

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 360 of 2022**

**STATE**

vs.

**MERESEINI ROKOVATU**

**Counsel:** Ms. M. Ramoala for the State  
Ms. S. Ben for the Accused

**Date of Sentence/Mitigation Submission:** 10<sup>th</sup> November, 2022

**Date of Sentence:** 05<sup>th</sup> December, 2022

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**SENTENCE**

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**Introduction**

1. Your charge reads thus;

**COUNT ONE**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM:** contrary to Section 275 of the Crimes Act, 2009.

*Particulars of Offence*

**MERESEINI ROKOVATU**, on the 6<sup>th</sup> of October, 2022 at Suva Street, Suva in the Central Division, assaulted **SUSANA LEDUA** by throwing hot water at her from a kettle.

2. On 10<sup>th</sup> of November 2022, you Ms. Mereseini Rokovatu being aware and well advised of the legal effects, did plead guilty to the above count in the presence of your Counsel.

This Court was satisfied that you fully comprehended the legal effects and that your pleas were voluntary and free from influence on your own freewill.

3. The summary of facts read and explained on 10<sup>th</sup> of November 2022 reveals that the offence of 'Assault Causing Actual Bodily Harm ' was committed and you understood and admitted the following summary of facts;
4. Summary of facts;

**Complainant (PW1): Susana Ledua, 39 years old, Property Officer of 18 Amar Singh, Nausori.**

**Accused (A1): Mereseini Rokovatu, 19 years old, Sales Girl of Bua Settlement, Delainavesi.**

*On Thursday 6<sup>th</sup> of October, 2022 at Opium Bar in Suva at around 8.30pm, PW1 was drinking alcohol with her former partner namely, Ernest Coffin, 30 years old, Plumber of Suva Street, Toorak (PW2), PW1 and PW2 were drinking with some other colleagues as they all work together. At around 10.30om, PW2 received a phone call from A1 who was PW2's current partner at the time to inform him (PW2) that she (A1) was on her way to his place. Thus, PW2 left the Bar to meet A1 at his apartment.*

*At about 11.00pm, PW1 then left the Bar and made her way in her car to PW2's apartment. PW1 met PW2 and asked to park her vehicle there and to use the washroom. Whilst PW1 was in the washroom, A1 had arrived at the apartment and found out that PW1 was inside the apartment. PW1 then heard A1 shouting at PW2 and when she came to ask PW2 what was happening, PW2 pulled her (PW1) wrist and asked her to go out of the apartment as A1 wanted her to leave and told her to do so as well. After many attempts for PW1 to leave, PW2 was finally able to escort PW1 out of the apartment and locked the door.*

*Once PW1 was outside, she kept knocking on the door of the apartment as she wanted PW2 to escort her to the road side to catch a taxi. Those knocks turned into bangs on the door and PW2 eventually opened the door and walked PW1 down the stairs escort her to the road side. Whilst walking down the stairs, A1 then took the electric kettle filled with hot water and threw the hot water at PW1. At the time, PW1 and PW2 had their backs to A1 since they were going down the stairs. According to PW1, A1 had the called the police as she thought that PW1 would drive her vehicle to Nausori. Two police officers arrived at the scene and saw the state that PW1 was in and informed her to lodge a report at the Totogo Police Station. The same was done by PW1 on 08.10.11.*

**Medical Report [TAB 1]**

*PW1 was medically examined on 08.10.22 at the Valelevu Health Centre by Doctor Azum – Ud – Dean. The following injuries were noted at D(12) of PW1's Medical Report:*

- (a) *Back – meted superficial burns with sooths. Mid back 12 x 6cm*
- (b) *Left scapula region 5x3cm superficial burns. Not bleeding. Good (illegible).*
- (c) *Neck – back region noted scarring. Blister noted (Left side – 3 small ones)*
- (d) *Left shoulder – bruising noted.*

*The injuries noted at D(12) are consistent with PW1’s version of events..*

**Record of Interview [TAB 2]**

*A1 was interviewed under caution on 10 October, 2022 by WPC 5094 Adi Mailekutu whereby full admissions were given to the allegation.*

*At Q&A 32, A1 admitted to the allegation by stating that it was true and that she did pour the hot water on Susana but that she did not expect that the water was that hot that had burnt her.*

*At Q&A 43, A1 further admitted that she had boiled the water and that her intention was to make PW1 leave because she (A1) knew that PW1 had always wanted to assault her (A1) (at Q&A 45).*

*On 10<sup>th</sup> November, 2022, A1 pleaded guilty as charged of her own free will, in the presence of her counsel.*

