

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 140 of 2017

STATE

V

MAIKA ROKORAUWA

Counsel : Ms. Swastika Sharma for the State
Ms. Anisha Singh with Ms. Shantel Hazelman for the Accused

Dates of Trial : 8-10 April 2019

Summing Up : 12 April 2019

Judgment : 16 April 2019

Sentence : 29 April 2019

The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "KMK".

SENTENCE

[1] Maika Rokorauwa you were charged with the following offences:

COUNT ONE

Statement of Offence

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

Particulars of Offence

MAIKA ROKORAUWA, on the 2nd day of May 2017, at Cunningham, in the Central Division, assaulted **KMK** thereby causing actual bodily harm.

COUNT TWO

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) of the Crimes Act of 2009.

Particulars of Offence

MAIKA ROKORAUWA, on the 2nd day of May 2017, at Cunningham, in the Central Division, had carnal knowledge of **KMK** by inserting his penis into the anus of **KMK**, without her consent.

- [2] You pleaded not guilty to the above mentioned charges and the ensuing trial was held over 3 days.
- [3] At the conclusion of the evidence and after the directions given in the summing up, by a unanimous decision, the three Assessors found you guilty of the charge of Assault Causing Actual Bodily Harm (Count One) and not guilty of the charge of Rape (Count Two).
- [4] Having reviewed all the evidence, this Court agreed with the unanimous opinion of the Assessors finding you guilty of the charge of Assault Causing Actual Bodily Harm and not guilty of the charge of Rape. Accordingly, you were convicted of Assault Causing Actual Bodily Harm, in terms of Section 275 of the Crimes Act No. 44 of 2009 (Crimes Act) and acquitted of the charge of Rape.
- [5] In support of their case, the prosecution called the complainant, KMK, PC 5165 Koshal Dutt and Dr. Kitone Waqanisau. The accused opted to remain silent.
- [6] It has been proved that on 2 May 2017, at Cunningham, you intentionally assaulted the complainant, KMK, and thereby caused actual bodily harm to her.
- [7] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the purposes for which sentencing may be imposed by a

Court; and sets out 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.

[8] In terms of Section 275 of the Crimes Act “A person commits a summary offence if he or she commits an Assault Causing Actual Bodily Harm.” The prescribed penalty for this offence is a term of imprisonment for 5 years.

[9] In **State v. Tugalala** [2008] FJHC 78; HAC 25S of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem said:

*“The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in **Elizabeth Joseph v. The State** [2004] HAA 030/04S and **State v. Tevita Alafi** [2004] HAA073/04S, that 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 (**Amasai Korovata v. The State** [2006] HAA 115/06S).”*

[10] In **Jonetani Sereka v. The State** [2008] FJHC 88; HAA 27 of 2008 (25 April 2008); His Lordship Justice Daniel Gounder 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 (**State v Anjula Devi**, Criminal Case No. 04 of 1998 Lab.).”*

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

“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.”

[12] In **State v McPherson** [2017] FJHC 890; HAC 42 of 2016 (22 November 2017); this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.

[13] Having regard to the above authorities, I consider the tariff for the offence of Assault Causing Actual Bodily Harm in the instant case too to range from 3 months to 12 months imprisonment.

[14] In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

“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. After adjusting for the mitigating and aggravating factors, the final term should fall within 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.”

[15] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 3 months imprisonment.

[16] The aggravating factors in this case are as follows:

- (i) The complainant was alone with you in the very early hours of the morning and you took advantage of the complainant’s vulnerability.

(ii) By your actions a haematoma was caused on the forehead of the complainant. The haematoma was located above the eye brow and below the front hairline. The medical evidence is that this was a serious injury that could have led to brain damage.

(iii) You showed no regard to the complainant's rights and her personal safety.

[17] The mitigating factors in this case are as follows:

(i) You are a first offender. This has been confirmed by the State as per the previous conviction report filed in Court.

(ii) You are a young offender. You are currently said to be 22 years of age (Your date of birth being 13 March 1997). Thus, at the time of offending you were 20 years of age.

[18] Considering the totality of the aforementioned aggravating factors and the mitigating factors, I sentence you to a term of 12 months imprisonment.

[19] Section 24 of the Sentencing and Penalties Act reads thus:

"If an offender is sentenced to a term of imprisonment, any period of time during which the offender was held in custody prior to the trial of the matter or matters shall, unless a court otherwise orders, be regarded by the court as a period of imprisonment already served by the offender."

[20] I find that you have been in remand custody for this case from 4 May 2017 to 18 September 2017, the day on which you were granted bail by this Court. This is a period of nearly 4 and a half months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 4 and a half months be considered as served by you in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[21] The next issue for consideration is whether the balance period of 7 and a half months imprisonment should be suspended.

[22] 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.

[23] In ***Singh & Others v. State*** [2000] FJHC 115; HAA 79J of 2000S (26 October 2000); Her Ladyship Madam Justice Shameem held:

“...However as a general rule, leniency is shown to first offenders, young offenders, and offenders who plead guilty and express remorse.....”

[24] Her Ladyship Madam Justice Shameem also held In ***Nariva v. The State*** [2006] FJHC 6; HAA 148J.2005S (9 February 2006);

“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.”

[25] Considering all the above facts and circumstances of this case, I am of the view that this is an appropriate case for a suspended sentence to be imposed on you on the balance period of 7 and a half months imprisonment. Accordingly, I suspend the 7 and a half months term of imprisonment for a period of 3 years.

[26] You are advised of the consequences of breaching a suspended sentence.

[27] You have 30 days to appeal to the Court of Appeal if you so wish.



A handwritten signature in black ink, appearing to read "Riyaz Hamza".

Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT SUVA

Dated this 29th Day of April 2019

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