

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

Criminal Case No. HAC 341 of 2022

THE STATE

-v-

KALIOVA TAKALA

**Counsels: Ms. Ali N. - for State
Ms. Ratidara L - for Accused**

Date of Sentence: 08/03/23

SENTENCE

1. **KALIOVA TAKALA**, you were charged on the following information with one count to Act with Intent to Cause Grievous Harm contrary to **Section 255 (a)** of the **Crimes Act of 2009**, as below:

COUNT ONE

Statement of Offence

ACT WITH INTENT TO CAUSE GRIEVOUS HARM: *Contrary to Section 255 (a) of the Crimes Act 2009.*

Particulars of Offence

KALIOVA TAKALA, on the 12th day of September 2022 at Nasava Village, Naitasiri in the Eastern Division, with intent to do some grievous harm to **MEREWAI TOGA**, grievously harmed the said **MEREWAI TOGA**.

2. You pleaded guilty on your own free will to the above mentioned count when you were represented by a legal counsel in Court on 15/11/2022. You understood the consequences of the guilty plea for the offence you were charged with. This Court was satisfied that the guilty plea was informed and unequivocal and entered freely and voluntarily by you.
3. You agreed to the following summary of facts, when they were read to you in Court on 26/01/2023. This Court was convinced that the summary of facts agreed by you satisfy all the elements of the offence you were charged with. You were found guilty and convicted on the one count, as charged.
4. **Summary of Facts**

- Accused 1 (A1): Kaliova Takala, 24 years old, Farmer of Nasava village, Naitasiri

- Prosecution Witness 1: Merewai Toga, 23 years old, domestic duties, Nasava Village, Naitasiri.
- Prosecution Witness 2: Seveci Ravetau, 27 years old, Farmer of Nasava Village, Naitasiri
- On 12 September 2022, there was a marriage function in the village hall of Nasava in Naitasiri. PW1 had attended the same, she was drinking and dancing with the other guests.
- PW1 at about 7.30pm came out of the village hall for a breath of fresh air. There were some men from the village outside with her.
- The Accused came outside of the village hall and saw PW1 with a boy. The boy ran away. The Accused then approached PW1 and asked her why she was standing with the boy and before she could answer the Accused started to punch her, PW1 states that the Accused was heavily intoxicated.
- PW1 states that the Accused punched her more than 9 times on her face and that she fell onto the ground. When she was on the ground, the Accused kicked her on the back and also on her face twice. She states that as a result of this assault, her jaws were swollen and dislocated.
- PW2 was also outside the village hall and had seen the Accused assault PW1. He intervened and this gave PW1 a chance to escape to the parent's house.
- On 13 September 2022, PW1 went to Colonial War Memorial Hospital for the injuries she sustained. The matter was reported to the Vunidawa Police Station thereafter. PW1 was medically examined and as per the report, PW1 suffered the following injuries:
 - i) Facial Asymmetry due to swelling on both mandible region (right body and left parasymphysis) not able to fully open mouth (2 finer breaths only);
 - ii) Tongue restriction on protrusion movement with sublingual hematoma; and
 - iii) Clinical fracture noted between teeth 32 and 33
- The medical Report further indicates the swelling and bruising on PW1's face. The medical officer also draw a diagram of the two fracture on PW1's jaw.
- The Accused was caution interviewed, where he admits to assaulting PW1 and he agreed that PW1 sustained the injuries after he assaulted her.

5. In comprehending the gravity of the offence you have committed, I am mindful that the maximum sentence prescribed by law for **Acting with the Intent to Cause Grievous Harm** is imprisonment for life.
6. In assessing the objective seriousness of your offending in this matter, I considered the maximum sentence prescribed for the offence, the degree of culpability and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4 of the Sentencing and Penalties Decree 2009**. It was revealed in the summary of facts that the incident you're charged with took place outside the village hall, where a reception for a marriage was taking place at around 7.30 pm. This is a case of violence caused by you on your partner due to domestic misunderstandings and flimsy suspicion. Be informed, your disliking to the act of socializing of your partner at a community function cannot be compensated or answered by causing grievous harm to her with several physical injuries against the established law of our country. In this regard, you had the opportunity of verifying this matter from your partner first without going to the extremes. To avoid the occurrence of such acts in our society, this Courts has a responsibility to discourage and deter behavior of anybody that causes physical harm to other members in our community.
7. In this matter, you had assaulted your partner on mere suspicion causing grievous harm to her without giving her an opportunity to her to answer and respond to the question raised by you. We have to be mindful that males and females have equal standings in our society and men have no right to use females as punching bags to address their mere suspicions and mood swings. If any harm is

done to females by such action this Court has a beholden responsibility to use the long arm of the law to punish the wrongdoers, as provided by our law.

