

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 107 of 2020

STATE

V

ETASA DIGO

Counsel : Ms. Shirley Tivao for the State  
Mr. Kavshik Prasad for the Accused

Sentence Hearing : 17 June 2020

Sentence : 7 July 2020

### SENTENCE

- [1] Etasa Digo, as per the Information filed by the Director of Public Prosecutions (DPP) you were charged with the following offence:

#### 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*

**ETASA DIGO**, on the 24<sup>th</sup> day of February 2020, at Samabula, in the Central Division, intended to cause grievous harm to **JOSEVATA CAVA**, by pouring boiling water onto his body.

- [2] This matter was due to be first called before the High Court on 14 April 2020. However, due to the lock down of Suva, as a result of the corona virus pandemic, the matter was fixed for 11 May 2020.
- [3] On 7 May 2020, the State filed the Information and Disclosures relevant to the case.
- [4] When the matter came up before me on 11 May 2020, 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 charge against you and the consequences of your plea.
- [5] Thereafter, on 22 May 2020, 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 plea to be unequivocal. I found that the facts support all elements of the charge in the Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the charge of Act with Intent to Cause Grievous Harm.
- [6] I now proceed to pass sentence on you.
- [7] The Summary of Facts filed by the State was as follows:

*Background*

1. *Complainant: Josevata Cava, 30 year old Process Worker of Nauluvatu Settlement, Suva.*
2. *Accused: Etasa Digo, 24 year old house girl of Nauluvatu Settlement, Suva.*

*Incident*

3. *The complainant and the accused are in a Defacto relationship.*
4. *On 24 February 2020 the complainant was with the accused, at his neighbor's house watching a movie when the accused threw a bottle of Glow Sheen (hair gel) towards the complainant.*
5. *After the complainant noticed the accused bring a 2L jug and pour hot water over him, he felt the heat from the hot water which landed on his back and arms. After he went home and then hospital.*
6. *At the time of the incident the accused had intended to cause grievous harm to the complainant, when she poured the hot water onto the complainant.*
7. *The complainant further adds that he had sustained burns to his back and arms, due to the above.*

8. *The complainant was examined by Doctor Aloima at CWM Hospital. The medical report outlines that he sustained injuries to his back and arms, namely second degree burns that was consistent with PW1's history of hot water poured on him.*
- *A copy of the complainant's medical report is attached as **Annexure 1.***

*Investigation and Caution Interview*

9. *The accused was caution interviewed where she admitted that she was angry with the complainant for using her Glow Sheen gel. She admits to boiling the water and then pouring the hot water onto PW1.*
- *A copy of the Accused Record of Interview is attached as **Annexure 2.**"*
- [8] Etasa you have admitted to the above Summary of Facts and taken full responsibility for you actions.
- [9] Section 4 (1) 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.
- [10] Section 4 (3) of the Sentencing and Penalties Act provides that in sentencing offenders for an offence involving domestic violence, a Court must also have regard to the following:
- (a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —*
- (i) the age of the victim;*
  - (ii) whether the victim was pregnant; and*
  - (iii) whether the victim suffered any disability;*
- (b) whether a child or children were present when the offence was committed, or were otherwise affected by it;*
- (c) the effect of the violence on the emotional, psychological and physical well being of a victim;*
- (d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;*
- (e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —*

*(i) accepts responsibility for the offence and its consequences;*

*(ii) has taken steps to make amends to a victim, including action to minimize or address the negative impacts of the offence on a victim;*

*(iii) may pose any further threat to a victim;*

*(f) evidence revealing the offender's —*

*(i) attitude to the offence;*

*(ii) intention to address the offending behaviour; and*

*(iii) likelihood of continuing to pose a threat to a victim; and*

*(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance.*

[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; HAA0052).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);
3. *State v. Isoa Boseyaco* [2019] FJHC 1037; HAC48.2018 (30 October 2019); and
4. *State v. Jonacani Salabula* [2020] FJHC 47; HAC406.2018 (6 February 2020).

