

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

Criminal Case No: 143 - 2019

STATE

-v-

SEKAIA NALIO

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : Mr Samy A. [Legal Aid Commission]
Date of Sentence : 10th January 2020

SENTENCE

BACKGROUND

1. **SEKAIA NALIO**, 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

SEKAIA NALIO on the 17th day of June, 2019 at Nadelesi, Vatukoula in the Western Division assaulted **VULORI MOLE** 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 her is your 28 year old wife. She asked you who was calling you on your phone. You tired of the argument and you punched her face. You also took an electric wire and hit her back.

5. After the matter was reported, you were arrested and later interviewed under caution by police. You admitted that your wife asked you for the phone so she could make a call. She then asked you about a mobile number registered as having called the phone. You said that you did not know who it belonged to. She said some things you did not like such as being a loafer. She also told you not to touch the phone. You took the phone from her and punched her. You took an extension cord hanging on the wall and you hit her. When you hit her she swore at you saying your mother's vagina and having a bad lineage. You were angry. Your children were there at the time too. She sent the children to call the police.
6. Your wife was medically examined about 15 hours later after your violence. The medical officer amongst other things, observed that there was a cut between her eyes around the area of her nose and there was a bruise and swelling to her back in the shape of an electrical cord 'whip'.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 29 years old. You are married with 4 children. The youngest is 1 year old and the eldest is 8 years old. You are a cane cutter. You are remorseful for your actions. You have reconciled with your wife. You are the sole breadwinner. You seek leniency.
10. A letter purportedly written by your wife was tendered by you. In summary, the letter expresses that you are a changed man. You are a loving husband and a caring father. You no longer bully or hit her.
11. Your wife was not present in court to verify the contents of the letter.
12. You said that you did not inform her of your court date when I asked you why your wife was not present in court to verify the contents.
13. My scepticism remains and I am not satisfied on the balance of probabilities that those are her words.

LAW

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

TARIFF

15. 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

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

AGGRAVATING FEATURES

17. This was your wife or a domestic relationship existed.
18. You punched her face and you used an electrical cord to hit her back.
19. I am sure that your children must have witnessed and experienced this ordeal.
20. I increase your sentence to 9 months imprisonment.

MITIGATION

21. You are a first offender.
22. Despite rejecting the letter purportedly written by your wife, I accept that you are remorseful.
23. You have a family to support.
24. You have cooperated with police when you were interviewed.
25. Your sentence is reduced to 5 months imprisonment.



Dated at Tavua this 10th day of January, 2020

A handwritten signature in blue ink, appearing to read "Lisiate T.V. Fotofili".

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