

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA  
CRIMINAL JURISDICTION

Criminal Case No: 38 - 2018

STATE

-v-

SIMELI NAIVITI

For Prosecution : WPC Chand [ Police Prosecution ]  
For the Defendant : Mr Samy A. [ Legal Aid Commission ]

Date of Sentence : 29<sup>th</sup> day of January, 2019

SENTENCE

1. Mr. SIMELI NAIVITI you have pleaded guilty to the following charge:

Statement of Offence

ASSAULT OCASSIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act 2009*.

Particulars of Offence

SIMELI NAIVITI on the 2<sup>nd</sup> day of February, 2018 at Nasomo, Vatukoula in the Western Division, assaulted Vika Sadole thereby causing her actual bodily harm.

2. You have admitted the facts proposed by prosecution.
3. The court is satisfied that your plea is unequivocal and supported by the evidence and the court has found you guilty as a result.
4. The victim here is your 24 year old wife. You woke your wife around 2 am in the morning to prepare some food. You two got into an argument where you slapped her on her chin. A neighbour came to stop the fight. You then took the children and told your wife to come to your uncle's place. On the way, you punched your wife on the face and back.

5. The medical examination of the victim done about 10 hours later by a medical officer, reveals amongst other things that there was a bruise and tenderness to your wife's left eye and laceration to her left lower lip.
6. You were arrested and interviewed by police. You admitted that you were drinking alcohol before going home. You woke your wife and children up as you wanted to eat. You had an argument with your wife about you going the whole day and coming home late. You slapped your wife on the chin once. When you went out and she refused to go with you, you then punched her face and back.
7. You have no previous conviction.
8. You were granted bail on the first day you appeared or were produced in court and you have been on bail ever since.
9. In your mitigation, it is submitted that you are 30 years old. You are married and have 3 children. The youngest is 6 months old and the eldest is attending pre-school. You are the sole breadwinner. You cooperated with police. You pleaded guilty early. You say that you have spent 2 days in police custody.

#### **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 to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [ see for example **Randipni Singh v The State** HAA 13 of 2016 ( 17<sup>th</sup> June 2016 ).

#### **STARTING POINT**

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

#### **AGGRAVATING FEATURES**

13. A domestic relationship existed. This was your wife.

14. I have no trouble accepting that your violence was committed in the presence of and in the view of your children. You said so in your interview that you woke your wife and children when you came home that morning.
15. I am sure that you were drinking alcohol but I am not sure whether you were drunk at the time when you committed this violence on your wife and so I will not increase your sentence because of this.
16. You hit your wife several times. You slapped her chin, punched her face or eye and you punched her back.
17. Your sentence is increased to 9 months imprisonment because of these.

### **MITIGATION**

18. I accept that you are remorseful.
19. You have cooperated with police.
20. Some consideration must also be taken for your past good character as well.
21. You have children to look after and you are the sole breadwinner.
22. Your sentence is reduced to 5 months imprisonment.

### **GUILTY PLEA**

23. You have pleaded guilty early and your sentence is reduced further to 3 months and 2 weeks.

### **SUSPENSION**

24. I can suspend your imprisonment term either in whole or in part pursuant to section 26 ( 1 ) and ( 2 ) ( b ) of the **Sentencing and Penalties Act 2009**.
25. 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.
26. Your sentence is aimed at deterrence, to punish you adequately and to allow you to return back to your family to support them.

**FINAL SENTENCE**

27. You are sentenced 3 months and 2 weeks imprisonment.
28. You were held in police custody for 2 days. Section 24 of the **Sentencing and Penalties Act 2009** provides a discretion to the court to count this as time already served.
29. I will not in your case as this time in custody was necessary for police to complete their investigations and to ensure that no further danger befalls the victim based on the violence alleged against you.
30. I will suspend 2 months and 2 weeks of your sentence for the next 1 year.
31. Commit any other offence in the next 1 year and this suspended term held in waiting may be activated.
32. You will serve 1 month imprisonment immediately.
33. The DVRO with section 27 standard non-molestation conditions which was imposed on you and explained to you on the 5<sup>th</sup> of February 2018 for the protection of your wife is made final.
34. Breach any condition of this DVRO and you may be charged with a separate offence of breaching a DVRO.
35. 28 days to appeal.



Dated at Tavua this 29<sup>th</sup> day of January, 2019.

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