

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 406 of 2018**

**STATE**

**V**

**JONACANI SALABULA**

**Counsel** : Mr. Rajneel Kumar for the State  
Ms. Talei Kean for the Accused

**Sentence Hearing** : 15 November 2019

**Sentence** : 6 February 2020

## **SENTENCE**

[1] Jonacani Salabula, as per the Amended Information filed by the Director of Public Prosecutions (DPP) you were charged with the following offences:

### **COUNT ONE**

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

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

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

**JONACANI SALABULA**, on the 28<sup>th</sup> day of September 2018, at Cunningham, Suva, in the Central Division, with intent to cause grievous harm to **ANASEINI RADUTU**, unlawfully wounded the said **ANASEINI RADUTU** by hitting her with a baton.

## COUNT TWO

### *Statement of Offence*

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

### *Particulars of Offence*

**JONACANI SALABULA**, on the 28<sup>th</sup> day of September 2018, at Cunningham, Suva, in the Central Division, with intent to cause grievous harm to **JEKOPE MCGOON**, unlawfully wounded the said **JEKOPE MCGOON** by hitting him with a baton.

- [2] This matter was first called before the High Court on 2 November 2018 and the State was granted time to file Information and Disclosures.
- [3] On 4 December 2018, the DPP filed the Disclosures relevant to the case; and the Information was filed dated 23 November 2018.
- [4] When the matter came up before me on 25 February 2019, you were ready to take your plea. You pleaded guilty to the one count in the Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your plea.
- [5] Thereafter, on 1 April 2019 the State filed an Amended Information. On 18 September 2019, you were ready to take your plea to the Amended Information and you pleaded guilty to the two counts in the Amended Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charges against you and the consequences of your plea.
- [6] Thereafter, on 30 October 2019, the State filed the Summary of Facts. The Summary of Facts were read out and explained to you on the same day and you understood and agreed to the same. Accordingly, Court found your guilty pleas to be unequivocal. I found that the facts support all elements of the charges in the Amended Information, and found the charges proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the two charges of Act with Intent to Cause Grievous Harm.
- [7] I now proceed to pass sentence on you.

[8] The Summary of Facts filed by the State was as follows:

- “1. The accused in this matter is Jonacani Salabula (DOB 26.02.67) a 52 year old self-employed man of Cunningham, Suva.
2. The first victim in this matter is Anaseini Raduta, a 47 year old chef of Cunningham, Suva.
3. The second victim in this matter is Jekope McGoon, a 23 year old supermarket employee of Cunningham, Suva.
4. Relationship: the accused is Anaseini Raduta’s former husband as they have since separated, while Jekope McGoon is the step-son of the accused and Anaseini Raduta.
5. At about 1.00 a.m. on 28 September 2018, Anaseini Raduta was asleep at their home at Lot 73 Wanitarawau Road, Cunningham, Suva. Anaseini Raduta was asleep in a room with her daughter, while Jekope McGoon was also asleep in their living room.

#### Count 1

6. Whilst Anaseini Raduta was asleep, the accused had gone to their house and had read some text messages on Anaseini Raduta’s mobile phone which had angered the accused after which the accused had an argument with Anaseini Raduta. The accused then went and got his black security guard baton.
7. After taking his said baton, the accused went to where Anaseini Raduta was and started to hit her head with the said baton. The accused struck Anaseini Raduta on her head several times with the said baton which caused wounds to Anaseini Raduta’s forehead where the wounds were bleeding.

#### Count 2

8. Whilst the accused was still hitting Anaseini Raduta, Jekope McGoon came to help her, however, the accused used the same baton to also hit Jekope McGoon on his head and hand which caused injuries to Jekope McGoon.
9. Anaseini Raduta, Jekope McGoon and his 2 siblings then made their way out of their house after which the matter was referred to the Police.

### Summary of Medical Findings

10. *Anaseini Raduta was medically examined at about 1.40 a.m. on 28 September 2018 at the Colonial War Memorial Hospital where the medical findings showed she has sustained multiple traumatic injuries to her head (attached: Medical Report of Anaseini Raduta dated 28.9.19).*
11. *Jekope McGoon was also medically examined at about 2.45 a.m. on 28 September 2018 at the Colonial War Memorial Hospital where the medical findings showed he has sustained a swelling over the right side of his head and his left hand was also swollen and had abrasions (attached : Medical Report of Jekope McGoon dated 28.9.19).*
12. *The accused was later arrested and interviewed under caution on 22 October 2018 where he opted to remain silent but answer questions in Court.*
13. *The accused was later charged with 2 counts of Acts Intended to Cause Grievous Harm contrary to Section 255(a) of the Crimes Act 2009. The accused has 1 active previous conviction (attached: Previous Convictions of Janacani Salabula)."*

[9] Jonacani you have admitted to the above Summary of Facts and taken full responsibility for you actions.

