

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Case No. HAC 270 of 2018
[Magistrates' Court Criminal Case No. 1015 of 2018]

BETWEEN : STATE

AND : ILISONI KALOUTERETERE

Counsel : Ms S Sharma for the State
Ms L David for the Accused

Date of Hearing : 11 September 2018

Date of Sentence : 12 September 2018

SENTENCE

- [1] Ilisoni Kalouteretere, you have pleaded guilty to two counts of assault causing actual bodily harm and one count of act with intent to cause grievous harm. Your guilty pleas are informed and unambiguous. You are convicted as charged.
- [2] There are three victims. The victims are your wife and two young daughters. One is your biological daughter and the other is your adopted daughter. Your wife is 27 years old. She is expecting your second child. Your daughters are 4 and 3 years old. You are 25 years old. You financially support your family. At the time of the offending, you worked as a baker at a bakery near your home at Howell Road, Suva.
- [3] On 11 June 2018, when you returned home after a 10-hour shift work, you had an argument with your wife regarding your children. You blamed her for not disciplining

your children. During the argument, you picked up a raw cassava and threw at her. The cassava hit her face and shoulder. You then punched her in the cheek. She sustained a tear and tenderness in the face.

[4] The following day, you had another argument with your wife. During the argument you saw your 3-year old daughter playing with dirt. You told her to stop playing with dirt and when she didn't listen, you turned your fury on her. You described the assault on the child in your caution interview as follows:

Q: What then happened when she was not listening to you?

A: I picked stick and hit her back four (4) times. When the stick was broken into half, I then hit her with a wooden kitchen knife handle (2) two times.

Q: Was this the stick and the wooden handle of kitchen knife you used to hit Alesi? [Items shown]

A: Yes.

Q: Can you confirm it?

A: Yes.

Q: What happen next?

A: I rub some ripe chillies on her mouth, packed her in a sack and then hit her with a phone charger (5) five times and a wooden broom handle (2) two times.

Q: How did you packed her in the sack?

A: I put her legs first inside the sack, pulled the sack up till her waist then hitting her.

Q: What was the weight of the sack?

A: It was a 10 kg sack.

Q: Can you confirm that this is the phone charger and the wooden broom handle you used to hit Alesi? [Items shown]

A: Yes.

[5] The 3-year old child victim was medically examined on 13 June 2018. The specific medical findings were:

(a) Face grossly swollen and bruised especially under both eyes and swollen lips.

- (b) Upper back multiple bruises noted making up a large area on the back – tender to touch.
- (c) The child was hospitalised.

- [6] On 13 June 2018, you were at work when your brother came and told you that your 4-year old daughter was crying at the roadside. You went home and found your daughter in a distressed condition wanting to be with her mother. At the time your wife was at the hospital. When your daughter did not stop crying, you lashed out your fury on her. You slapped her in the face several times until she started bleeding from her nose and also hit her several times in the hands and back with a wooden broom handle. Her upper lip was cut and her forearm and back were bruised.
- [7] In assessing the objective seriousness of an offence, regard must be made to the maximum penalty prescribed for that offence. The maximum penalty prescribed for assault causing actual bodily harm is 5 years imprisonment. The tariff ranges from a suspended sentence where there is a degree of provocation and no weapon used, to 9 months' imprisonment for the more serious cases of assault (*State v Anjula Devi*, Criminal Case No. 04 of 1998 Lab).
- [8] The offence of act with intent to cause grievous harm is a more serious offence. The offence is punishable by life imprisonment. Grievous harm is a dangerous or serious harm. The tariff is 6 months' imprisonment to 5 years' imprisonment (*State v Mokubula* [2003] FJHC 164; HAA0052J.2003S (23 December 2003)).
- [9] The offences you committed constitute family violence. In sentencing, the Court must have regard to all the factors outlined in section 4(2) of the Sentencing and Penalties Act, and in particular, the factors outlined in subsection (3).
- [10] By entering early guilty pleas, you have expressed remorse for your conduct. Your guilty pleas are consistent with your admissions made to the police under caution. You have relieved your wife and children from giving evidence and have saved court

time and resources. For all these factors I give you a discount of one third. Further, you are a first time offender. I give you some credit for your previous good character.

[11] You have been in custody on remand since 18 June 2018. I make a downward adjustment of 3 months to reflect your remand period.

[12] I consider the following as the aggravating factors:

- The victims were your wife and your children. You breached their trust by inflicting violence on them.
- Your two children were vulnerable due to their tender age.
- The children were beaten with weapons – wooden knife and broom handles and phone charger.
- The beating of the 3-year old child was cruel, prolonged and dangerous.
- The victims not only suffered physical trauma, but they also suffered psychological trauma.

[13] I weigh all these factors to arrive at a sentence that reflects the criminality involved. Despite your early guilty plea, expression of remorse and previous good character, the courts have a duty to denounce family violence and deter others. The violence that you inflicted on your family was not only savage but senseless. I denounce such violence in the strongest terms.

[14] I sentence you as follows:

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| Count 1 | - | Assault causing actual bodily harm – 6 months' imprisonment. |
| Count 2 | - | Assault causing actual bodily harm – 9 months' imprisonment. |
| Count 3 | - | Act with intent to cause grievous harm – 2 years' imprisonment. |

- [15] I am mindful of the totality principle. All sentences are made concurrent. The total effective sentence is 2 years' imprisonment. Suspension is inappropriate due to the use of weapons to inflict physical injuries on the victims. The message to you and others is that you be prepared to go to jail if you are going to inflict violence on vulnerable women and children. I decline to fix a non-parole period to give you a chance to rehabilitate.
- [16] A permanent domestic violence restraining order with standard non-molestation conditions is issued for the safety and wellbeing of all three victims. This order will remain in place until further order from the High Court, Family Division.
- [17] The Department of Social Welfare is to attend to the welfare of all three victims while the offender is in prison.



A handwritten signature in blue ink, consisting of the letters "DGA" followed by a horizontal line.

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Hon. Mr Justice Daniel Goundar

Solicitors:

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