process. 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 No. 44 of 2009 (Crimes Act), "A person commits a summary offence if he or she commits an assault occasioning actual bodily harm".
13. The offence carries a maximum penalty of 05 years imprisonment.
14. In *State v. Tugalala [2008] FJHC 78; HAC 025 of 2012S*. Hon. Justice Shameem, held:
"The tariff for this offence (an assault occasioning actual bodily harm) appears to range from an absolute or conditional discharge to 12 months imprisonment".
15. In *Elizabeth Joseph v. The State [2004]HAA 030/04S* and *State v. Tevita Alafi [2004] HAA073/04S*, the High Court has held;
"It is the extent of the injury which determines the 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."
16. In *Jonetani Sereka v. State [2008] FJHC88; HAA27/2008*, His Lordship Justice Daniel Goundar 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."

17. Above view has been adopted and approved by a series of cases including:
State v. Prasad [2016] FJHC435; HAC33/2014,
State v. Bose [2016] FJHC 43; HAC71/2015,
State v. Ledua [2015] FJHC 643; HAC117/2012,
Basa v. State [2014] FJHC 518; HAA12/2014, Etc.
18. In the recent decision of *State v. McPherson [2017] FJHC 890; HAC42/2016*, Justice Hamza accepted the tariff set by Justice Perera in the case of *Anaiasa Naqialawa v. State [2017] FJH484; HAA15/2017*, which set a tariff within the range of 3months to 12 months, where His Lordship Justice Perera stated:
"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 would attract considering its objective seriousness. In my view, an imprisonment 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.
19. Regarding best sentencing practices, in *Koroivuki v. State [2013] FJCA15*; the Court of Appeal provided guidelines in determining the starting point during sentencing within a said tariff and stated:
"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. 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. Considering all the above, I adopt the tariff for the offence of Assault Causing Actual Bodily Harm as between an absolute or conditional discharge to 12 months imprisonment and decide that the starting point should be 3 months imprisonment.
21. The State has submitted the following aggravating factors against you:
- (i) The offence has taken place in a public place.
 - (ii) It is an unprovoked attack on a female by a male.
 - (iii) In offending against the PW1, A1 showed no regard for her rights and personal safety.
 - (iv) Seriousness of the injuries.
22. In mitigation this Court observe the following:
- (i) Injuries to the PW1 were not of permanent nature.
 - (ii) You are only 24 years old.
 - (iii) You have sought forgiveness from this Court and have assured that you will not re-offend.
 - (iv) You have submitted that you are truly remorseful of your actions and that you have offered your apologies to the complainant in this case, though she refused to accept the same.
 - (v) You have fully cooperated with the police.
23. As stated in paragraph 20 above, starting from 3 months imprisonment I enhance the sentence by 4 months due to aggravating factors set out above in paragraph 21 to become it a 7 months' imprisonment and reduce back 4 months due to mitigating factors set out above in paragraph 22 to reach at 3 months imprisonment.
24. You have tendered a plea of guilt at the first opportunity and I reduce 1/3 of the above sentence giving merit to it and sentence now stands at 2 months imprisonment.
25. You have been in remand for 13 days and I deduct ½ a month from the sentence above and finally arrive at 1 and ½ months imprisonment as the appropriate term.

26. The next issue for consideration is whether your sentence should be suspended.
27. 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.
28. In *Nariva v. The State* [2006] FJHC 6; HAA 148J.2005S (9 February 2006); Her Ladyship Madam Justice Shameem held:
- "The courts must always make every effort to keep young first offenders out of prison. Prisons do not always rehabilitate the young offender. Non-custodial measures should be carefully explored first to assess whether the offender would acquire accountability and a sense of responsibility from such measures in preference to imprisonment."*
29. You have no previous convictions and no pending cases, and you are a first time offender.
- Therefore, it is my opinion that the chances for your rehabilitation are high. Therefore, I deem it appropriate to suspend your sentence for a period of 3 years. You are advised of the effect of breaching a suspended sentence.
30. In result, your sentence of one and half (1 ½) months imprisonment is suspended for a period of 3 years.

31. You have 30 days to appeal to the Court of Appeal if you so wish.



Chamath S. Morais
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated on this 20th Day of July 2018

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