5. This matter was transferred by the order dated 11<sup>th</sup> October, 2022 by the Resident Magistrate of Suva with the charge before the Magistrate Court was for an offence of Act Intended to Cause Grievous Harm under section 255(a) of the Crimes Act 2009. Upon it being so transferred the DPP filed information dated 31<sup>st</sup> October 2022 substituting a charge of Assault Causing Actual Bodily Harm under section 275 of the Crimes Act 2009. The information was subsequently amended on the 9<sup>th</sup> November, 2022 to correct an error of the place at which the said information was signed by the DPP. Subject to which the charges remain the same. An offence under section 275 of the Crimes Act is certainly a summary offence. The Accused pleaded guilty to this charge.
6. As there was some concern if this court can take cognizance of a summary offence I would briefly consider this aspect prior to proceeding with the sentencing.

**Can the High Court try a summary offence?**

7. The transfer of this matter appears to have been made by virtue of the sections 35(2)(b)(1) read with section 191 (Division 3 of Part XIII) of the Criminal Procedure Act. By such transfer of proceedings the criminal jurisdiction of the High Court is invoked and it enables such High Court to take cognizance of such proceeding or case.

8. When a matter or a case is so transferred, by virtue of section 198 of the CPA, the DPP is empowered and authorized to file information in the High Court.

Section 198 reads as follows;

*Filing of an information*

198 (1) *An information charging an accused person and drawn up in accordance with section 202 shall be filed by the Director of Public Prosecutions or by the Commissioner or Deputy Commissioner of the Fiji Independent Commission Against Corruption .....*

(2) *In the information, the Director of Public Prosecutions or Commissioner of the Independent Commission Against Corruption may charge the accused person with any offence, either in addition to or in substitution for offence in respect of which the accused person has been transferred to the High Court for trial. (emphasis added)*

By virtue of subsection 2 of section 198 of the CPA, the DPP is empowered and authorized to include **any offence** either in addition or **in substitution** of the offence that was so transferred.

What is any offence?

9. In **Koroi v The State** [2002] FJHC 152; HAA0055.2002S (23 August 2002) the meaning word “**offence**” as appearing in section 28(1) of the then Constitution, appearing in the right to counsel provision, was considered in the context of criminal trials and proceedings and the following comprehensive and composite interpretation was formulated and held that;

*“ **“Every person charged with an offence has the right”**. It then goes on to specify those rights including the right to counsel. The question is whether the Right to Counsel is confined to charges under the Penal Code or extends to other offences too. This answer depends on the meaning of the word ‘offence’.*

*Prima facie an offence is equivalent to a crime – per Collins J. in DERBYSHIRE COUNTY COUNCIL v. DERBY 1896 2 Q.B. 57 at 58. The Dictionary of English Law by Earl Jowitts says **‘the word offence has no technical meaning in English Law, but it is commonly used to signify any public wrong, including, therefore not only crimes or indictable offences, but also offences punishable on summary convictions ... it is used as a comprehensive term to cover anything for which a court can inflict punishment’**. In section 2 of the Interpretation Act Cap. 7 “offence” is defined as **“any crime, felony, misdemeanour or contravention or other breach of, or failure to comply with, any written law for which a penalty is provided”**. In*

*the Penal Code it is defined as "an act attempt or omission punishable by law".*

*These definitions suggest that if penal consequences follow from certain acts or omission, then that particular act or omission is to be treated as an offence. One has to look at the consequences to the accused of a conviction for such act or omission. If it could result in payment of fine or loss of liberty in any way or any other type of penalty, then the act or omission is an offence. The amount of fine or level of penalty is immaterial."*

10. This interpretation stands valid and applicable to the law as it stands today. That being so the words '**any offence**' will mean and encompass offences of whatever nature that may be and is created by any statute. The use of the words *any offence* in section 198 (2) in my view most certainly and necessarily includes summary offences. As such in these circumstances this Court is competent and empowered to try the said summary offence of Assault Causing Actual Bodily Harm under section 275 included in the information.

#### Sentencing regime

11. The maximum sentence prescribed for the offence of Assault Causing Actual Bodily Harm by section 275 of the Crimes Act, 2009 is 5 years imprisonment.
12. In **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 has held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. In the case of **State v Marama** [2020] FJHC 629; HAC 174.2019 (7 August 2020); a case of domestic violence where the complainant was the sister-in-law of the accused), this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. The Court considered the domestic relationship between the parties as an aggravating factor.
13. I have considered the culpability and the harm factors of your offending. you have thrown hot water. It is an extremely cruel act. The extent of the injury determines

sentence. The use of boiling water ostensibly thrown from the back of a person who was intoxicated for instance, justifies a higher starting point as this is a deliberate assault of an extreme cruel nature. You have acted with callous and in utter disregard of her physical safety as a human being.

