

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

Criminal Case No: 62 - 2019

STATE

-v-

AAJNESH KUMAR

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Ms Henao G. [Legal Aid Commission]
Date of Sentence : 22nd October 2019

SENTENCE

BACKGROUND

1. **AAJNESH KUMAR**, 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

AAJNESH KUMAR on the 23rd day of February, 2019 at Lakalaka, Tavua in the Western Division assaulted **JANES SANJINA** thereby occasioning her actual bodily harm.

2. I am satisfied that your guilty plea or admission of guilt is voluntary and that you understand the consequence of your plea. The evidence tendered in support of your admission also supports your guilty plea. I have convicted and found you guilty of the charge.
3. The victim here is your 35 year old wife. An argument arose between you and your wife while you two were in the kitchen having breakfast. You threw your plate towards her and the plate landed on your wife's face.

4. Your wife was medically examined about 4 hours later after your violence. The medical officer amongst other things, observed that there was swelling to the left side of her eye.
5. The matter was reported, you were arrested and then interviewed by police. You admit being at home with your wife and your 3 children. You argued with your wife where she said for you not to eat the food she cooked and you threw a plate and it landed on her face. You pushed her away when she tried to punch you.
6. You are a first offender.
7. You have not spent any time in remand.
8. Your counsel has filed written mitigation to assist you. You are 42 years old. You are a labourer and you support your 3 children. You admit that there is no excuse for your action and you regret your lack of self-restraint.
9. Your wife was in court when the matter was called last and she confirms that you have apologized to her. You two are still together and both of you have reconciled.

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

AGGRAVATING FEATURES

13. I have no trouble accepting that your children or at least one child would have witnessed your violence.
14. There is a domestic relationship in existence. This was your wife.
15. You used a weapon which in this case was a plate.
16. Your sentence is increased to 10 months imprisonment.

MITIGATION

17. I accept that you are remorseful.
18. You are a first offender.
19. You have cooperated with police.
20. I accept that emotions must have been high at the time.
21. You have a family to support.
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 have not spent any time in remand and so no further time will be deducted from your sentence.
28. You are sentenced to 3 months and 14 days imprisonment.
29. I am inclined to suspend your imprisonment term but only in part.
30. 3 months is suspended for the next 2 years.
31. Do not commit any other offence punishable with imprisonment in the next 2 years. If you do, this 3 months imprisonment held in waiting maybe 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 25th of February 2019 is made final. You are to behave towards your wife. You breach any of those DVRO conditions and you may be charged and prosecuted for another offence.
34. 28 days to appeal to the High Court if you are dissatisfied with your sentence.




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Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 22nd day of October 2019