

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

Criminal Case No: 288 - 2018

STATE

-v-

TIMOCI NAISUA

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: In Person, Waived Right To Counsel
Date of Sentence: 9th April 2019

SENTENCE

BACKGROUND

1. **TIMOCI NAISUA**, 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

TIMOCI NAISUA on the 6th day of October 2018 at Waibukubuku Village, Tavua in the Western Division assaulted **MARIA LUSIA** thereby causing her actual bodily harm.

2. You initially pleaded not guilty but you changed your position later. You at first admitted hitting the victim but that it was an accident. When you changed your position and after I enquired with you, you admitted that it was not an accident but that you intended to hit the victim. You were angry and that is the reason for your violence.
3. I am satisfied that your admission of guilt to the charge is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have found you guilty accordingly.

4. The victim here is your 27 year old wife. She was in town taking your 5 month old baby to the hospital as the baby was sick. She was inside a taxi. You came into the taxi and punched her nose and slapped her several times causing her injuries.
5. Your wife was medically examined about 4 hours later after you had hit her. The medical officer amongst other things observed that there was a hand imprint on the right side of her face and her nose was bleeding and the blood was dripping onto the baby's clothes.
6. You were later arrested and interviewed by police. You said that you arrived home around 5am and you were informed by your wife that your son is sick and that they will need to go to the hospital. You said to go in the morning. You slept and when you woke up they had already left. You followed them to town. You saw them get into a taxi. You got into the taxi and you slapped her inside the taxi. You fought with her at the hospital. You were aware that there was an injury to her nose after you slapped her.
7. Your wife was in court on the 12th of February 2019. Both you and your wife tried to mislead me. Both of you came to court on that day with the ' story ' that it was an accident and that when you were trying to take the baby from her and when she turned, your hand landed on her face.
8. This explanation was pathetic in light of the injuries she sustained and your acceptance later that it was intentional rather than an accident. I remanded you in custody as it was apparent to the court that you were interfering with the witness.
9. The law allows the court to consider the time you have spent in remand as time served. I will not in your case as you had blatantly interfered with your wife who is a witness and tried to downplay the incident and mislead the court. This is also a betrayal of your bail undertaking.
10. You are a first offender.
11. You are 24 years old. You seek forgiveness. You are the sole breadwinner. You support your wife and you promise not to reoffend. You have learnt a lot when in remand and that is to be a good citizen.

LAW

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

TARIFF

13. 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

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

AGGRAVATING FEATURES

15. There was a domestic relationship in existence. This was your wife.
16. You hit her several times on the face.
17. You hit her in public.
18. It was unprovoked.
19. She was carrying the baby at the time.
20. You tried to mislead the court and got the victim to perpetuate your attempted lie.
21. Your sentence is increased to 12 months imprisonment.

MITIGATION

22. You will get some reduction for having a past good history.
23. I don't accept that you truly remorseful. For example, you tried to downplay the incident by lying to the court.
24. You have cooperated with police.
25. You have a family to look after.

26. Your sentence is reduced to 7 months imprisonment.

GUILTY PLEA

27. I accept that your guilty plea is early and I will reduce your sentence to 4 months and 2 weeks imprisonment.

SUSPENSION

28. I can suspend your 4 months and 2 weeks imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

29. 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.

30. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

31. You are sentenced to 4 months and 2 weeks imprisonment.

32. As I have explained earlier, I will not deduct your sentence any further for time spent in custody.

33. I will suspend 3 months imprisonment for the next 18 months.

34. Commit any other offence in the next 18 months and this term held in waiting maybe activated.

35. You will serve 1 month and 2 weeks imprisonment, immediately.

36. The DVRO [section 27 standard non-molestation conditions] which was imposed on you and explained to you earlier on the 8th of October 2018 is made final. This is to protect your wife.

37. 28 days to appeal.



.....
Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 9th day of April 2019