

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

**CRIMINAL CASE NO. HAC 027 of 2018**  
**[Magistrates' Court Criminal Case No. 100 of 2018]**

**BETWEEN** : **THE STATE**

**AND** : **TANIELA VAKALACA**

**Counsel** : **Ms S Lodhia for the State**  
**Ms L David for the Accused**

**Date of Hearing** : **18 May 2018**

**Date of Sentence** : **31 May 2018**

**SENTENCE**

[1] Taniela Vakalaca, you appear for sentence after freely and voluntarily pleading guilty to the following offences:

- Count One - Act with Intent to Cause Grievous Harm contrary to section 255(a) of the Crimes Act.
- Count Two - Serious Assault contrary to section 277(b) of the Crimes Act.
- Count Three - Damaging Property contrary to section 369(1) of the Crimes Act.
- Count Four - Resisting Arrest contrary to section 277(b) of the Crimes Act.

- [2] The Court is satisfied that your guilty pleas are informed and competent. You are convicted as charged.
- [3] The victim, Lavenia Nanovu is your spouse. Together you have three children between two and six years of age. You have been married for six years.
- [4] On 13 January 2018 at about midday, you confronted your wife in rage when you saw her sitting with her cousin at Suva foreshores. You punched her in the face and she fell down. While she was on the ground, you picked up a piece of wood and hit her on the back of the head. You kicked her head and dragged her into a taxi that drove you to your home in Raiwai. When you arrived home, you inflicted further violence on your wife. A relative reported the violence.
- [5] When the police officers arrived at your home, they found your wife's face and clothes drenched in blood. They immediately took her to Raiwaqa Police Station to facilitate the documents for medical examination. While they were at the station, you came to the station and behaved unruly towards the police officers. You followed your wife to the health centre and tried to assault her. When CPL Nandni intervened to stop you, you punched her in the chest and pushed her away. In the process, CPL Nandni's official name badge was damaged. Constable Shavneel tried to arrest you. You resisted arrest by trying to punch the officer and fled the scene. Later, you were arrested from your home and interviewed under caution.
- [6] The victim sustained physical injuries as a result of the violence that you inflicted on her. She sustained a 5 cm laceration on the back of her scalp, swellings on the forehead and abrasions and scratches on her back shoulder region. CPL Nandni was also medically examined. Tenderness was noted on her right chest.
- [7] Although there is no specific offence of domestic violence, the Court regards the assault on your spouse as an incident of domestic violence. Section 3 of the Domestic

Violence Act states that domestic violence in relation to any person means violence against that person (the victim) committed, directed or undertaken by a person (the perpetrator) with whom the victim is, or has been, in a family or domestic relationship. Violence is broadly defined by section 3(2) of the Act. It includes physical injury or threatening physical injury.

- [8] When sentencing for domestic violence, the Court must have regard to the factors outlined in section 3 of the Sentencing and Penalties Act. Pre-sentencing counselling reports on you and the victim have been submitted to the Court. Your report was compiled by Empower Pacific, an organization that provides counselling services to perpetrators of gender based violence. In that report you have informed your counsellor that you became upset when you returned home after work and found your children left alone at home with a sickly relative. You searched for your wife and when you found her at Suva foreshores, you lost your temper and assaulted her. In your counselling session you minimized the gravity of your offending by giving an impression that you used minimum violence on the victim. You have informed your counsellor that you have apologized to your wife and have attended anger management sessions in prison.
- [9] The victim's report was compiled by Medical Services Pacific. In that report, the counsellor has found the victim confused and in a state of fear of the consequences of the outcome of the criminal charges against you. She claims that the children did not witness the assault on the day in question as they were with their maternal grandmother and not at home. According to her, your six-year old son misses you and is having trouble sleeping at night. Your wife is economically disadvantaged and she feels she is at fault for depriving herself and her children the only source of livelihood they had. Currently, she is receiving some financial assistance from the State after an intervention by counsel for the State when the Department of Social Welfare expressed reluctance to provide any financial assistance to her and her children when you were remanded in custody by this Court.



- [10] In mitigation, your counsel has informed the Court that you are 32 years old, and at the time of the offending, you were casually employed as a cable layer for the 4G network by a company contracted by Telecom Fiji Limited. You have given your counsel a different reason for the violence that you inflicted on your spouse. You suspected that your spouse had used the wages that you had earned on night clubbing. You hold strong misguided views regarding the role of women. You think that your role as a husband is to provide for your family and your wife's role is to take care of your home and children. She used to work but you got her to leave her job to look after the family. When you found out that your wife was not at home when you returned from work, you felt you had to teach her a lesson in order to regain control of her using violence.
- [11] In your case, your wife has expressed a desire to reconcile and continue with the relationship. As a matter of general sentencing principle, little weight is accorded to pleas by the victim to reduce the sentence considered appropriate by the court (*R v Perks* [2001] 1 Cr App R (S) 66). While this Court is mindful that the victim has expressed a wish to remain in a relationship with you, the paramount consideration is the protection of the victim and the prevention of violence. The courts have a duty to protect women and children from gender based violence. Deterrence, both special and general, and denunciation are primary purposes of punishment for domestic violence. Rehabilitation is only significant if the offender takes genuine effort to reform.
- [12] The Court is also mindful that the seriousness of an incident of violence is not diminished merely because it takes place in a domestic context. An offence of violence is an offence of violence regardless of whenever or wherever it occurs. The Court must also have regard to the maximum penalty prescribed for the offence and any established tariff to assess the seriousness of an offence.
- [13] The offence of Act with Intent to Cause Grievous Harm is punishable by discretionary life imprisonment. The tariff for this offence is between 6 months

