

IN THE MAGISTRATE'S COURT AT LAUTOKA, FIJI

CRIMINAL CASE NO. 676/19

STATE

V.

NOA TOGA

Counsel: WPC Biu for Prosecution

Legal Aid Commission for Accused

SENTENCE

1. You, Noa Toga, are charged with one count of Serious Assault: Contrary to Section 277(b) (iii) of the Crimes Act No 44 of 2009.
2. Read over to you the charge you pleaded guilty on your own free will and admitted the summary of facts. Since summary of facts are well enough to prove the elements of the two counts and having been satisfied your plea to be unequivocal, this court convicted you for the count.
3. According to the summary of facts on 16th August 2019 at B.S. Charan Rd, Lautoka at the road block complainant stopped the vehicle you were travelling.

Upon checking found that the driver was drunk and complainant informed you and others to look for another vehicle as the driver is been arrested for drunk and drive. Complainant then started drive the car slowly with the arrested suspect where you went running to him and threw a punch at complainant's right side of cheek. Complainant kept driving the car upon reaching Sukanivalu Rd you stopped the car after following in a taxi and threw another punch on the complainant's cheek.

Matter was reported to the Lautoka Police Station and victim was medically examined. Then you were arrested and brought to Lautoka Police Station and interviewed under caution and charged accordingly.

4. The maximum penalty for Serious Assault is 05 years of imprisonment. Tariff for this offence is well settled as per the case of **State v Batiratu** [2012] FJHC 864; HAR001.2012 (13 February 2012).

"The sentence ordered of binding over, the discharge without conviction, was not within the range and type of sentencing suitable for the offence of assault on police. The range is between 6-9 months imprisonment. The perversity of the offence is its violent challenge to lawful action taken by State servants, not in the extent of the assault. Of course the greater

the violence and the injuries caused will lead to enhancement of sentence.”

5. In this instance you have challenged the lawful actions of the police officer and interrupted the duties and disregarded instructions given to you. Considering the manner which incident happened and the seriousness of the injuries sustained by victim, I commence you sentence at 8 months of imprisonment.
6. As aggravating factors I find that you assaulted the victim without any provocation and you have followed him in a taxi and assaulted for the second time as well. In reflecting the same I increase your sentence by 4 months bringing your sentence to 12 months of imprisonment
7. In mitigating your counsel submitted that;
 - o you are 21 years old
 - o you are in a defacto relationship and a student in FNU
 - o you were intoxicated at the time of offending
 - o you pled guilty at your earliest saving the court's time
 - o you have fully cooperated with the police
 - o you seek forgiveness for your act
 - o you promise not to reoffend

Court also took into its consideration that you have no previous convictions and pled guilty at your earliest.

For the above mitigation except early guilty plea, I deduct 3 months from your sentence and now your sentence is 09 months of imprisonment. In Ratubalavu v State [2009] FJHC 199; HAA063.2008 (10 September 2009) Judge Daniel Goundar said "It has been the practice of the courts in Fiji to give a reduction of one third in the sentence for an early plea of guilty by an accused"; therefore, I further deduct 1/3 of your sentence for your early guilty plea, bringing down your sentence to 06 months of imprisonment.

Now your final sentence for Serious Assault is 06 months of imprisonment.

8. In **State v Batiratu** (Supra) his lordship Chief Justice stated that "However the courts must protect police officers on duty. This arrest was not an easy one. It is not to be accepted that police officers will be assaulted during the course of their work. That is not part of their job."
9. Considering the above, I am of the view that following expectations of the sentencing and penalties act should reflect by this sentence.
 - (a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(e) to signify that the court and the community denounce the commission of such offences;

10. I would also like to echo 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.”

11. Therefore, even though sentence is below 2 years question of suspending does not arise as of section 26 of sentencing and penalties act as it is stilt law that suspended sentences are not in the range of sentences for **Serious Assaults**.
12. Accordingly, Noa Toga, you are sentenced to serve in custody for 06 months.

13. You have 28 days to appeal.

A handwritten signature in black ink, appearing to be 'Bandula Gunaratne', written in a cursive style with a long horizontal stroke extending to the right.

BANDULA GUNARATNE
Resident Magistrate

At Lautoka

22nd November 2019