14. According to the victim impact statement she had suffered emotional trauma and the burn injuries which will certainly cause lifelong scars.
15. As for the aggravating factors. I observe the following aggravating circumstances of your offending:
  - a. Throwing hot water in the present circumstances requires some premeditation and pre planning
  - b. This was not your apartment but that of your boyfriend's and the victim was there on the invitation and permission of PW 2,
  - c. The complainant due to her state of intoxication was vulnerable,
  - d. You acted with impunity.
16. Now as for the mitigating factors the following circumstances were submitted, that you;
  - a. Ms. Mereseini Rokovatu, you are now 19 years of age,
  - b. employed and earning about \$170 weekly and the sole breadwinner. You are said to be now living with your partner and younger sibling and cousins at Delainavesi.
  - c. are remorseful and seek forgiveness,
  - d. co-operated with the police,
  - e. pleaded guilty at an early stage,
  - f. have no a previous convictions.
17. The State submits that you are a first offender and you have no previous convictions (vide-Antecedent Report). As such I will consider you as being a person of previous good character.
18. In mitigation it was submitted that the Accused is 19 years and she has some antecedent prospect of proceeding to New Zealand with the assistance of her church and the help

of a relative. If there is a conviction she may be disqualified and be prevented from so proceeding. The defence also filed an affidavit confirming that the Accused has acquired qualifications in the field of Tourism and Hospitality from the Technical College of Fiji and submitted a letter dated 29<sup>th</sup> November, 2022 from a relative in New Zealand confirming that *the Accused has been planning to visit them in New Zealand and any conviction would severely jeopardise any chance of her being able to travel and have an opportunity to better herself.*

19. It is submitted that the Accused be sentenced without recording a conviction. However the Accused was willing to pay compensation to the victim. Both parties filed submissions on the legality of making such an order and the power of this court to make an order paying compensation.
20. An order to proceed without conviction is provided for by sub sections (e) or (f) or (i) or (i) of Section 15(1) of the Sentences and Penalties Act. Section 15 reads thus;

*The range of sentencing orders*

**15 (1)** *If a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and subject to the provisions of this Act—*

- *(a) record a conviction and order that the offender serve a term of imprisonment;*
- *(b) record a conviction and order that the offender serve a term of imprisonment partly in custody and partly in the community;*
- *(c) record a conviction and make a drug treatment order in accordance with regulations made under section 30;*
- *(d) record a conviction and order that the offender serve a term of imprisonment that is wholly or partly suspended;*
- ***(e) with or without recording a conviction, make an order for community work to be undertaken in accordance with the Community Work Act 1994 or for a probation order under the Probation of Offenders Act 1952;***
- ***(f) with or without recording a conviction, order the offender to pay a fine;***
- *(g) record a conviction and order the release of the offender on the adjournment of the hearing, and subject to the offender complying with certain conditions determined by the court;*
- *(h) record a conviction and order the discharge of the offender;*

- *(i) without recording a conviction, order the release of the offender on the adjournment of the hearing and subject to the offender complying with certain conditions determined by the court;*
- *(j) without recording a conviction, order the dismissal of the charge; or*
- *(k) impose any other sentence or make any other order that is authorised under this Act or any other Act.*

*(2) All courts may impose the sentences stated in subsection (1) notwithstanding that a law may state that a penalty is to be imposed upon the conviction of an offender.*

21. Section 16 of the Sentences and Penalties Act specifies the circumstances that may be considered in deciding the non-recording a conviction which is as follows;

*"Section 16. (1) In exercising its discretion whether or not to record a conviction, a court shall have regard to all the circumstances of the case, including*

- (a) the nature of the offence;*
- (b) the character and past history of the offender; and*
- (c) the impact of a conviction on the offender's economic or social well-being, and on his or her employment prospects."*

22. **In State v Batiratu [2012] FJHC 864; HAR001.2012 (13 February 2012)** delivered by His Lordship Chief Justice Gates laid down guidelines applicable to the discharge of offenders without entering a conviction under section 15(1)(i) of the sentences and Penalties Act as follows;

*" [29] The effect of the cases and the purport of the more detailed provisions of the Sentencing and Penalties Decree with regard to discharges can be summarized. If a discharge without conviction is urged upon the court the sentence must consider the following questions, whether:*

