

IN THE HIGH COURT OF FIJI
AT SUVA
REVISIONAL JURISDICTION

Criminal Review Case no. HAR 005 of 2014

BETWEEN

STATE

AND

JONE VASUTOGA

Respondent.

Counsel: Mr. S. Nath for the State
Respondent absent and unrepresented

Dates of hearing: 12 & 15 December 2014, 16 January,
20 February and 30 March 2015

Date of Judgment: 27 April 2015

JUDGMENT

1. On the 26th November 2014, the respondent was sentenced in the Magistrates Court at Suva to one count of "assault causing

actual bodily harm" contrary to s.275 of the Crimes Decree 2009. He had earlier entered a plea of guilty to the charge and admitted a set of relevant facts.

The facts admitted were:

"On the 14th June 2014 at Nanuku Settlement a fight broke out between the accused and his wife. The accused tried to choke her but she threw a bucket at him at which he slapped her and punched her several times on the face and head. The wife left and went to spend the night at the accused's parents house. The next day the accused went to his parents' house and called for her. She said she had not heard him calling and so she didn't go out to see him. In a rage, the accused went in and started to beat her, punching her in the face. Medical evidence stated that she suffered swelling on both sides of the face and forehead and had cut lips".

2. The accused in mitigation said that he had no previous record, that he had co-operated with the police and had entered a plea of guilty at first opportunity. He said he was very angry and that he could not stop himself as she had not come to him when he called her.
3. In his sentence, the learned Magistrate noted society's abhorrence of violence against women and noted also that this particular accused appeared to have no remorse whatsoever and even told the Court that he saw nothing wrong with what he did.
4. The Magistrate then went on to sentence him to 12 months' imprisonment, the first two months to be served and the balance suspended.

5. This Court has called for the file to review that sentence pursuant to section 260 of the Criminal Procedure Decree 2009. Such a process is in place to check the propriety of the sentence passed and the appropriateness of the proceedings below.
6. There have been many hearings of this matter because of the difficulty in locating the respondent who once released from custody has left his wife and his whereabouts unknown. The respondent has still not been located and hasn't had the opportunity of being heard on this review. Section 262 (2) of the Criminal Procedure Decree would prevent this Court from acting to the prejudice of the respondent without hearing from him or his counsel. For that reason alone, the lenient sentence passed below will not be disturbed.
7. It is an alarming trend noted in Fiji that more and more cases of spousal assault are coming before the Courts and clear parameters must be set to try and deter would be aggressors in the matrimonial home.
8. The maximum penalty for assault causing actual bodily harm is 5 years imprisonment. The tariff was set by Goundar J in **Jonetani Sereka** HAA 27/2008 (25 April 2008) where he held that the tariff ranges from a suspended sentence where there is a high degree of provocation to 9 months imprisonment for serious assaults that cause harm. That tariff was set for the offence under the Penal Code where the maximum penalty was the same.
9. That tariff (suspended to 9 months) is still appropriate except as to say that in a domestic violence context the sentence can rise above the 9 months mark to allow for breach of trust and a

consideration of the factors which must be considered as set out in section 4 (3) of the Sentencing & Penalties Decree 2009.

10. The sentence imposed by the learned Magistrate although lenient is not wrong in law or principle and will not be disturbed.
11. It is to be noted however that sentences for assaults occasioning harm in domestic violence cases will very rarely result in suspended sentences, because of the breach of trust and to send the perpetrator back into the family home is probably courting disaster without a "cooling off" period.



At Suva
27 April 2015

A handwritten signature in black ink, appearing to read "P. K. Madigan".

P. K. Madigan
Judge