

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

CRIMINAL CASE NO: HAC 165 of 2019

STATE

V

LODOVIKO NAGONE

Counsel : Mr. Alvin Singh for the State
Ms. Alanieta Bilivalu for the Accused

Sentence Hearing : 8 April 2022

Sentence : 25 April 2022

SENTENCE

[1] Lodoviko Nagone, as per the Information filed by the Director of Public Prosecutions (DPP), you were originally charged with the following offence:

Statement of Offence

ATTEMPTED MURDER: Contrary to Section 44 and 237 of the Crimes Act 2009.

Particulars of Offence

LODOVIKO NAGONE, on 7th day of September 2019, at Ba, in the Western Division, attempted to murder **SENI LOMA**.

[2] The Disclosures relevant to the case were file in Court on 25 October 2019; while the original Information was filed on 6 December 2019.

[3] You pleaded not guilty to the above mentioned charge and the matter was fixed for trial from 21 March to 25 March 2022.

[4] However, on 23 March 2022, the State filed Amended Information reducing the charge to Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Act No. 44 of 2009 (Crimes Act).

[5] The Amended Information reads as follows:

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM: Contrary to Section 275 of the Crimes Act 2009.

Particulars of Offence

LODOVIKO NAGONE, on the 6th of September 2019, at Ba, in the Western Division, assaulted **SEINI LOMA** thereby occasioning her actual bodily harm.

[6] Lodoviko, on the same day you were ready to take your plea to the Amended Information. You pleaded guilty to the one count in the Amended Information. This Court was satisfied that you pleaded guilty on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.

[7] On the 24 March 2022, the Summary of Facts were filed in Court and read out and explained to you. You confirmed that you understood and agreed to the same. Accordingly, Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Assault Causing Actual Bodily Harm in the Amended Information, and found the charge proved on the Summary of Facts agreed by you. Accordingly, I found you guilty on your own plea and I convicted you of the count as charged.

[8] I now proceed to pass sentence on you.

[9] The Summary of Facts filed by the State was as follows:

1. *The accused person in this case is Lodoviko Nagone (hereafter referred to as accused), 22 years old, farmer of Votua Village, Ba. The accused has attained form three level of education at Xavier College in Ba.*
2. *The complainant in this case is Seini Loma (hereafter referred to as complainant), 25 years, Domestic Duties of Votua Village, Ba.*
3. *The accused and the complainant have been married since 2016 and have 2 children together.*

4. *On the 6th day of September 2019, the accused and the complainant were at home at Votua Village, Ba when the two had a verbal argument.*
5. *The complainant wanted to go to a nearby village namely Etatoka whilst the accused did not like the idea. The accused further suspected the complainant of having an extra marital affair whereby he demanded her to reveal the name of the person that she was chatting with on Facebook. The complainant kept on denying the allegation and this made the accused very angry. As a result, the accused punched the complainant on her face. Furthermore, several punches were thrown by the accused on the complainant.*
6. *The matter was reported to Police and the complainant was medically examined. The doctor noted the following injuries:*
 - a. *Left eye: noted bruising, black in colour*
 - b. *Nil swelling noted on left mandible*
 - c. *Left side of neck: noted healed wound 4cm x .05cm*
 - d. *Extremities: wounds .05cm noted palmar aspect of left fingers*
7. *Accused was arrested and taken in for questioning. Accused admitted to punching the complainant in his Record of Interview.*

[10] Lodoviko, you have admitted to the above Summary of Facts and taken full responsibility for your actions.

[11] Section 4 of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the purposes for which sentencing may be imposed by a Court; and sets out the relevant factors that a Court should take into account during the sentencing process.

[12] In particular, Section 4 (3) of the Sentencing and Penalties Act provides as follows:

“(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —

(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —

(i) the age of the victim;

(ii) whether the victim was pregnant; and

(iii) whether the victim suffered any disability;

(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;

(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;

(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;

(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —

(i) accepts responsibility for the offence and its consequences;

(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;

(iii) may pose any further threat to a victim;

(f) evidence revealing the offender's —

(i) attitude to the offence;

(ii) intention to address the offending behaviour; and

(iii) likelihood of continuing to pose a threat to a victim; and

(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance."

[13] I have duly considered these factors in determining the sentence to be imposed on you.

[14] In terms of Section 275 of the Crimes Act "A person commits a summary offence if he or she commits an Assault Causing Actual Bodily Harm." The prescribed penalty for this offence is a term of imprisonment for 5 years.

[15] In *State v. Tugalala* [2008] FJHC 78; HAC 25S of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem said:

"The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in Elizabeth Joseph v. The State [2004] HAA 030/04S and State v. Tevita Alafi [2004] HAA073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18

months imprisonment have been upheld (**Amasai Korovata v. The State** [2006] HAA 115/06S).”