- (a) The offender is morally blameless.*
- (b) Whether only a technical breach in the law has occurred.*
- (c) Whether the offence is of a trivial or minor nature.*
- (d) Whether the public interest in the enforcement and effectiveness of the legislation is such that escape from penalty is not consistent with that interest.*
- (e) Whether circumstances exist in which it is inappropriate to record a conviction, or merely to impose nominal punishment.*



*(f) Are there any other extenuating or exceptional circumstances, a rare situation, justifying a court showing mercy to an offender.”*

23. These guidelines have been laid down in respect of discharge without conviction under section 15 (1) (i) of the sentencing and penalties act. However, this may not apply in its full force to other forms of orders made without recording a conviction under section 15 (1) which does not entail a discharge but a fine. In the present case I would consider acting under section 15 (1) (f) which provides for the ordering of a fine without recording her conviction.

24. The offence to which the Accused pleaded guilty is an offence punishable under section 275 of the Crimes Act. The sentence provided for is a maximum of 5 years imprisonment. There is no fine specified therein. Hence, can this court lawfully impose a fine in respect of an offence under section 275 of the Crimes Act? If the sentencing is directly under section 275 of the Crimes Act certainly it will not be possible to impose a fine as the penal provision does not provide for a fine. However, when a court proceeds to make an order without entering a conviction under section 15 (1) (f) Sentencing and Penalties Act the said provision specifically empowers the sentencing court to impose a fine. Said section states thus

*15 (1) If a court finds a person guilty of an offence, it may, subject to any specific provision relating to the offence and subject to the provisions of this Act—*

*(f) with or without recording a conviction, order the offender to pay a fine*

25. Further, section 31 provides for and spells out the power to fine as follows;

*Power to fine*

*31 (1) If a person is found guilty of an offence the court may, subject to any specific provision relating to the offence, fine the offender in addition to or instead of any other sentence to which the offender may be liable.*

*(2) The maximum fine that a court may impose under subsection (1) is the maximum amount specified in the provision which prescribes the relevant offence, and a court may impose any lesser fine than the maximum.*

*(3) Where no fine is fixed for an offence the fine which a court may impose is unlimited, but a court shall not impose an excessive fine*

26. By virtue of section 31 (1) upon a finding of guilt, a court is empowered subject to any specific provision relating to the offence to fine an offender instead of any other sentence upon a person being found guilty. Then Sub section (3) provides that where no fine is fixed for an offence the fine that may be imposed is unlimited but should not be excessive.
27. In the above circumstances, though the substantive penal provision does not provide for a fine for this offence by virtue of section 15 (1) (f) of the Sentences and Penalties Act when a court proceeds to make a sentencing order *without recording a conviction* such Court is by section 15 (1) (f) empowered to order such offender to pay a fine.
28. In the present application the act of the Accused of throwing hot water is a serious act and as the water had been thrown to the posterior upper body. The fact that the burn marks are on the rear of the body leads to the inference that hot water had been thrown from the victim's rear when the victim was not facing the accused. It is certainly a situation when the victim has not been aggressive or been a threat to the accused. The said happened in the house of the 3<sup>rd</sup> party. Thus, this is not a technical breach of the law or an offence of a trivial nature. The Accused is morally culpable. On the face of it these are not circumstances which is appropriate to impose a nominal punishment. However, the Accused is 19 years old and she is an extremely young offender. She is hoping and intending to better her life by proceeding to New Zealand with the help of a relative. Do these circumstances amount to any other extenuating or exceptional that weren't to proceed without recording a conviction.
29. Considering primarily the age of the Accused who is just 19 and if she was 18 she would have the benefit of the Juveniles Act and considering the circumstances of this offending I will consider it as being extenuating and exceptional to proceed without entering a conviction.
30. Considering this application along with the age of the Accused though the circumstances of the offending does not strictly justify I am inclined to consider some

form of sentence that will not jeopardise the future prospect of this young offender. Accordingly I will proceed to sentence in the following manner.

Sentence

31. I would find the Accused guilty on her own plea. However, I would act under the provisions of section 15(1)(f) of the Sentencing and Penalties and without recording a conviction, order the offender to pay a fine of \$500 in default a sentence of 3 months imprisonment is imposed. Said fine is to be paid on or before 6<sup>th</sup> January 2023. By virtue of the provisions section 153(1)(b) of the Criminal Procedure Act is further ordered that if the said fine is paid the said sum is to be forthwith paid to the Complainant Ms. Susana Ledua as compensation for her injuries
32. You have 30 days to appeal against this order if you so desire



At Suva

5<sup>th</sup> December, 2022.

Solicitors

Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission for the Accused.