[21] Having regard to the above authorities, and since you had used boiling hot water to pour on the complainant’s body, which is similar or comparable to using a weapon, 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 sentence at 2 years imprisonment for the charge of Act with Intent to Cause Grievous Harm.
- [24] The aggravating factors in this case are as follows:
- (i) There is a domestic relationship between you and the complainant. The complainant is your defacto partner.
  - (ii) Serious injuries were caused to the complainant as a result of your actions. The Medical Examination Report of the complainant confirms that he sustained second degree burn injuries on his right back and arms.
  - (iii) The frequent prevalence of offences of this nature in our society today.
- [25] The mitigating factors in this case are as follows:
- (i) You are a first offender. The State has confirmed that there are no previous convictions or pending cases against you.
  - (ii) 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 have sought forgiveness from the complainant and his family.
  - (iv) You have now reconciled with the complainant. The complainant testified before this Court and submitted that he has forgiven you.
  - (v) That you entered a guilty plea at a very early stage in these proceedings.
- [26] Considering the aforementioned aggravating factors, I increase your sentence by a further 3 years. Now your sentence is 5 years imprisonment.
- [27] I accept that you are a person of previous good character and that you have fully cooperated with the Police in this matter. I also accept your remorse as genuine. Accordingly, considering these mitigating factors, I deduct 2 years from your sentence. Now your sentence is 3 years imprisonment.
- [28] I accept that you entered a guilty plea at a very early stage in these proceedings. In fact, you did so on the very first day you appeared before this Court. In doing so, you saved precious time and resources of this Court. For your early guilty plea I grant you a further discount of one year. Now your sentence is 2 years imprisonment.
- [29] Accordingly, I sentence you to a term of 2 years imprisonment for the charge of Act with Intent to Cause Grievous Harm.

[30] The next issue for consideration is whether your sentence should be suspended.

[31] 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.*

[32] Etasa you are now 24 years of age (Your date of birth is 13 May 1996). You normally reside at Delaitokatoka Settlement, Valelevu, Nasinu, with your de-facto partner and his maternal uncle and aunt.

[33] You are currently unemployed and confined to domestic duties. However, prior to the offending you are said to have been casually employed as a Cleaner at Flour Mills of Fiji (FMF), in Walu Bay earning \$25.00 on Sundays. From Mondays to Fridays weekly you were said to be employed as a Baby-Sitter at Gaji Road, Suva, earning \$100.00 per week. With your earnings you were supporting your de-factor partner and his family.

[34] You are said to be pregnant with the complainant's child. You are now at an advance stage of your pregnancy. You are due to give birth next month (August 2020).

[35] From your previous relationship you are said to have 2 daughters (twins who were born in July 2015). Your daughters are said to be living with your father at Koronisiga Village in Sigatoka.

[36] I have considered the following circumstances:

- You are a relatively young offender;
- You have been of previous good character;
- You have fully cooperated with the Police;
- You have accepted responsibility for your conduct;
- You submit that you are truly remorseful of your actions and have sought forgiveness from the complainant and his family;



- You have now reconciled with the complainant, who testified in Court and said that he has forgiven you;
- You have assured Court that you will not re-offend;
- You entered a guilty plea at the earliest opportunity in these proceedings;
- You are at an advanced stage of your pregnancy.

Considering all these factors I deem it appropriate to suspend your sentence. It is my opinion that the chances for your rehabilitation is high.

- [37] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.
- [38] In the result, Etasa your final sentence of 2 years imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.
- [39] Furthermore, in terms of Section 4 (3) (g) of the Sentencing and Penalties Act, I order that you receive counselling from the Family Court Counselling Services in Suva.
- [40] In terms of the provisions of Section 27 of the Domestic Violence Act No. 33 of 2009, I order a permanent Domestic Violence Restraining Order for the protection of the complainant in this case, with standard non-molestation conditions as stipulated in the said section.
- [41] You have 30 days to appeal to the Court of Appeal if you so wish.



*Riyaz Hamza*  
 Riyaz Hamza  
 JUDGE  
 HIGH COURT OF FIJI

AT SUVA

Dated this 7<sup>th</sup> Day of July 2020

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