[10] 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.

[11] In terms of Section 255 (a) of the Crimes Act No. 44 of 2009 (Crimes Act) "*A person commits an indictable offence if he or she, with intent to maim, disfigure or disable any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person—*

*(a) Unlawfully wounds or does any grievous harm to any person by any means....."*

The prescribed penalty for this offence is imprisonment for life.

[12] The offence of Act with Intent to Cause Grievous Harm also existed under the Penal Code (Section 224 of the Penal Code), with the same prescribed penalty of life imprisonment.

[13] In **State v. Maba Mokubula** [2003] FJHC 164; HAA 52J.2003S (23 December 2003); Her Ladyship Madam Justice N. Shameem said:

*"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....."*

[14] His Lordship Justice Madigan in **State v. Emosi Taku Tuigulagula** [2011] FJHC 163; HAC 31.2010 (15 March 2011); stated thus:

*"The maximum penalty for this offence is life imprisonment and the Court of Appeal has said in **Shaukat Ali** (1976) 22 FLR 87 that for this offence a custodial sentence is inevitable. The offence is akin to section 224 of the old Penal Code and so the authorities pertaining to that section are relevant. In the case of **Mokubula** (2003) FJHC 164, Shameem J set out several cases of assault intending to cause grievous bodily harm and came to the conclusion that the then prevailing "tariff" was between 6 months imprisonment to 5 years imprisonment, but stressing that where a weapon was used the starting point should be 2 years."*

[15] However, in the above case, Justice Madigan sentenced the accused, who pleaded guilty for striking his wife with a cane knife, severing her fingers in both hands, excluding the thumbs, and also injuring the head, to 6 years imprisonment.

[16] In **State v. Asesela Rabia** [2012] FJHC 877; HAC074.2011 (22 February 2012); the Fiji High Court followed the tariff that had been adopted in **Mokubula and Tuigulagula** (*supra*).

[17] In **State v. Seremaia Nalulu & 4 others** [2013] FJHC 358; HAC 155.2010 (23 July 2013);

His Lordship Justice Paul Madigan, while adopting the above tariff held as follows:

*“The maximum penalty for act with intent to cause grievous harm contrary to Section 255(a) of the Crimes Decree 2009 is life imprisonment. Despite the accepted tariff being between 6 months and 5 years (as set by Shameem J in **Mokubula** (2003) FJHC 164) much higher sentences have been passed when the circumstances dictate. In **Tuigulagula** HAC 81 of 2010 this Court passed a sentence of six years on a husband who did very serious harm to his wife. The penalty being life imprisonment, it is to be regarded as a very serious offence indeed and sentences of up to 8 years would not be out of order.”*

[18] In **State v. Taniela Vakalaca** [2018] FJHC 455; HAC027.2018 (31 May 2018); His Lordship Justice Goundar held:

*“The offence of Act with Intent to Cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (**State v Mokubula** [2003] FJHC 164; HAA0052J.2003S (23 December 2003)). Further, the offence may be aggravated by the seriousness of the injuries, premeditation or planning, length and nature of the attack and vulnerability of the victim.....”*

[19] In **Vosa v. State** [2019] FJCA 89; AAU0084.2015 (6 June 2019); the Fiji Court of Appeal while making reference to the tariff range and the sentences imposed in the above mentioned cases said that they provide some form of guidance in sentencing offenders for the offence of Act with Intent to Cause Grievous Harm, subject of course to the different aggravating and mitigating circumstances prevalent in those cases.

[20] This Court adopted the said tariff in the following cases:

1. **State v Jese Mateavula Toma** [2019] FJHC 648; HAC79.2018 (28 June 2019);
2. **State v Emosi Banuve** [2019] FJHC 1022; HAC88.2019 (24 October 2019); and
3. **State v Isoa Boseyaco** [2019] FJHC 1037; HAC48.2018 (30 October 2019).

[21] Having regard to the above authorities, and since a weapon (namely a security guard's baton) had been used to commit the offences, I consider the tariff for the offence of Act with Intent to Cause Grievous Harm in the instant case to be between 2 years to 5 years imprisonment.

[22] 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.”*

[23] In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentences at 2 years imprisonment for the two counts of Act with Intent to Cause Grievous Harm.