imprisonment to 5 years imprisonment, and in cases where a weapon is used, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon (*State v Mókubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)). Further, the offence may be aggravated by the seriousness of the injuries, premeditation or planning, length and nature of the attack and vulnerability of the victim. In your case, you struck the victim on the head with a piece of wood, causing her to fall and you continued to punch and kick her on the head while she was on the ground. Head is a vulnerable part of the body. The assault on the head was dangerous. You continued to punch the victim after you arrived home with her. There is no evidence of planning or premeditation but the duration of the attack was long. Fortunately, the victim was not seriously injured. The seriousness of your conduct falls in the middle range of the tariff for the offence.

- [14] Serious assault on a police officer in due execution of his or her duty is punishable by 5 years imprisonment. The maximum penalty was recently increased to 10 years imprisonment by the Parliament. However, in your case, 5 years imprisonment is applicable as that was the punishment available at the time the offence was committed. The tariff is between 6-9 months imprisonment but in *State v Batiratu* [2012] FJHC 864; HAR001.2012 (13 February 2012) Gates CJ said at [46]:

The perversity of the offence is its violent challenge to lawful action taken by State servants, not in the extent of the assault. Of course the greater the violence and the injuries caused will lead to enhancement of sentence.

- [15] You punched CPL Nandni once in the chest when she came between you and your spouse in order to protect her from further assault by you. Fortunately, the officer did not sustain any physical injury. The seriousness of your actual conduct falls on the lower end of the tariff for serious assault.

- [16] Damaging property is punishable by 2 years imprisonment. The tariff is between 3-12 months imprisonment (*State v Baleinabodua* [2012] FJHC 981; HAC145.2010 (21

March 2012)). The property that was damaged was an official name badge that the police officers are required to wear while on duty. There is no evidence of the actual cost of the damage to the badge. The seriousness of your actual conduct falls on the lower end of the tariff.

- [17] Resisting arrest is punishable by 5 years imprisonment. The tariff is between 6-12 months imprisonment (*Hicks v State* [2011] FJHC 455; HAA018.2011 (19 August 2011)). You resisted arrest by trying to punch Constable Shavneel and fleeing the scene. No physical violence was inflicted on the arresting officer. The seriousness of your actual conduct falls on the lower end of the tariff.
- [18] However, when assessing your overall criminality, the seriousness of the individual offences that you committed is less significant. In your case, your overall criminality is assessed on the basis that you committed four separate offences. There are two female victims – your spouse and a woman police officer. You were in a position of mutual trust with your spouse. Instead of giving her respect and care, you breached her trust by inflicting physical violence on her. There is also present an element of abuse of power. You have created an environment of power imbalance in your relationship. She and her young children are dependent on you for their livelihood. It makes her vulnerable from seeking and obtaining help when faced with domestic violence. It was a relative who alerted the police of the violence on the day in question. Otherwise, victims of domestic violence suffer in silence due to fear of adverse consequences of reporting.
- [19] Your early guilty plea is the only compelling mitigating factor in your favour. By pleading guilty you have saved court time and resources and relieved the victim from the stress of giving evidence. But I have reservation whether you are genuinely remorseful. You faced a strong prosecution case. You continued with your aggression towards your wife in the plain view of the police officers. You made admissions under caution. In taking responsibility for your action you tried to justify or minimize



the gravity of your conduct. But I am mindful that you are willing to undergo counselling and change your behavior.

[20] You have 10 previous convictions ranging from robbery with violence to burglary. On 13 April 2017, you were sentenced in absentia to 26 months imprisonment for aggravated burglary and theft. You started serving that sentence effective from 6 March 2018. You are not entitled for any reduction in sentence for previous good character.

[21] Your remand period is about one month and three weeks. I make a downward adjustment to your sentence to reflect your remand period.

[22] If it was not for your early guilty plea, I would have imposed a total sentence of 3 years' imprisonment to reflect your overall criminality. For your guilty plea, I give you a discount of one third.

[23] You are sentenced as follows:

Count One - Act with Intent to Cause Grievous Harm – 2 years' imprisonment.

Count Two - Serious Assault – 6 months' imprisonment.

Count Three - Damaging Property – 3 months' imprisonment.

Count Four - Resisting Arrest – 6 months' imprisonment.

[24] I now consider whether to make the sentences concurrent or consecutive. The offences of serious assault, damaging property and resisting arrest were committed in one transaction. Those three terms are made concurrent. But the offence of act with

intent to cause grievous harm to your spouse is a separate serious offence that warrants a separate punishment to reflect the overall criminality involved. The term of 2 years' imprisonment is made consecutive with the terms imposed for serious assault, damaging property and resisting arrest. Your total sentence is 2 years and 6 months' imprisonment. You are already serving a term of 2 years and 2 months' imprisonment in an unrelated case. I am mindful that making the sentence imposed in the present case consecutive to your pre-existing sentence may result in an excessive sentence and offend the totality principle. For these reasons, I order the total term of 2 ½ years' imprisonment to be served concurrently with your pre-existing sentence. Given your willingness to reform your conduct, I decline to fix a non-parole period.



A handwritten signature in black ink, appearing to read "Goundar", written over a dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Office of the Director of Public Prosecutions for the State  
Legal Aid Commission for the Accused