

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

Criminal Case No: 274 - 2018

**STATE**

-v-

**WAISAKE RATOTO**

Before : RM Fotofili L.  
For Prosecution : Inspector Lenaitasi S. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Sentence : 18<sup>th</sup> August 2020

**SENTENCE**

**BACKGROUND**

1. **WAISAKE RATOTO**, 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**

**WAISAKE RATOTO** on the 27<sup>th</sup> day of September, 2018 at Matacawa, Tagitagi Tavua in the Western Division, assaulted **MERE O'CONOR** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea and admission in court is voluntary and that you understand the consequences. The evidence tendered in support of your admission also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 30 year old wife. Your wife was at her sister's place. You were drunk and came and spoke to your wife at the driveway. You two argued and in the

process you kicked her face. She was lying down on the ground at the time crying. You also used the side of a cane knife to hit your wife.

5. Your wife was medically examined about 30 minutes later after your violence. The medical officer amongst other things, observed that both her eyes were swollen and her nose had blood clots. She had lost sensation to the lower half of her body and she had no power to the lower half of her body. Your wife was referred to the Lautoka hospital thereafter for further management.
6. The matter was reported to police and you were arrested and then interviewed under caution. You admitted that you were drinking beer. You then went to see your wife and you two argued about why you were drinking. You then you slapped her. She sat down. You slapped her five times. You slapped her cheek and the back of her head. You denied that you kicked her head, neck and back. You said that you do not know about any of her injuries. A person came to stop you beating your wife.
7. You have a previous conviction for larceny in 2005. I will still consider you a first offender in this case as that previous conviction is spent.
8. You have not spent any time in remand.
9. You are 34 years old. You seek forgiveness. You are a farmer and the sole breadwinner. You promise not to re-offend.
10. Your wife was present in court on the 24<sup>th</sup> of July 2020.
11. Your wife explained that due to your violence, she was numb from her waist down. She was discharged from hospital the same day she was admitted. She received her sensation the following day after your violence. She is normal now and she did not sustain any long term or serious injury. Both of you are still together. You two have two children together. The eldest child is in primary school in class three and the other is four years old. Your wife is not working.

#### **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 objective seriousness of the offence, a 4 month imprisonment term is selected as a starting point.

### **AGGRAVATING FEATURES**

15. A domestic relationship was in existence. This was your wife.
16. I find that you were drunk at the time.
17. You slapped her several times.
18. Although you denied it to police, I find that you also kicked her when she was on the ground.
19. She lost sensation to half of her lower body. All of those injuries I accept and find was caused by you.
20. You also used the side of a cane knife to hit her. This was potentially dangerous and threatening.
21. I increase your sentence to 11 months imprisonment.

### **MITIGATION**

22. This will be treated as your first offence.
23. You have a family to support.
24. I accept that you are remorseful.
25. You have cooperated with police during your interview but only in part. You did not accept or you denied kicking her and you denied causing her injuries.
26. I am certain that emotions must have been high at the time.

27. Your sentence is reduced to 6 months imprisonment.

### **GUILTY PLEA**

28. You have pleaded guilty early and I will reduce your sentence to 4 months imprisonment.

### **SUSPENSION**

29. 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** if your sentence is 2 years and below.

30. 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.

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

### **SENTENCE**

32. Mr. **WAISAKE RATOTO**, you have not spent any time in remand and so your sentence will not be reduced any further.

33. You are sentenced to 4 months imprisonment.

34. This imprisonment term will only be suspended in part.

35. 2 months and 14 days imprisonment is suspended for the next 2 years.

36. Do not commit any other serious offence or offence punishable with imprisonment in the next 2 years or you risk this 2 months and 14 days imprisonment being activated.

37. You will serve 1 month and 14 days imprisonment, immediately.

38. The Domestic Violence Restraining Order [ DVRO ] with section 27 standard non-molestation conditions which was imposed and explained to you on the 28<sup>th</sup> of September 2018 is made final.

39. You are to continue behaving towards your wife. Do not misbehave or breach any of those DVRO condition as you may be charged and prosecuted for another offence.

40. 28 days to appeal.



Dated at Tavua this 18<sup>th</sup> day of August, 2020.

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