

Particulars of Offence

AMITESH KUMAR on the 22nd day of January, 2019 at Nasinu in the Central Division assaulted **PRIYANKA SHIVANI** thereby causing her actual bodily harm.

2. In the presence of your counsel, you pleaded guilty to the above charge on your own free will. You agreed the Summary of Facts read in court by the Prosecution. You understood the charge and the Summary of Facts. I am satisfied that you pleaded guilty on your own free will and that your guilty plea is well informed and unequivocal. I find that the Summary of Facts satisfies the elements of the offence. You are convicted as charged.
3. In sentencing you, I have taken into account the following Summary of Facts agreed by you;

“Accused (A1): Amitesh Kumar, 24 years old, salesman of Lot 32 nasinu Road.

Complainant (PW1): Priyanka Shivani, 24 years old, pack leader of Lot 32 Nasinu Road.

PW1 is the girlfriend of A1. On 22 January, 2019 at Nasinu in the Central Division between 2pm – 3pm, PW1 and A1 were at their flat. PW1’s former flatmate had called PW1 on her phone and A1 questioned her about it as he suspected that PW1 was having an affair with her former flatmate. A1 then began to slap and punch PW1 on the face several times and blood began to come out of her mouth. When his hands got tired, A1 then used a stick to assault PW1 by hitting her hands with it. Furthermore, A1 also used a USB

cable wire to hit PW1 on the face two or three times. A1 continued to assault PW1 thereafter. Later on, the Police intervened and A1 was arrested.

PW1 was medically examined on the same day 22 January, 2019 at the Valelevu Health Centre whereby a medical report was prepared by Doctor Ashwin Chand who noted the injuries at D(12) and Appendix 1 of the said report:

- Multiple bruises noted over the body, extensive bruises over the hand, chest, legs and posterior back; and*
- Facial swelling with mandibular swelling and facial asymmetry as well as bruises noted on the face.*

The Medical Report of PW1 is attached as Annexure 1.

On 24 January, 2019, A1 was interviewed under caution at the Valelevu Police Station where he made admissions at Q7A 28 – 37. A1 admitted to slapping PW1 across the face 10 times, punching PW1 on the face 2 – 3 times, using a stick to hit PW1's hands and using a USB cable wire to hit PW1 on the face 2 – 3 times as well.

The Record of Interview of A1 is attached as Annexure 1

Afterwards, A1 was charged with one count of Assault Causing Actual Harm.

On 27 March, 2019, A1 pleaded Guilty to this offence of his own free will and in the presence of his counsel.

4. The maximum sentence prescribed by law for the offence of Assault Causing Actual Bodily Harm is 5 years' imprisonment.
5. In *Matai v State* [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) Madigan J set a tariff for the offence of Assault Causing Actual Bodily Harm, when committed in a domestic setting, ranging from 6 months to 18 months. Referring to Shameem J's judgment in *Salote Tugalala* [2008] FJHC 78 (29 April 2008), His Lordship observed:

"In light of Shameem J's finding (supra) it must now be said that the tariff for a domestic violence assault causing actual bodily harm is a wide range of 6 to 18 months, wide enough to cater for all kinds of injuries. It would be only in exceptional circumstances that a suspended sentence would be passed for the offence, given that sending the convict back into the family home could well have perilous consequences. For a second offence on the same victim, a suspended sentence is inconceivable"

6. It is aggravating that you assaulted the complainant who is your girlfriend. She had been living in a domestic relationship with you for more than one year. You admitted punching and slapping her not once but several times after an argument over a telephone call she received from her former flat mate. She did not offer any provocation. Even if she did, the repetition of the attack exceeded your limit. You also used a stick and a USB cable to inflict her injuries. According to the medical report, she has received extensive bruises all over her body; hands, chest, legs, face, posterior back and she suffered a facial swelling.
7. If you had a reasonable suspicion in your girlfriend of having an affair with another boy, violent reaction that you resorted to is not the solution to your problem. Fiji is an open society where a relationship is based on mutual trust and

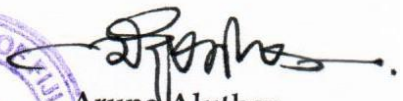
understanding. You could simply end a relationship that you don't trust without resorting to violence.

8. I considered the mitigating circumstances of your offending. You have pleaded guilty to the charge at the first available opportunity. You have been extremely remorseful. The complainant was present in court each time the case was called and, at the mitigation hearing, she came forward to confirm that she has reconciled with you. She has accepted your apology unreservedly. You sounded genuine to me when you were giving your mitigation. The court however will not simply accept reconciliation proposals unless it is fully satisfied that the reconciliation is genuine and sustainable.
9. The complainant said in court that she cannot live without you and your support. A reconciliation deal struck in unequal bargaining conditions will be seen by the courts with a degree of skepticism unless there is strong evidence of a solid basis for true and genuine reconciliation. The complainant said that she is worried that she is in a helpless and dependent situation without your support. A situation such as this is liable to be exploited by the strong against the weak. Therefore, having accepted your remorse in mitigation as being genuine, I am not inclined to give full credit to the so called reconciliation.
10. Resorting to violence aimed at resolving domestic issues has become a big problem in Fiji. It is unfortunate that court interventions are sought in familial issues that could easily and amicably be settled by way of dialog based on mutual understanding and trust. Once confronted with a violent domestic issue, the courts are looked upon by the society as saviors who will do something substantial to ensure that the vulnerable victims and potential victims in domestic setting are safe and protected. The court must demonstrate that it will not tolerate any kind of domestic violence and that it will come down harshly on

violators. Given that, an immediate prison term is warranted to punish you for your violent offending so that a clear message is sent to the society.

11. You are currently serving a 5 month prison term in a separate matter which began on the 13th March 2019. You have been in custody since 22nd January 2019 for this matter hence your remand period is 1 month and 21 days. Your remand period has been considered in coming to the final sentence.
12. Considering the seriousness of the offence, the harm caused to the complainant and all mitigating and aggravating factors, I sentence you to a period of 12 months imprisonment.
13. I do not think it appropriate to keep you in prison for the whole period of your sentence. You are a young offender with a good prospect of rehabilitation. I suspend 6 months of your sentence for a period of 3 years. If you commit any other offence in the next 3 years, the remaining 6 months imprisonment term may be activated.
14. In result, you are to serve only 6 months in prison with immediate effect and the rest of the sentence is suspended for a period of 3 years. I order that you serve this sentence concurrent to the sentence that you are serving at present.
15. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

AT Suva
On 22 May 2019

**Counsel: Office of the Director of Public Prosecution for Prosecution
Office of the Legal Aid Commission for Accused**