

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**[CRIMINAL JURISDICTION]**

**CASE NO: HAC. 163 of 2016**

**BETWEEN** : **STATE**

**AND** : **MONISH CHAND**

*Counsel* : *Ms. Lata P.K. for the State*  
: *Ms. Volau L. for the Accused*

*Hearing on* : *27<sup>th</sup> February 2020*  
*Sentence* : *06<sup>th</sup> March 2020*

**SENTENCE**

1. Mr. Monish Chand, you were initially charged on two counts, to which you pleaded not guilty and the trial was taken up. In the trial, at the conclusion of the prosecution case, you were acquitted of the 1<sup>st</sup> count of rape as the prosecution failed to adduce sufficient evidence. At that juncture, you moved to withdraw your earlier plea in regards to the 2<sup>nd</sup> count, which was allowed.
2. The alleged 2<sup>nd</sup> count was read over to you and explained. You having understood the said count freely and voluntarily pleaded guilty to it. That count is;

**COUNT 2**

*Statement of Offence*

**ASSAULT CAUSING ACTUAL BODILY HARM**: contrary to section 275  
of the Crimes Act 2009

*Particulars of Offence*

**Monish Chand** on the 27<sup>th</sup> day of July 2016 at Nadi, in the Western Division, assaulted Irene Lata thereby causing her actual bodily harm.

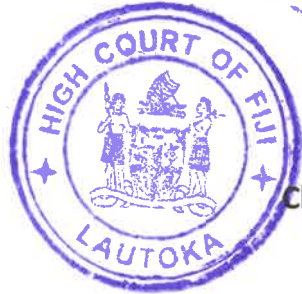
3. Monish Chand, you have freely and voluntarily pleaded guilty to the above count. I am satisfied and convinced that you have pleaded so unequivocally, having understood the consequences of such a plea.
4. The evidence transpired throughout the trial revealed that you assaulted your wife Irene Lata and thereby she suffered bodily harm.
5. I find that the above unchallenged evidence support all elements of the 2<sup>nd</sup> charge in the Information, and find the said charge proved. Accordingly, I find you guilty on your own plea and I convict you of the count of Assault Causing Actual Bodily Harm, contrary to section 275 of the Crimes Act 2009.
6. The maximum sentence for the offence of Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009 is an imprisonment for 5 years.
7. The tariff for the offence of Assault Causing Actual Bodily Harm ranges from absolute or conditional discharge to 12 months of imprisonment. (Per Shameem J. in **State v Tugalala** [2008] FJHC 78; HAC 025S.2008S)
8. In determining the starting point within the said tariff, the Court of Appeal, in **Laisiasa Koroivuki v. State** [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

In the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your aggregate sentence at 04 months of imprisonment.

9. As for the material available before me the main aggravating factor that could be considered to enhance the sentence would be the breach of trust. The accused is the husband of the complainant, meant to protect her and not to assault her.
10. The mitigation factors are that the accused has co-operated with the police. In addition he has pleaded guilty before the conclusion of the trial showing his remorse.
11. In consideration of the aggravating factors set out above I enhance your sentence by further 2 months and now your sentence stands at 6 months of imprisonment.
12. In consideration of the factors set out in mitigation I will deduct 2 months and now your sentence would be 4 months of imprisonment.
13. Now I will consider the provisions of section 26(1) of the Sentencing and Penalties Act. The accused has been in remand for about 12 days. Therefore I will deduct two weeks in lieu of the said 12 days and the remainder you will have to serve would be 3 months and 2 weeks.
14. Though the state submits that he has two previous convictions, I find that this alleged offence is committed in 2016, whereas the convictions are in 2017. Therefore, the said convictions would not be previous convictions, hence will be disregarded. Since he should be regarded to have no previous convictions, it would be nothing but fair for him to be given an opportunity to mend his ways and become a law abiding citizen. In consideration of all the distinctive circumstances of this case, I would consider it appropriate to suspend your sentence for a period of 3 years.
15. In the result, your sentence of 3 months and 2 weeks of imprisonment will be suspended for a period of 3 years. The clerks will explain you the consequences of any violation of the terms of the suspended sentence.

16. You will have thirty (30) days to appeal to the Court of Appeal, if you so desire.



**Chamath S. Morais**  
**JUDGE**

**Solicitors : *Office of the Director of Public Prosecutions for the State.  
Legal Aid Commission, Nadi for the Accused.***