

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

Crim. Case No: HAC 271 of 2024

STATE

v

SOVAIA NAWAQASARA

Counsel: Mr. S. Seruvatu for the State
Ms. A. Dean for the Accused

Date of Mitigation/Sentencing submission: 13 May 2025

Date of Sentencing: 29 May 2025

SENTENCE

1. **Sovaia Nawaqasara**, the accused, is indicted with the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009, laid out as follows in the Information by the Director of Public Prosecutions dated and filed on 3 December 2024:

Statement of Offence

ACTS INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255(a) of the Crimes Act 2009.

Particulars of Offence

SOVAIA NAWAQASARA, on the 13th day of October 2024, at Wailea Settlement, Raiwaqa, Suva, in the Central Division, with intent to cause grievous harm to **JOSAIA YABAKI**, unlawfully wounded **JOSAIA YABAKI** by pouring hot water on him.

2. On 14 March 2025 the accused Sovaia Nawaqasara pleaded *guilty*, voluntarily and unequivocally, to the charge of *Acts intended to cause grievous harm*, confirmed by her LAC counsel Ms. A. Dean.
3. On 2 April 2025 the accused Sovaia Nawaqasara voluntarily admitted the prosecution's *Summary of facts* and *Antecedent report*, confirmed by her LAC counsel Mr. A. Prasad. The Court then formally convicted Sovaia Nawaqasara of the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009 as per the indictment.
4. Plea in mitigation and sentencing hearing was held on 13 May 2025, and this is the Courts finding on sentence.

Brief facts for *Acts intended to cause grievous harm*

5. **Sovaia Nawaqasara, the accused**, 37 years old, domestic duties of Wailea settlement, Raiwaqa, Suva, is the wife of the complainant Josaia Yabaki, 39 years, carpenter of the same

address. On 13 October 2024 at about 10.30am, the complainant requested the accused to prepare a cup of tea, and upon receiving the cup of tea, the complainant noticed that the cup was unwashed and dirty, and being displeased with the dirty cup, he then reacted by pouring out the tea. The accused saw this, got cross and responded calling the complainant in I-Taukei, “*cici levu*” meaning big anus. The complainant was offended by such derogatory and unpleasant remark, and punched the accused’s face and threw the thermos cup at her. The accused then retaliated by pouring hot water from the thermos on the complainant resulting in burn injuries. The complainant subsequently lodged a complaint to the Raiwaqa Police Station prompting an investigation. Later that day the complainant was medically examined at the Raiwaqa Health Centre by Dr. Jainesh Nand who noted the following injuries sustained by the complainant in section D(12) of his medical report dated 13/10/2024: (a) approximately 5cm x 3cm partial tenderness burn on left posterior loin area; (b) approximately 7cm x 5cm partial tenderness burn above the burn described previously; and (c) 3cm x 3cm approximately partial tenderness burn on left proximal posterior arm. The accused was interviewed under caution on 28/10/2024 at Raiwaqa Police Station, and admitted to the aforesaid facts in Q/As’ 37 – 45 of her caution interview statement. The accused was then formally charged later that day with the offence of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009. The accused was first produced in the Suva Magistrate’s Court on 29 October 2024 in CF 1548 of 2024, and the matter then transferred to the High Court on the same day by the learned magistrate.

Sentencing analysis for Acts intended to cause grievous harm

6. Section 255(a) of the Crimes Act 2009 state:

255. 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; ...

Penalty – Imprisonment for life.

7. Life imprisonment is the maximum sentence for the offence of *Acts intended to cause grievous harm*.

8. In State v Kavneel Kishant Lal [2020] FJCA 44; AAU001.2017 (28 April 2020), the Fiji Court of Appeal held at paragraph 17:

[17] Thus, Mokubula [2003] FJHC 164; HAA0052J.2003S (23 December 2003) provide general sentencing guidance that tariff for cases under section 255 of the Crimes Act, 2009 committed by any means other than a weapon, is between 6 months to 5 years of imprisonment, but if the attack is by a weapon the starting point should range from 2 to 5 years which means that the final sentence could be over 5 years depending on the nature of the weapon and other aggravating circumstances. As stated by the Court of Appeal in Vosa v State [2019] FJCA 89; AAU0084.2015 (6 June 2019) the list of aggravating and mitigating circumstances set out in Mokubula is not exhaustive.

9. Based on the above precedent, I rely on the tariff of 6 months to 5 years imprisonment justified by the fact that the accused Sovaia Nawaqasara poured hot water on her husband the complainant causing burn injuries substantiated by the medical report dated 13/10/2024 rendered by Dr. Jainesh Nand.

10. I choose a **starting point** of 1 year, and enhance it by 1 year for the **aggravating factors** bearing in mind the extent of injury sustained by the complainant including the emotional and psychological trauma having being poured hot water and sustaining burns supported by Dr. Jainesh Nand's medical report dated 13 October 2024.

11. For the **mitigating factors** of having no prior conviction indicating previous good character, 37 years, domestic duties and caring for 7 children aged 16, 15, 13, 12, 10, 4 and 3 including her husband the complainant who has reconciled and forgiven the accused as noted in his letter dated 5 November 2024, and cooperated with the police, I reduce the sentence by 6 months, thus arriving at 1 year 6 months imprisonment.

12. Of the 1 year 6 months thus far, further deductions of 6 months for the **early guilty plea**, and 30 days for **time spent on remand** are made, hence arriving at 11 months imprisonment.
13. Therefore, the head sentence for *Acts intended to cause grievous harm* in this instant is a custodial term of 11 months.

Suspended sentence

14. Due to the accused Sovaia Nawaqasara's previous good character, having reconciled and being forgiven by her husband the complainant, and the important need for her to continue collaborating with her husband in caring and looking after their 7 children who are currently attending primary and secondary schools, and pursuant to section 26 of the Sentencing and Penalties Act 2009, I have decided to wholly suspend the custodial term of 11 months for 2 years.

CONCLUSION

15. Sovaia Nawaqasara, the accused, stands convicted of the charge of *Acts intended to cause grievous harm* contrary to section 255(a) of the Crimes Act 2009, and I hereby sentence her to an imprisonment term of **11 months**, but **suspended** for **2 years**.
16. Sovaia Nawaqasara is hereby explained that in the event she commits another offence punishable by imprisonment during the 2 years operational period of the suspended sentence of 11 months imprisonment, she may be charged with an offence under section 28(1) of the Sentencing and Penalties Act 2009, and if found guilty of the latter offence, the Court may, in accordance with section 28(4), impose a fine not exceeding 100 penalty units and restore the sentence held in suspense (i.e. 11 months) and order the accused to serve it.

Permanent DVRO, standard non-molestation, non-contact orders

17. In addition to the suspended sentence, pursuant to the Domestic Violence Act 2009, I hereby issue a ***Permanent Domestic Violence Restraining Order*** [s.22] with the standard non-molestation conditions [s.27] including a non-contact order [s.29] against **Sovaia Nawaqasara**, and the protected party being the complainant **Josaia Yabaki**.

18. Thirty (30) days to appeal to the Fiji Court of Appeal.



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Hon. Mr. Justice Pita Bulamainavalu
PUISNE JUDGE

At Suva

29 May 2025

Solicitors

Office of the Director of Public Prosecutions for the State

Legal Aid Commission for the Accused