8. In identifying a suitable sentencing tariff for the offence of **Act with Intent to Cause Grievous Harm**, this Court refers to the case of **State v Mokubula [2003] FJHC 164; HAA0052J.2003S (23 December 2003)**, where analysing the tariff pronounced in several cases referring to the then **Penal Code Section** that is similar to the now **Crimes Act Section** dealing with **Act with Intent to Cause Grievous Harm**, Justice Shameem stated as below:

“On the basis of these authorities, the tariff for sentences under section 224 of the [Penal Code](#), is between 6 months imprisonment to 5 years imprisonment. In a case of an attack by a weapon, the starting point should range from 2 years imprisonment to 5 years, depending on the nature of the weapon. Aggravating factors would be:

1. *Seriousness of the injuries;*
2. *Evidence of premeditation or planning;*
3. *Length and nature of the attack;*
4. *Special vulnerability of the victim;*

Mitigating factors would be:

1. *Previous good character;*
2. *Guilty plea;*
3. *Provocation by the victim;*
4. *Apology, reparation or compensation”*

9. As a consequence, I start the sentence in this matter with a starting point of 36 months imprisonment, i.e. in the mid-range of the applicable tariff.
10. As aggravating factors in this matter, as enunciated in the summary of facts, you have caused serious injuries to the victim by your conduct. Further, in this matter, the victim was your partner. Therefore, at the moment when this incident took place, she was a vulnerable victim who did not expect you to act in an aggressive manner without giving an opportunity for her to respond. In view of this aggravating factor, I increase your sentence by 12 months to reach your sentence to 48 months of imprisonment.
11. In mitigation, your counsel has informed Court that you are first offenders and that you have maintained good characters before the involvement in this offence. However, on this point, I would like to highlight the sentiments of **Nawana J** in the case of **State v Tilalevu [2010] FJHC 258; HAC081.2010 (20 July 2010)**, where His Lordship said that;

*“I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as '**First Offender Syndrome**' - where people would tempt to commit serious offences, once in life, under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule.”*

12. If this Court is to give credence to this “Fist Offender” phenomena, Court will send a wrong signal to the citizenry of this Country, where Court would inform every citizen that they could commit a crime for the first time with minimum repercussions. We should remember that a crime is a crime, regardless whether it is the first crime of the offender or the 10th crime. Our civilizations have detested crimes from the very inception.

13. Still further, your counsel has informed the Court that you have entered an early guilty plea and that you regret your action on the day in question. You have also been supportive to the police during investigations after your arrest. By pleading guilty to the charge you have saved court time and resources at a very early stage of the court proceedings. For all these grounds in mitigation, you should receive a considerable discount in the sentence. In this regard, I give you a reduction of one third in your sentence.
14. Counsel for the Prosecution has also brought to the attention of this Court that you have been in custody since your arrest on 23rd September 2022, which period should be deducted from your sentence separately.
15. **Mr. KALIOVA TAKALA**, consequent to your conviction, I sentence you to **26 months** imprisonment. Further, in considering your young age and your high rehabilitation potential, with the authority given to me by **Section 26** of the **Sentencing and Penalties Act of 2009 (the Act)**, your sentence is partially suspended, where you shall serve **18 months** of your sentence forthwith, and the remaining period of **08 months** is suspended for **five (05) years**.
16. If you commit any crime punishable by imprisonment during the above operational period of five (5) years and found guilty by the Court, you are liable to be charged and prosecuted for an offence according to **Section 28** of the **Sentencing and Penalties Act of 2009**.
17. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

*At Suva
This 08th day of March 2023*