

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

Criminal Case No: 316 - 2017

STATE

-v-

PENI NIUDAMU

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: Mr Samy A. [Legal Aid Commission]
Date of Sentence: 16th April 2019

SENTENCE

BACKGROUND

1. **PENI NIUDAMU**, 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

PENI NIUDAMU on the 17th day of December, 2017 at Tavua in the Western Division assaulted **RO VATISEVA TINANIKALOU** thereby causing 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 also supports your guilty plea. I have convicted and found you guilty accordingly.
3. The victim here is your 22 year old wife. You went out to the village to attend a ceremony. You asked your wife if you could leave but she refused. You left later without telling her. When you returned and when she asked you where you were, you got angry and punched her back and head 3 times.
4. You were arrested later and interviewed by police. You admitted punching the victim. You said that you were really wild and you did not like it when she swore at you and your friends. You said that she also threw a frying pan.

5. The victim was medically examined about a day later. There was no physical injuries noted but there was muscular pain.
6. You are a first offender.
7. You have not spent any time in remand.
8. You are 28 years old. You are married with 2 children. Your wife just gave birth recently and the infant would be around 3 months old. You are the sole breadwinner. You are still with your wife.
9. Your wife could not make it to court as she had recently undergone a 'C section'. A medical certificate has been tendered in support. She says in her letter though that both of you two are together and 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 circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. There was a domestic relationship in existence. This was your wife.
14. You punched her head.

15. Your sentence is increased to 7 months imprisonment.

MITIGATION

16. You will get some reduction for having a past good history.
17. I accept that you are remorseful.
18. I accept that you must have been frustrated and the passion must have been high at the time.
19. You have cooperated with police.
20. Your sentence is reduced to 3 months imprisonment.

GUILTY PLEA

21. I accept that you pleaded guilty at the earliest opportunity despite first appearing in 2017 and I will reduce your sentence to 2 months.

SUSPENSION

22. I can suspend your 2 months imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
23. 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.
24. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

25. You are sentenced to 2 months imprisonment.
26. You have not spent any time in remand and so your sentence will not be reduced any further.
27. I am inclined to suspend your 2 months imprisonment but only in part largely based on the minimal injuries sustained (muscular pain is still bodily harm see section 4 of

the Crimes Act 2009) , the level of provocation and the need for you to support your young family.

28. 1 month and 3 weeks imprisonment will be suspended for the next 18 months.
29. Commit any other offence in the next 18 months and this term held in waiting maybe activated.
30. You will serve 7 days imprisonment, immediately.
31. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 19th of December 2017 is made final. You are to behave towards the victim. You breach any of those DVRO conditions and you may be charged and prosecuted for another offence.
32. 28 days to appeal.



.....
Lisiata T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 5th day of April 2019

