

IN THE MAGISTRATES' COURT OF FIJI
AT NAUSORI

Criminal Case : 310/2019

STATE

V

OSEA TAGI

For the Prosecution : PC Sharma

The accused: In person

Date of Hearing : 03rd of May 2019

Date of Sentence : 08th of May 2019

SENTENCE

1. **OSEA TAGI**, you were charged with one count of Assault Occasioning Actual Bodily Harm contrary to section 275 of the Crimes Act No 44 of 2009("Crimes Act") .
2. You pleaded guilty and admitted the following summary of facts presented by the Prosecution :

On the 29th day of April 2019 at about 0700hours, one MAile Silovate (A-1), 30 years, Domesic Duties of Naimasimasi Village reported that she was assaulted by (B-1) at his residence.

(PW1) and the Accused are husband and wife.

On the above mention date, time and place (PW1) was sitting in the porch when (B-1) called (A-1) for the match. Whilst (A-1) was still looking for the match inside the house. (B-1) threw a hosepipe which stroke (A-1)'s neck and also punched (A-1) on her ribs, back and shoulder. (A-1) tried to run, (B-1) also kicked the leg of (A-1). (A-1) went to the porch and then (B-1) also swore at (A-1).

Matter was reported at the station and an intial enquiry was conducted. (A-1) was sent for medical examination at Nausori Health Centre Dr. Kunal Singh in his

professional opinion opined to the injuries as injury consistent with blunt force trauma injury less than 12 hours old. (B-1) was later arrested and interviewed under caution which he admitted to the allegation. (Accused) was then formally charged and to be appearing in custody.

3. I am satisfied that your plea was voluntary and unequivocal. Accordingly I convict you for this charge.
4. The maximum penalty for Assault Occasioning Actual Bodily Harm under the Crimes Act is 05 years imprisonment.
5. In Matai v State [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) his Lordship Justice Madigan said that the tariff for a domestic violence assault causing actual bodily harm is now from 6 to 18 months imprisonment.
6. In Kumar v State [2018] FJHC 583; HAA05.2018 (10 July 2018) his Lordship Justice Aluthge held that the tariff in a domestic violence case is 9- 12 months' imprisonment and if the assault is serious the decision in State v Prasad [2015] 493 justifies a sentence up to 18 months' imprisonment.
7. Since this is a domestic violence offence, I am mindful about the section 4(3) of the Sentencing and Penalties Act which the sentencing court must consider in sentencing an accused.
8. In Laisiasa Koroivuki v the State (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar 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".
9. Considering the objective seriousness of the offence, I select 09 months as the starting point for your sentence.
10. The aggravating factor is using a horse pipe for the assault and for that I add 06 months to reach 15 months imprisonment.
11. In mitigation you submitted the following :
 - a. You are 32 years old;
 - b. Married with 4 children ;

c. Farmer.

12. For the above mitigating factors I deduct 06 months to reach 09 months imprisonment.
13. You have reconciled with your wife and produced a letter from the victim to confirm that.
14. In **Patel v State** [2011] FJHC 669; HAA030.2011 (27 October 2011), Justice Madigan held:

"[8] This is a domestic violence offence and as such it cannot be reconciled. (Part III Section 3 (b) of Domestic Violence Decree). The appellant's ground that the Magistrate did not allow for credit for reconciliation cannot be made out. The victim in this case cannot reconcile with the appellant in order to mitigate this offence. Nor should the Magistrate have allowed it to be a factor in his mitigation "list". Reconciliation plays no part in a domestic violence offence either for or against an accused."
15. In **State v Kumar** [2011] FJHC 341; HAA 020.2010 (9 June 2011), Justice Madigan observed :

"A domestic violence offence which this obviously is cannot be reconciled and in any event the Court record notes that the victim did not want to reconcile. It is incumbent upon the tribunal or officer of the Court to have regard to the Domestic Violence Decree which came into force on the 1st of December 2009. The Decree was enacted to protect persons, men women and children, from abuse in domestic environment and if the Courts do not make findings and ruling within the spirit of the Decree, then that altruistic arm is thwarted."
16. Based on the above judicial precedents, I find the reconciliation has no role to play in domestic violence offences in the court and it has a little value as a mitigating factor. Hence I disregard the supposed reconciliation between the parties.
17. You pleaded guilty at the first available opportunity and for that I deduct 1/3 to reach 06 months imprisonment.
18. Now I would consider whether to suspend your sentence pursuant to section 24 (2) (b) of the Sentencing and Penalties Act.
19. You are neither a young offender nor a first offender. You have number of previous convictions where the courts have treated you leniently. You were given suspended sentences starting from 2012 but managed to come back to the court. It appears that the suspended sentences are not working for you and also you are not prepared to rehabilitate.
20. In **State v Kailoma** [2018] FJHC 763; HAC46.207 & HAC63.2017 (21 August 2018) his Lordship Justice Goundar observed ;

"The courts will never condone family violence. Family violence must be denounced. The primary purpose of sentence is deterrence, both special and general. Custodial sentence is inevitable in cases where a weapon is used to inflict physical injuries to the victim".
21. Even though there was no weapon used in this case, without any justification you assaulted your wife on her ribs, back and shoulder and when she tried even kicked her legs. Hence a deterrence sentence is warranted to denounce your behavior and deter you from committing crimes in future.

22. OSEA TAGI, accordingly you are sentenced to 06 months imprisonment for this charge.
23. For the safety of the victim, I also issue a permanent domestic violence restraining order with standard non molestation conditions.

24. 28 days to appeal.



S
Shageeth Somaratne
Resident Magistrate