

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 36 - 2018

STATE

-v-

ONISIMO RAUQE

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Date of Sentence : 29th October 2019

SENTENCE

BACKGROUND

1. **ONISIMO RAUQE**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

ONISIMO RAUQE on the 30th day of January, 2018 at Tavua in the Western Division, assaulted **SOFIA BIBI** thereby occasioning her actual bodily harm.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 26 year old wife. You asked her if you could carry your 6 month old daughter. Your wife refused because you were drunk. You asked her again later when having dinner but your wife still refused. You two argued and then you

slapped your wife while she was still holding the baby. Your wife gave the baby away and walked away but you followed your wife and dragged her back home.

5. Your wife was medically examined about 10 minutes later after your violence. The medical officer amongst other things, observed a slight swelling to her left eye.
6. The matter was reported and you were arrested and interviewed by police. You admitted drinking methylated spirit with another. You were drunk. You said that you cannot recall whether you slapped her as you were drunk.
7. You may have forgotten whether you slapped her but I accept and find that you were aware and conscious of what you did at the time you slapped your wife. I do not find any defence available here particularly if it was self-induced intoxication.
8. You are not a first offender. You have a previous conviction in 2000 for robbery with violence, a conviction for assault occasioning actual bodily harm in 2003 and the most recent is for defilement in 2012.
9. You have not spent any time in remand for this case.
10. You are 39 years old. You are now separated. You have reconciled with the victim but you are no longer together. You have 1 child. You are a hairdresser by profession.

LAW

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

TARIFF

12. 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

13. Considering the objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

14. There was a domestic relationship in existence. This was your wife.
15. You slapped her while she was holding the baby.
16. You were drunk at the time.
17. I increase your sentence to 9 months imprisonment.

MITIGATION

18. You will not get any reduction for having a good history or character.
19. I accept that you are remorseful.
20. You have a young family to support.
21. Although you did not expressly admit in your police interview that you slapped your wife. I am sure that you told them what you could remember. I find that you cooperated with police.
22. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

23. You have pleaded guilty early and I will reduce your sentence to 3 months and 14 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. You are sentenced to 3 months and 14 days imprisonment.
28. You have not spent any time in remand and so your sentence will not be reduced any further.
29. I am inclined to suspend your imprisonment term but only in part.
30. 3 months imprisonment is suspended for the next 18 months.
31. Do not commit any other offence punishable with imprisonment in the next 18 months or you risk this 3 months imprisonment held in waiting being activated.
32. You will serve 14 days imprisonment, immediately.
33. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 2nd of February 2018 is made final.
34. You are to behave towards the victim. You misbehave or breach any of those DVRO conditions, you may be charged and prosecuted for another offence.
35. 28 days to appeal.



[Handwritten signature]

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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 29th day of October, 2019