

**IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION**

Criminal Case No: 10 - 2015

STATE

-v-

NACANIELI NAIVOGO RATUMAIYALE

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Ravu S. [Legal Aid Commission]
Date of Sentence : 26th July 2019

SENTENCE

BACKGROUND

1. **NACANIELI NAIVOGO RATUMAIYALE**, you have pleaded guilty to the following charge:

Statement of Offence

ASSAULT OCCASIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

NACANIELI NAIVOGO RATUMAIYALE on the 13th day of December, 2014 at Tavua in the Western Division assaulted **ADI ALESI NACOBA** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. Your admission and the evidence also support your guilty plea. I have found you guilty and I convict you.
3. You explained that you had pleaded not guilty in August 2015 because the victim had sworn at you.

4. The victim here is your 44 year old aunty. She was at home when you came by calling your uncle [her husband] to attend a function with you. It was known that you and your uncle love to drink grog together and your aunty did not like this. She swore at you and chased you from there. You were insulted by what she was saying and you pushed her. The victim continued and you pushed her again. This time she fell backwards on a fire place causing injuries to her.
5. The matter was reported to police. You were arrested and interviewed. You admitted that the victim is your aunty. You said that you went to see your uncle and the victim swore at you saying 'Magaitinamu' [your mothers vagina] she also said 'Kawa Ca' [your lineage being bad]. You pushed her and she flew backwards. She came towards you and you pushed her again. You said that she wanted to chase you from the village. You admit causing a mark or injury to her shoulder. There were other family members who were present.
6. Your aunty was medically examined the same day about 2 hours later after you pushed her. The medical officer observed amongst other things that there was a 2 x 3 cm cut to the left of her neck, there was bruising on the left side of her buttocks and cut to her toe.
7. I am satisfied that you caused those injuries.
8. You are a first offender. You are 32 years old. You have a 9 year old child. You are employed as a support officer. You are remorseful and have reconciled with the victim. You support your mother and sister who is suffering from down syndrome. You seek leniency.
9. You have not spent any time in remand.

LAW

10. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

11. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example State v Kalouteretere - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018).

STARTING POINT

12. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. There is a domestic relationship in existence. This is your aunty.
14. There were other family members who witnessed your violence.
15. Your sentence is increased to 8 months imprisonment.

MITIGATION

16. You are a first offender.
17. You have cooperated with police.
18. I accept that emotions must have been high at the time and the continued vulgar language pushed you over the edge.
19. I accept that you are remorseful.
20. You have a family to look after.
21. Your sentence is reduced to 3 months imprisonment.

GUILTY PLEA

22. I do not consider your guilty plea early and the reason for not pleading guilty earlier is not satisfactory. You have pleaded guilty nonetheless.
23. I reduce your sentence to 2 months and 10 days imprisonment.

SUSPENSION

24. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

25. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
26. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

27. I impose a final domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions on you. You are to behave towards your aunty or the victim. You breach any of the conditions for this DVRO, you may be charged and prosecuted.
28. You are sentenced to 2 months and 10 days imprisonment.
29. No further time will be deducted as you did not spend any time in remand.
30. I am inclined to suspend your imprisonment term but only in part.
31. 2 months of your imprisonment term is suspended for the next 1 year.
32. Do not commit any other offence punishable with imprisonment in the next 1 year, if you do, this 2 months imprisonment held in waiting maybe activated.
33. You will serve 10 days imprisonment immediately.
34. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 26th day of July 2019