

IN THE HIGH COURT OF FIJI
AT LABASA
CRIMINAL JURISDICTION

Criminal Case No. HAC 32 of 2018

STATE

V

RUKSHANA HUSSEIN

Counsels: Mrs. D. Kumar for the State
Mr. S. Sharma for the Accused

Date of Plea: 20 July 2018
Date of Mitigation: 30 July 2018
Date of Sentence: 06 August 2018

SENTENCE

1. The accused has entered a plea of guilty to the following charge:

Statement of Offence

ACT INTENDED TO CAUSE GRIEVOUS HARM: Contrary to section 255[a] of the Crimes Act 2009

Particulars of Offence

RUKSHANA HUSSEIN on 13 September 2017 at Labasa in the Northern Division with intent to do grievous harm to **JP** unlawfully burnt the said **JP** with a hot spoon.

2. The facts agreed between the parties are as follows:

“The complainant is JP, a child of 7 years. She was a Year 2 student and lived with her mother (the accused) her step-father, brother and uncle.

The accused is 21 years, domestic duties. She is the biological mother of the child complainant.

On the 13 September 2017 JP woke up around 3am as she normally did to prepare for the day. She was wearing a dress and washing dishes. The accused was making roti and kept telling JP to be fast with her chores. She was angry with JP.

At this point the accused lifted JP's dress and placed a hot cooking spoon on her back. The spoon was heated on an open flame from the wood stove she was cooking the roti on JP tried to run but the accused pulled her dress. She was burnt and cried.

Later at about 5am, JP got dressed for school but the accused left to go to the sugar cane farm without making JP's hair. She did not go to school.

On 14 September JP's teacher noticed the burn injury on her and informed Social Welfare. A social welfare officer reported the matter to the police on the same day.

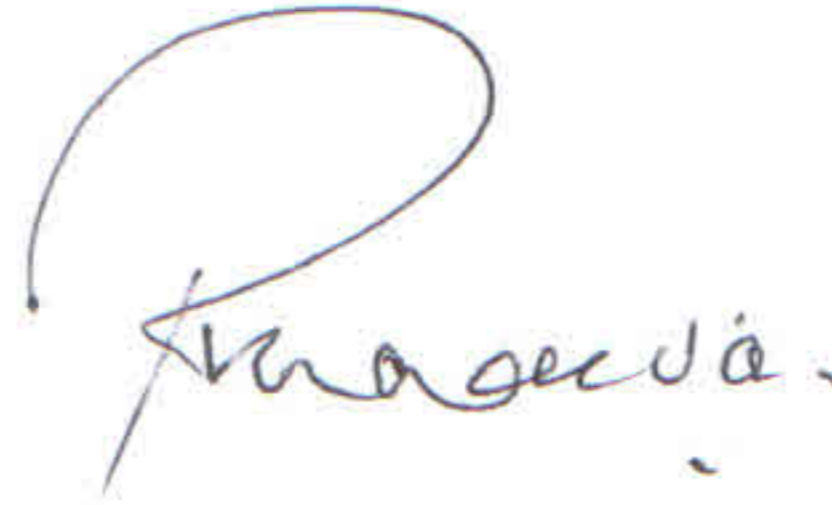
On 13 September 2017 JP was medically examined at the Labasa hospital. She had injuries on her left buttock, right lower back, left buttock (sic) and forehead.

The doctor noted areas of superficial burns, tenderness, bruises and swelling. The skin on her back was noted to be red, peeling and tender. ”

2. In Mitigation Counsel submits that the accused is married with 2 children. She is a housewife. She has no previous convictions and has pleaded guilty. She is very remorseful and understands that it was very wrong for her to do what she did. The time she spent in a Police cell and on remand has taught her a lesson and she is now a changed woman and promises not to reoffend.
3. Counsel for the State submits that this is a serious case of abuse of a 7 year old who was woken at 3am to help the accused with household chores. It is claimed that the assault was a breach of trust with a weapon (the hot spoon) on a vulnerable child.
4. The offence of act with intent to cause grievous harm attracts a maximum penalty of life imprisonment and Shameem J set the tariff to be a term of imprisonment of between 6 months and 5 years in **Maba Mokubula** HAA52/2003S. She stated that if a weapon is used the sentence should be at the upper end of this range.
5. A social welfare report obtained by the State for the purposes of sentencing is disturbing, but helpful.

6. It is reported that the child (now 8) has been in the care of the state since 21 September 2017. She is housed at a children's home in Savusavu. She was removed from the care of her mother when her teacher reported marks of physical abuse on her body and it was noted that she was not washed or provided with suitable food for the day.
7. She is thriving under the care of the wardens at the Childrens' home and her reports from school are laudatory. She speaks and reads three languages (English, Hindi and Fijian) fluently.
8. However she has refused to have family members visit her, and whenever teachers or wardens talk about families she becomes morose and untalkative.
9. It is clear from the report that she has suffered very badly both physically and psychologically at the hands of mother and step-father and it is her stated choice that she remain at the home with the people she now regards as family.
10. For this offence I take a starting point of 18 months' imprisonment. For her clear record I deduct a term of 6 months and to reflect her co-operation and plea of guilty at a very early stage of proceedings I deduct a third being 4 months which means that the accused will serve a total term of imprisonment of 8 months.
11. Her counsel asks that any term of imprisonment be suspended. Suspension of sentence for this crime can only be ordered in very exceptional circumstances. If the accused is remorseful it is remorse too late. Society will not countenance physical and emotional abuse of such a young child, or any child for that matter. The sentence is a sentence to be served.

12. Section 18 of the Sentencing and Penalties Act 2009 is not applicable so there is no minimum term to be served.



P. K. Madigan

Judge



At Labasa

06 August 2018