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

- (i) The first victim Anaseini Raduta is your former wife, while the second victim Jekope McGoon is yours and Anaseini’s step-son. Thus there is a domestic relationship between you and the victims.
- (ii) You attacked the victims multiple times with your security guard baton.
- (iii) Serious injuries were caused to the victims and these injuries were on the head of the two victims. As per the Medical Report of Anaseini Raduta, she had sustained multiple traumatic injuries to her head. Similarly, as per the Medical Report of Jekope McGoon, he had sustained swelling over the right side of his head and his hand was also swollen and had abrasions.
- (iv) The frequent prevalence of offences of this nature in our society today.
- (v) You are now convicted of multiple offending.

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

- (i) That you cooperated with the Police when you were taken in for questioning and subsequently charged instead of trying to circumvent the course of justice.
- (iii) You have submitted that you are truly remorseful of your actions and that you deeply regret your acts.
- (iv) That you entered a guilty plea at an early stage in these proceedings.

- [26] Jonacani you are now 52 years of age and residing at Muanikoso in Nasinu. You are said to be working as a lorry driver with RB Patel earning \$240.00 per week. You have also submitted that you help run a canteen at Khalsa Road, selling yaqona (kava) to help your cousin's family and also for your own welfare. It is the opinion of this Court that these are personal circumstances and cannot be considered as mitigating circumstances.
- [27] Considering the aforementioned aggravating factors, I increase your sentence by a further 4 years in respect of count one and 2 years in respect of count two. Now your sentence is 6 years imprisonment for count one and 4 years imprisonment for count two.
- [28] I accept that that you have fully co-operated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 2 years from your sentences. Now your sentence is 4 years imprisonment for count one and 2 years imprisonment for count two.
- [29] I accept that you entered a guilty plea at an early stage in these proceedings. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of 16 months for count one and 8 months for count two. Now your sentence is 2 years and 8 months imprisonment for count one and 1 year and 4 months imprisonment for count two.
- [30] Accordingly, I sentence you to a term of 2 years and 8 months imprisonment for count one and 1 year and 4 months imprisonment for count two.
- [31] I order that both sentences of imprisonment to run concurrently. Therefore, your total term of imprisonment will be 2 years and 8 months.
- [32] The next issue for consideration is whether your sentence should be suspended.
- [33] 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.*

**[34]** As I have stated earlier the first victim Anaseini Raduta is your former wife, while the second victim Jekope McGoon is yours and Anaseini's step-son. Thus there is a domestic relationship between you and the victims. The injuries sustained by both the victims were serious.

**[35]** In mitigation you have also submitted that on the day of the offending, that you were returning from work in the evening when you heard message notification coming from your ex-wife's phone. You had then accessed her phone and read the messages. You discovered that your ex-wife was having an affair and that she was in contact with another man, where they were devising a plan to live together in his house in Cunningham. You state that you felt betrayed and shocked with your ex-wife and this resulted in the assault taking place. However, as you too admit, there is no justification for the cause or manner in which you attacked the two victims.

**[36]** Furthermore, as per your list of previous convictions, there are three convictions recorded against you for Assault Occasioning Actual Bodily Harm. The first of these convictions was on 10 November 1992, the next on 1 September 2005 and the third on 14 June 2011. You are now convicted of two counts of Act with Intent to Cause Grievous Harm.

**[37]** For these reasons, I am not inclined to suspend your sentence. I am of the opinion that a custodial sentence is appropriate in the given circumstances so as to deter you and other like persons from committing such criminal acts, and also to protect the community.

**[38]** Accordingly, I sentence you to a term of 2 years and 8 months imprisonment. Pursuant to Section 18 of the Sentencing and Penalties Act, I order that you are not eligible to be released on parole until you serve 2 years of this sentence.

**[39]** 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."*

**[40]** You have been in remand custody for this case from 22 October 2018 until 10 December 2018, the day on which you were granted bail by this Court. This is a period of nearly 2 months. The period you were in custody shall be regarded as period of imprisonment already served by you. I hold that a period of 2 months be considered as served by you in terms of the provisions of Section 24 of the Sentencing and Penalties Act.

[41] In the result, your final sentence is as follows:

Head Sentence - 2 years and 8 months imprisonment

Non-parole period - 2 years imprisonment

Considering the time you have spent in remand, the time remaining to be served would be as follows:

Head Sentence - 2 years and 6 months imprisonment

Non-parole period - 1 year and 10 months imprisonment

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



**Riyaz Hamza**  
**JUDGE**  
**HIGH COURT OF FIJI**

AT SUVA

Dated this 6<sup>th</sup> Day of February 2020

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