

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 68 of 2021

STATE

vs.

- 1. JOELI NUENUE**
- 2. EPINERI QALIBAU**

Counsel: Ms. B. Kantharia with Ms. S. Prakash for the State
Ms. L. David for 1st Accused
Mr. E. Sau for 2nd Accused

Date of Sentence/Mitigation Submission: 21st November, 2022

Date of Sentence: 29th November, 2022

SENTENCE

Introduction

1. Mr. Epineri Qalibau, you were found guilty and convicted on the 14th of November 2022 of a Count of an act with an intent to cause grievous harm to Ms. Mereseini Bularawa by this Court after a full hearing of the trial of which I presided. You appear today to be sentenced for the said offences.

Circumstances of the Offending

2. On the 18th of February 2021 around 12.30 you were standing by the side of the road and threw a heavy stone at a passing bus. The bus was rather empty but you directed the stone towards the area of the bus where three passengers were seated and it with extreme velocity struck on the face of the victim Mereseini Bularawa. There can be no excuse or any reasonable explanation for this conduct except a sadistic pleasure of harming an innocent passerby or damaging the vehicle of such innocent road user. Ms. Mereseini Bularawa was been travelling in a bus towards Suva. The velocity was such she had no time to dodge or evade and she took the full brunt of the heavy stone on the left side of her face. She sustained injuries to her lips and her jaw was fractured, front left teeth were broken and dislodged and was bleeding. The force was such due to the impact she had momentarily lost consciousness or was concussed.

Sentencing regime

3. As for the offence of Acts Intended to Cause Grievous Harm the maximum penalty prescribed by section 255 of the Crimes Act for act with intent to cause grievous harm is life imprisonment. The tariff ranges from 6 months to 5 years imprisonment, depending on the nature of the weapon used and the seriousness of the injuries sustained by the victim (*State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)).

Emotional & Psychological Harm

4. According to the victim impact statement of the victim, after the incident she has a feeling of anger whenever she thinks about it. She is unable to live the normal life as she did before. This incident has changed everything and she is unable even to engage in her job well. Team. She cannot eat properly but can only eat soft drinks and foods. It has tremendously impacted her life and living. She is cannot trust other people now because of the feeling fear.
5. Her career in rugby since has ended as a contracted payers for the national. She cannot work or train like I used to before. She finally says that it affects her every single day and at night she is in pain and she was compelled to quit her career because of this incident.

Without doubt the victim is continuously suffering physical as well as psychological trauma which certainly will not diminished even with the lapse time. It certainly will remain for a very long time and have a permanent effect on her life and living for ever.

6. In my mind the circumstances and to the consequence are serious. You from a position of control and executing a surprise attack has caused a serious injuries resulting in infirmities and deformities of a permanent nature. You have randomly selected a victim to satisfy your sadistic and cruel desires. Therefore, their offending should be considered the most serious. Randomly attacking public transport or road users in this form is extremely serious and cannot be considered lightly as it affects the safe and peaceful mobility of the society at large. This to my mind is a violent offending at the top end of a spectrum of violent crimes directly impacting and affecting the society at large in respect of which deterrence and condemnation should be principal considerations and should take precedence over the personal considerations of the offender.

7. Upon considering the gravity and objective seriousness the viciousness and also the antisocial nature of the act of throwing projectiles at passing vehicles, the nature the injuries were inflicted and the seriousness of those injuries caused makes this offending serious. Upon considering the gravity and objective seriousness of the offences, to my mind it is reasonable and just to pick 4 years imprisonment as the starting point of the sentence. However, the final sentence will depend on the mitigating and aggravating factors which I will consider next.

Aggravating Factors

8. First, I will consider the aggravating factors. I observe the following aggravating circumstances of your offending:
 - a) The victim has spent almost 3 weeks in hospital.
 - b) Some planning and premeditation is required to carry out an attack of this nature,
 - c) The extremely serious nature of the injuries, the victim had to undergo surgery and suffered a fracture to the jaw.

- d) Victim had to abandon her career in rugby.
- e) The victims was in a vulnerable position in a moving bus and was not in a position to defend herself against a sudden attack of this nature,
- f) The use of a heavy stone which is extremely lethal and dangerous when thrown at a moving vehicle with the propensity to cause serious injury.

9. I am inclined to add 1 year and 6 months to the starting point for the above-mentioned aggravating factors bringing the interim sentence to 5 years and 6 months imprisonment.

Mitigating Factors

10. Now as for the mitigating factors the following circumstances were submitted, that you;
- a. Are 24 years of age and employed earning \$100 per week,
 - b. The accused is remorseful and seeks forgiveness,
 - c. He has no previous convictions or other pending matters and thus he is a person of previous good character.
 - d. According to letter tendered by Reverend Sainimere Marama Degei the accused has been closely associated with the church but due to peer pressure he had got involved with this incident and since this incident there is an improvement of his behavior.
11. For the mitigating factors as aforesaid will deduct 2 years, leaving a balance of 3 years and 6 months imprisonment. In view of the reasons discussed above,
12. I sentence you to a total period of three (3) years and six (6) months imprisonment for the offence of act with intent to cause grievous harm for which you stand convicted.

Non-Parole period

13. Having considered the seriousness of this crime, the purpose of this sentence, and opportunities for rehabilitation, I find that a two (2) year non-parole period would serve the purpose of this sentence. Hence, you are not eligible for parole for two (2) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

14. Having considered section 4 (1) of the Sentencing and Penalties Act and the serious nature of the offences committed compels me to state that the purpose of this sentence is to punish you in a manner that is just in all the circumstances, and in a manner which is just in all the circumstances of the case.

Head Sentence

15. Accordingly, I sentence you to a period of three (3) years and six (6) months imprisonment for the offence of act with intent to cause grievous harm as charged and convicted. However, you are not entitled to parole for two (2) years pursuant to Section 18 (1) of the Sentencing and Penalties Act.

Actual Period of the Sentence

16. You were in arrested on 18th February 2021 and was in remanded for this case for 5 months and 11 days. In terms of the provisions of Section 24 of the Sentencing and Penalties Act I hold that the said period of 6 months be considered as imprisonment that you have already served.
17. I must confess my heart cries that I deal with this youth with leniency considering his youth and previous clear record. However it is the nature and gravity of the crime but not the criminal, which should be the primary consideration in determining the appropriate punishment in a crime of this nature. This Court will be failing in its duty if an appropriate punishment is not awarded for this offending which has been committed not only against the individual victim but also against the society at large in its literal sense. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the nature, and brutality with which the crime has been perpetrated and especially the direct effect of the offending on the day to day activities of the public warranting public concern in arresting this type of offending and deterring. The main object of this sentence thus deterrence.

18. Accordingly, the actual sentence is a period of is three (03) years imprisonment with a non-parole period of one (01) year and six (06) months.
19. You have thirty (30) days to appeal to the Fiji Court of Appeal if you so desire.



At Suva

29th November 2022

Solicitors

Office of the Director of Public Prosecutions for the State.

Legal Aid Commission for both the Accused