

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

Criminal Case No: 120 - 2019

STATE

-v-

JESE VOREYALEWA

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : In Person, Waived Right To Counsel
Date of Sentence : 18th August 2020

SENTENCE

BACKGROUND

1. **JESE VOREYALEWA**, 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

JESE VOREYALEWA on the 8th day of May, 2019 at Nadrau Village, Nadarivatu in the Western Division assaulted **LUISA LEWELEWE** 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 am satisfied that the motive for your act of violence was not primarily in self-defence but in anger and retribution.
4. I find you guilty and convict you of the charge.

5. The victim here is your 37 year old wife. Your wife asked you to stay home and look after your son while she went to the farm to get food. Your cousin came home and asked that you drink grog with him. An argument developed between you and your wife. During the argument you punched your wife and when she fell down, you then kicked her on the head. She felt pain to her head as a result.
6. Your wife, the victim was medically examined about 2 days later after your violence. Amongst other things, the medical officer observed that there was bruising on her right arm.
7. The matter was reported and you were later arrested and then interviewed under caution by police. You admitted that your wife wanted you to stop drinking grog and told you to go farm. You said that she picked up a stick and hit your left leg. You then punched her and kicked her after she fell. You said that you were really angry as she was disrespectful. You seek forgiveness.
8. You are not a first offender. You have a previous conviction on the 28th of August 2017 for assault occasioning actual bodily harm. The victim in that case was your wife. You have a previous conviction in 1997 for a similar offence.
9. You have not spent any time in remand.
10. You are 47 years old. You are still with your wife. You have apologised to her. You have 2 children who are in secondary school. You are a farmer. You seek forgiveness.
11. Your wife was present in court and she verifies that you have apologised to her.

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. The victim was your wife or a domestic relationship existed.
16. You kicked her head after she fell.
17. I increase your sentence to 7 months imprisonment.

MITIGATION

18. You have a family to support.
19. You are remorseful.
20. I accept that some passion must have existed at the time and I accept that you were hit first by the victim.
21. Your sentence is reduced to 2 months imprisonment.

GUILTY PLEA

22. You have pleaded guilty early and I will reduce your sentence to 1 month and 8 days imprisonment.

SUSPENSION

23. 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**.
24. 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.

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

SENTENCE

26. No further reduction will be made to your sentence as you did not spend any time in remand.

27. You are sentenced to 1 month and 8 days imprisonment.

28. This will only be suspended in part and most of your sentence will be suspended because of the level of provocation by the victim.

29. 1 month of your imprisonment term is suspended for the next 2 years.

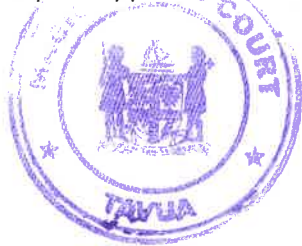
30. Do not commit any other serious offence or any offence punishable with imprisonment in the next 2 years or you risk this 1 month imprisonment that is held in waiting being activated.

31. You will serve 8 days imprisonment immediately.

32. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed on you and explained to you on the 13th of May 2019 is made final. This is to protect the victim, your wife forever until the order is cancelled or varied.

33. Do not breach any condition of this DVRO or you may be charged with another offence.

34. 28 days to appeal.



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Lisiata T.V. Fotofili
Resident Magistrate

Dated at Tavua this 18th day of August, 2020