

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 174 of 2019

STATE

V

MEREONI MARAMA

Counsel : Ms. Kimberly Semisi for the State
Ms. Lice Manulevu for the Accused

Dates of Trial : 23-26 and 29-30 June 2020

Summing Up : 3 July 2020

Judgment : 8 July 2020

Sentence Hearing : 23 July 2020

Sentence : 7 August 2020

SENTENCE

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

Statement of Offence

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

Particulars of Offence

MEREONI MARAMA, on the 29th day of April 2019, at Nasinu, in the Central Division, with intent to cause grievous harm to **RACHAEL BOSEIWAQA**, unlawfully wounded the said **RACHAEL BOSEIWAQA**.

- [2] You pleaded not guilty to the above mentioned charge and the ensuing trial was held over 6 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 not guilty of the charge. However, by a unanimous decision, the Assessors found you guilty of the alternative charge of Assault Causing Actual Bodily Harm.
- [4] Having reviewed all the evidence, this Court agreed with the unanimous opinion of the Assessors finding you guilty of the alternative charge of Assault Causing Actual Bodily Harm. 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).
- [5] In support of their case, the prosecution called the complainant, Rachael Boseiwaqa, her mother Kalesi Vasu, her cousin's wife Taraivina Rika, her brother Lenaitasi Boseiwaqa and Dr. Salome Daunivalu. The Medical Examination Report of Rachael Boseiwaqa was tendered to Court as Prosecution Exhibit **PE1**.
- [6] You testified on your own behalf. You also called a witness, Dr. James Danford, in support of your case. Your Medical Examination Report was tendered to Court as Defence Exhibit **DE1**.
- [7] The complainant clearly testified as to the manner in which you had caused injuries to her in the evening of 29 April 2019, at her home in Kuruva Road, Caubati, by striking her on the right side of her forehead with a glass bottle.
- [8] In the Medical Examination Report of the complainant it is recorded that there was a moderately deep laceration on the right facial (right forehead) measuring about 8cm x 4cm x 2cm. The laceration appeared to be deep which could have been the reason for the active bleeding at the time of examination. Sutures had to be put in place to stop the bleeding.
- [9] 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.
- [10] 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.
- [11] In *State v. Tugalala* [2008] FJHC 78; HAC 255 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 030/045 and **State v. Tevita Alafi** [2004] HAA073/045, 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 115/065)."*

- [12] 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.)."*

- [13] 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."

- [14] In **State v McPherson** [2017] FJHC 890; HAC 42.2016 (22 November 2017); **State v Naimoso** [2018] FJHC 345; HAC 95.2016 (27 April 2018); and **State v Qalobula** [2020] FJHC 255; HAC 100.2018 (3 April 2020) this Court held that the tariff for the offence of

Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.

[15] 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.

[16] 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.”

[17] 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.

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

- (i) The complainant was your younger sister-in-law. Thus there was a domestic relationship between you and the complainant.
- (ii) The complainant was 10 years younger than you. At the time of offending the complainant was 19 years of age, while you were 29 years of age.
- (iii) The complainant was unarmed at the time of the assault.
- (iv) You used a glass bottle to attack the complainant.
- (v) The actual bodily harm caused to the complainant was serious. A moderately deep laceration was caused to her right forehead. The injury required sutures.

[19] In mitigation it is submitted that you are a person of previous good character. The State too has confirmed that you are first offender and has no previous convictions.

[20] It is clear from the evidence that transpired in this case that the injury to the complainant had been caused during the course of an argument between the

complainant and you, arising from a family dispute. In fact, the complainant herself has testified that she threw the first punch at you. Furthermore, you were already carrying in your hand the glass bottle at the time the argument began. You were in the process of clearing your belongings since your mother-in-law had asked you to leave the house that night.

- [21] You too had sustained injuries during the incident. This is confirmed by the Medical Examination conducted on you by Dr. James Danford and the Medical Examination Report tendered to Court.
- [22] It has also been established in evidence that based on the complaint made by you to the Valelevu Police Station against the complainant, the complainant has been charged in the Magistrate's Court of Nasinu.
- [23] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating circumstances relevant to this case, I impose on you a sentence of 12 months imprisonment.
- [24] The next issue for consideration is whether your sentence should be suspended in terms of Section 26 of the Sentencing and Penalties Act.
- [25] 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.*
- [26] Mereoni Marama, you are now 31 years of age (Your date of birth is 30 June 1989). You are said to be residing with your parents and 3 year old daughter at Vunaniu Village in Serua. You are said to be currently separated from your husband. At the time of the incident you had been employed by the Pearl Resort, Pacific Harbour. However, due to the coronavirus pandemic you are now said to be unemployed.

- [27] You were arrested for this case on 6 May 2019 and remanded in custody. You were granted bail by the Suva High Court on 23 May 2019. Therefore, you have been in remand custody for this case for over two weeks.
- [28] Considering the fact that you are a person of previous good character, that the incident took place during the course of an argument arising from a family dispute, that there was provocation by virtue of the fact that the complainant herself has testified that she threw the first punch at you, that you too had sustained injuries during the incident and the fact that you have spent over two weeks in remand custody for this case, I deem it appropriate to suspend your sentence.
- [29] 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 4 years.
- [30] In the result, Mereoni Marama your final sentence of 12 months imprisonment, is suspended for a period of 4 years. You are advised of the effect of breaching a suspended sentence.
- [31] 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 07th Day of August 2020

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