- [16] In **Jonetani Sereka v. The State** [2008] FJHC 88; HAA 27 of 2008 (25 April 2008); His Lordship Justice Daniel Gounder held:

*“The tariff for assault occasioning actual bodily harm 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.).”*

- [17] His Lordship Justice Vincent Perera in **Anaiasa Naqialawa v. State** [2017] FJHC 484; HAA 15 of 2017 (29 June 2017); stated thus:

“It is pertinent to note that 12 months is only a one fifth of a 5 year imprisonment which is the maximum sentence for the offence of assault causing actual bodily harm under section 275 of the Crimes Act. All in all, I am of the view that it is appropriate to have 12 months imprisonment as the higher end of the tariff for the said offence.

Needless to say, the selecting of a starting point is not that difficult where the relevant sentencing tariff indicates the lower end of the imprisonment term applicable to a particular offence as opposed to other sentencing options that may be considered.

If the sentencer decides that an imprisonment term is the appropriate punishment for an offender who is convicted of the offence of assault causing actual bodily harm under section 275 of the Crimes Act and not to opt for an absolute or conditional discharge, it is important for the sentencer to have a clear opinion on the minimum imprisonment term the offence should attract considering its objective seriousness. In my view, an imprisonment term of 3 months would appropriately reflect the objective seriousness of the offence of assault causing actual bodily harm under section 275 of the Crimes Act.”

- [18] In **State v McPherson** [2017] FJHC 890; HAC 42.2016 (22 November 2017); **State v Naimoso** [2018] FJHC 345; HAC 95.2016 (27 April 2018); **State v Qalobula** [2020] FJHC 255; HAC 100.2018 (3 April 2020); and **State v. Kurukuvui** [2021] FJHC 133; HAC 296.2019 (24 February 2021) this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.

- [19] Even in the case of **State v Marama** [2020] FJHC 629; HAC 174.2019 (7 August 2020); which was a domestic violence case (where the complainant/injured was the sister-in-law of the accused), this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. The

Court considered the domestic relationship between the parties as an aggravating factor.

[20] Having regard to the above authorities, I consider the tariff for the offence of Assault Causing Actual Bodily Harm in the instant case too to range from 3 months to 12 months imprisonment.

[21] 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.”

[22] Lodoviko, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 3 months imprisonment.

[23] The aggravating factors in this case are as follows:

- (i) The complainant is your wife. Thus there was a domestic relationship between you and the complainant.
- (ii) The complainant was unarmed at the time of the assault.
- (iii) The actual bodily harm you caused to the complainant was quite serious. Injuries had been caused to her left eye, left side of her neck and on her left fingers.

[24] In mitigation it is submitted that you are a person of previous good character. The State too has confirmed that you are first offender and has no previous convictions.

[25] It has been further submitted in mitigation that you are now remorseful of your actions. It is stated that you have reconciled with the complainant and that both parties are on talking terms at present. You have also sought forgiveness from this Court and submit that you are willing to reform if given an opportunity. You have also assured Court that you will not re-offend in the future and that you would lead a crime free life. Court is also conscious of the fact that you pleaded guilty to the Amended Information on the same day it was filed in Court.

[26] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating circumstances relevant to this case, I impose on you a sentence of 12 months imprisonment.

[27] The next issue for consideration is whether your sentence should be suspended in terms of Section 26 of the Sentencing and Penalties Act.

[28] Section 26 of the Sentencing and Penalties Act provides as follows:

(1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*

(2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*

(a) does not exceed 3 years in the case of the High Court; or

(b) does not exceed 2 years in the case of the Magistrate's Court.

[29] Lodoviko, you are now 24 years of age (Your date of birth is 26 July 1997). You are married to the complainant and have 2 children together. You are said to be currently engaged with the Fiji Rugby Union's Development Unit as a volunteer carrying out Rugby Clinics in communities and schools in the West. You are said to be paid only an allowance and have no consistent source of income. Your wife, the complainant, is also said to be unemployed.

[30] You had been remanded for this case on 16 September 2019. You were granted bail by the Lautoka High Court on 7 February 2020. Therefore, you had been in remand custody for this case for almost five months.

[31] Considering all the above factors, especially the fact that you are a person of previous good character, that you are now remorseful for your actions, that you have now reconciled with the complainant, that you have assured Court that you will not re-offend, your early guilty plea to the Amended Information and the fact that you have spent almost five months in remand custody for this case, I deem it appropriate to suspend your sentence.

[32] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 5 years.

[33] In the result, Lodoviko Nagone your final sentence of 12 months imprisonment, is suspended for a period of 5 years. You are advised of the effect of breaching a suspended sentence.

[34] In terms of the provisions of Section 27 of the Domestic Violence Act No. 33 of 2009, I order a Permanent Domestic Violence Restraining Order for the protection of the complainant in this case, with standard non-molestation conditions as stipulated in the said Section.

[35] You have 30 days to appeal to the Court of Appeal if you so wish.




Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

AT LAUTOKA

Dated this 25th Day of April 2022

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