

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

**CRIMINAL APPEAL CASE NO: HAA 003 of 2009**

**BETWEEN:**

**ELIKI HARRY**

***Appellant***

**AND:**

**THE STATE**

***Respondent***

**Counsel:** Appellant in person  
Ms J. Cokanasiga for State

**Date of Hearing:** 27<sup>th</sup> May 2009

**Date of Judgment:** 1<sup>st</sup> June 2009

## **JUDGMENT**

[1] The appellant was convicted on his own plea of guilty to the following offence and sentenced to 4½ years imprisonment:

### ***Statement of Offence***

**ACT WITH INTENT TO CAUSE GRIEVOUS HARM:** Contrary to Section 224(a) of the Penal Code Act 17.

**Particulars of Offence**

ALIKI HARRY, on the 26<sup>th</sup> day of October, 2008 at Nasinu in the Central Division, with intent to do some grievous harm to MARIKA VUNIBAKA, squeezed the scrotum of the said MARIKA VUNIBAKA.

- [2] He appeals against sentence saying it is harsh and excessive.
- [3] The complainant was a 15 year old student. He sustained serious injuries to his scrotum and was hospitalized for three days. The incident happened at the time the complainant was to sit for external exams. Special arrangements had to be made for him to do his exams.
- [4] The appellant was drunk at the time of the assault. Apparently, he was upset with the complainant for harassing his teenage daughter. He was a man of previous good character and the sole breadwinner for his family. His three children are schooling.
- [5] The learned Magistrate took 6 years as a starting point and gave the following reductions:
- "2 years deducted for an early guilty plea;  
6 months deducted for not having re-offended since 1993;  
6 months deducted for remorse in court;  
6 months deducted for promising not to re-offend."
- [6] The learned Magistrate increased the sentence by 2½ years for the serious injuries sustained by the complainant and arrived at the final sentence of 4½

years imprisonment. The Magistrate did not take into account that the appellant had spent about a month in remand while awaiting sentence.

- [7] The tariff for the offence of act with intent to cause grievous harm range from 6 months to 5 years imprisonment (**State v. Mokubula** [2003] FJHC 164; HAA0052J.2003S (23 December 2003)).
- [8] The higher side of the range is reserved for pre-planned attack that results in serious injuries to the victim (**Shiu Sami & Shiu Kumar -v- State** Crim. App. AAU0007 of 1995).
- [9] In this case the learned Magistrate picked 6 years as her starting point, which fell outside the range for this type of offence.
- [10] In a recent case of **Raj -v- State** Cr. App. No. HAA004 of 2009 (27 May 2009), this Court stressed the following point about selecting a starting point for sentence:
- "As a matter of principle, starting point should be picked up from within the range. A term outside the range should only be picked if exceptional or special circumstances are present."
- [11] In the present case the learned Magistrate offered no reasons for selecting 6 years as her starting point. Nor can I find any special circumstances to go outside the range.
- [12] For these reasons I find the learned Magistrate fell in error, which justifies this Court to intervene.

- [13] I use three years as my starting point. The mitigating factors are the appellant's early guilty plea, remorse, previous good character and family circumstances.
- [14] The aggravating factors are that the complainant was a child who sustained serious bodily injuries and that the assault took place while the appellant was drunk.
- [15] After adjusting for the mitigating and aggravating factors and the time spent in custody, the appellant is sentenced to 18 months imprisonment. I find no special circumstances to suspend the imprisonment term.

### **Result**

- [16] The appeal against sentence is allowed. The sentence is reduced to 18 months imprisonment effective from 2 December 2008.

.....  
Daniel Goundar  
**JUDGE**

At Suva  
1<sup>st</sup> June 2009

**Solicitors:**

Office of the Director of Public Prosecutions for State  
Appellant in person