

IN THE MAGISTRATES' COURT OF FIJI
AT NAUSORI

Criminal Case No: - 318/2018

STATE

V

SULIANO MANABUA

For the Prosecution: Mr.S.Komaibaba(ODPP)

The Accused: In person

Date of Judgment: 03rd of September 2019

Date of Mitigation: 11th of September 2019

Date of Sentence : 12th of September 2019

SENTENCE

1. **SULIANO MANABUA** , you were convicted after a hearing to one count of Common Assault contrary to section 274 of the Crimes Act No 44 of 2009("Crimes Act").
2. During the hearing the following facts were proved by the prosecution.
3. The victim in this case was 10 years old child and was having dinner with his family in his home on 29th July 2017. You were a police officer at that time and after receiving information about a missing phone went to the home of the victim with a driver and inquired from him about that. When the victim denied any knowledge about that you held him from his collar and took him to the Nausori police station. You refused the victim's mother to accompany him and subjected to physical assaults there. You slapped his cheek and punched his lower back and threatened him till he revealed about the phone. You kept the victim alone in the Police station from 8pm to 1am in the morning.
4. In sentencing you in this case I am going to use two tier method which is widely used in Fiji.

5. Fiji Court of Appeal in Naikelekelevesi v State [2008] FJCA 11; AAU0061.2007 (27 June 2008) described this method as follows;

“In Fiji sentencing now involves a more structured approach incorporating a two tier process. The first involves the articulation of a starting point based on guideline appellate judgments, the aggravating features of the offence [not the offender]; the seriousness of the penalty as set out in the act of parliament and relevant community considerations. The second involves the application of the aggravating features of the offender which will increase the starting point, then balancing the mitigating factors which will decrease the sentence, leading to a sentence end point. Where there is a guilty plea, this should be discounted for separately from the mitigating factor in a case.”

6. The maximum penalty for Common Assault under the Crimes Act is 01 year imprisonment.

7. In Kumar v State [2017] FJHC 360; HAA28.2017 (17 May 2017) his Lordship Justice Sharma said that the accepted tariff for the offence of Common Assault is between a fine to a term of imprisonment (see Rajnil Kumar vs The State, Criminal Appeal No. HAA 010 of 2012 (25 July, 2012) and The State vs Kissun Sami Krishna, Criminal Appeal No. HAA 040 of 2007 (10 September 2007).

8. Accordingly it appears that the sentencing range for this offence is from fine to a term of imprisonment.

9. In deciding your sentence I would first consider the nature of your offending.

10. Sections 41(1)(d) and 41(1)(e) of the Fiji Constitution provide:

“Every child has the right—

(d) to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour”

11. Article 11(1) of the Constitution states every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.
12. The constitution has not defined the Torture but Article 7(2) states when interpreting the bill of rights the court may, if relevant, consider international law, applicable to the protection of the rights and freedoms in this Chapter.
13. United Nations Convention against Torture is the main international treaty presently that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world.
14. Article 1.1 of the Convention defines torture as:

“ For the purpose of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.”
15. Fiji has signed this treaty on 1st March 2016 and ratified that on 16th March 2016.
16. In this case the accused whilst working as a police officer was using the physical punishments on the victim who was suspected of stealing a mobile phone to obtain information. His action falls in to the Definition of Torture under the Convention and hence I find the term of imprisonment is warranted in this case.

17. Now I would consider the starting point for the sentence.
18. In Laisiasa Koroivuki v the State [2013] FJCA 15; AAU0018.2010 (5 March 2013) the Fiji Court of Appeal discussed the guiding principles for determining the starting point in sentencing and observed :
- "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".**
19. Presently there is no guideline case about the starting point for this offence when the court has decided to impose a term of imprisonment.
20. Hence I am going to select 03 months imprisonment as your starting point.
21. The victim in this case was 10 years old child and he was subjected to various kinds of physical attacks in the Nausori police station. The accused was a police officer and by committing these breached the trust of the Public. The victim was kept alone in the police station depriving his parents to accompany him there. I consider these as aggravating factors and add 06 months to reach 09 months imprisonment.
22. In written mitigation you submitted the following :
- a. **You are 34 years old;**
 - b. **Married with 2 small children;**
 - c. **Presently a farmer ;**
 - d. **Wife is unemployed.**
23. The prosecution confirmed that you are a first offender and you also highlighted that in your mitigation submission. But I do not think you should be given credit for your past good behavior. Being a police officer you were supposed to have a good character in your profession. Hence I disregard this as a valid mitigating factor.
24. But for your other personal mitigating factors I deduct 03 months to reach 06 months imprisonment.

25. Now I have to consider whether to suspend your sentence.
26. In Proceedings Commissioner v Attorney General of Fiji [2018] FJHC 1039; HBC249.2017 (26 October 2018) the victim in this case filed an application for constitutional redress submitting his arrest and subsequent assault by the accused has violated his rights guaranteed under the Constitution. His Lordship Justice Lyone Seneviratne made the following observation :
- “Assaulting a child of 10 years, especially the way he has been assaulted, is no doubt an inhuman treatment.”**
27. In that case the High Court held that the State has violated rights of the victim guaranteed by sections 11(1), 11(2) and 13(1)(d) of the Constitution which deal with right to be right to be free from torture and confession. The accused was not a party in that case and the Attorney General of Fiji and the Commissioner of Fiji Police Force were and ordered to pay \$25,000.00 as compensation as well as cost to the victim.
28. Even though the victim has been adequately compensated by the High Court in civil action, it is the duty of this court to show torture of suspects in police custody is deplorable and should be condemned in strongest manner. Every person in this country has right to be free from subject to torture or degrading treatments and this right applies to suspects who are in detention also. The law enforcement officers need to conduct their investigations within the legal parameters and need to be reminded that they are been appoint to safeguard the public and not to harass them. The accused has failed miserably in his duty by subjecting a child to cruelty in the police station and need to be denounced and other law enforcement officers need to deter also behaving in this manner in future. Accordingly I find a custodial sentence is warranted in this case.
29. SULIANO MANABUA , accordingly I sentenced you to 06 months imprisonment for this charge.
30. 28 days to appeal.



Shageeth Somaratne
Shageeth Somaratne
Resident Magistrate