

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

Criminal Case No: 99 - 2019

STATE

-v-

PENISONI SAUKUBULA

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Samy A. [LAC]
Date of Sentence : 18th August 2020

SENTENCE

BACKGROUND

1. **PENISONI SAUKUBULA**, 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

PENISONI SAUKUBULA on the 8th day of April, 2019 at Dakavono, Vatukoula in the Western Division assaulted **MERELITA MOLE** thereby causing her 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 31 year old wife. You two argued about money and that is when you punched her back and the left side of her face.

5. Your wife was medically examined later the same day after your violence. The medical officer amongst other things, observed that there was swelling to the left side of her face, a bruise to her left eye, there were multiples bruises and abrasions under her chin, a small cut to her left ear and swelling over her left upper back.
6. The matter was reported to police and you were arrested and then interviewed under caution. You admitted that you were drunk at the time. You admitted arguing with your wife about some money you had given her earlier. You admitted that you punched her back several times as your wife was hiding her face from you while she was lying down on the ground. You admitted punching her face once.
7. You are a first offender.
8. You have not spent any time in remand.
9. The defendant is 31 years old. He apologises for what he has done. He has a three year old daughter. He was expecting some change from the \$100 he gave his wife and he lost his temper and hit his wife because of his frustration.
10. A letter purportedly from the victim was tendered as part of the defendant's written mitigation.
11. The letter indicates that the defendant has just started work at the mine and supports his family. The wife has seen 'a lot of change' in the defendant.
12. I accept the contents of the letter to be from the victim. Prosecution has no dispute or issue with it too.

LAW

13. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

14. 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

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

AGGRAVATING FEATURES

16. A domestic relationship was in existence. This was your wife.
17. You were drunk at the time.
18. You hit her back several times and you punched her face.
19. You hit her back several times while she was on the ground.
20. I increase your sentence to 8 months imprisonment.

MITIGATION

21. You are a first offender.
22. You have a family to support.
23. I accept that you are remorseful.
24. You have cooperated with police during your interview.
25. I am certain that emotions must have been high at the time.
26. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

27. You have pleaded guilty early and I will reduce your sentence to 3 months and 8 days imprisonment.

SUSPENSION

28. 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.
29. 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.
30. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

31. Mr. **PENISONI SAUKUBULA**, you have not spent any time in remand and so your sentence will not be reduced any further.
32. You are sentenced to 3 months and 8 days imprisonment.
33. This imprisonment term will only be suspended in part.
34. 2 months imprisonment is suspended for the next 2 years.
35. Do not commit any other serious offence or offence punishable with imprisonment in the next 2 years or you risk having this 2 months imprisonment that is held in waiting being activated.
36. You will serve 1 month imprisonment and 8 days imprisonment, immediately.
37. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you on the 10th of April 2019 is made final.
38. You are to continue behaving towards your wife. Do not misbehave or breach any of the DVRO condition because you may be charged and prosecuted for another offence.
39. 28 days to appeal.



Dated at Tavua this 18th day of August, 2020.

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Lisiata T.V. Fotofili
Resident Magistrate