

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

Criminal Case No: 153 of 2015

STATE

-v-

SHANIL KUMAR

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
For Defendant : Mr. Anthony M. [AC Law]
Date of Trial : 17th June 2019
Date of Judgment : 6th August 2019
Date of Sentence : 10th January 2020

SENTENCE

BACKGROUND

1. **SHANIL KUMAR**, having pleaded not guilty and after trial, you have been found guilty and convicted of the following charge:

Statement of Offence

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

Particulars of Offence

SHANIL KUMAR on the 24th day of June 2015 at Mataniwai, Tavua in the Western Division assaulted **ANAR AMISHAY NAICKER** thereby causing her actual bodily harm.

2. The victim is a 1 year old boy. You were in a de-facto relationship with the boy's mother. The boy and the mother were staying with you at your house. It was around midnight when you came home. There was an argument between you and your de-facto partner. The boy was sleeping on the bed. You punched and slapped the boy on the head and face. The boy was medically examined about 14 hours later and the medical officer observed a 2cm x 2cm bruise to his right cheek, linear 3cm bruise to his ear and his forehead was swollen.
3. You are a first offender.
4. You have spent about 7 days in remand. I will consider this as time served and I will deduct this from your sentence.
5. Your age has not been led in evidence or submitted in mitigation. This is inconsequential though. It is submitted on your behalf that you are apologetic. You are a mechanic and you are the sole breadwinner. You have moved on and you are now in another relationship and you have a 1 year old child. You are no longer in contact with the mother of the boy victim. You seek forgiveness.

LAW

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

TARIFF

7. 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

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

AGGRAVATING FEATURES

9. A domestic relationship existed at the time. You were in a de-facto relationship with the victim's mother.
10. The boy victim was 1 year old.
11. He was under your care and protection.
12. Your violence was unprovoked and sinister. The child did not do anything to you to deserve a cowardly attack. Your grievance was with his mother.
13. You punched and slapped the unsuspecting child on the face and head.
14. I increase your sentence to 12 months imprisonment.

MITIGATION

15. I have heard from your counsel and I have observed you during the progress of your case. I am not persuaded that you are remorseful.
16. You are a first offender though.
17. You have a family to support.
18. This case stems from 2015 and I am sure the ordeal must have been taxing for you this past years.
19. I reduce your sentence to 6 months imprisonment.

SUSPENSION

20. 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**.
21. 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.
22. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

23. You are sentenced to 6 months imprisonment.
24. As I have explained, I will deduct 7 days from your sentence for the time you have spent in remand.
25. You have 5 months and 21 days imprisonment remaining.
26. I am inclined to suspend your imprisonment term but only in part.
27. 2 months imprisonment is suspended for the next 18 months.
28. Do not commit any other offence punishable with imprisonment in the next 18 months or you risk this 2 months imprisonment held in waiting being activated.
29. You will serve 2 months and 21 days imprisonment, immediately.
30. Although I accept that you are no longer in a relationship with the victim's mother and that you are no longer staying together, I finalize the domestic violence restraining order [DVRO] with section 27 standard non-molestation conditions which was imposed and explained to you earlier on the 6th of July 2015. This time, the protected persons will both be the victim Anar Amishay Naicker and his mother Ms. Deepeka Kumari.
31. Do not breach any of the conditions of the DVRO or misbehave towards the victims or you may be charged with another offence.
32. 28 days to appeal.



Dated at Tavua this 10th day of January, 2020

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Lisiate T.V. Fotofili
Resident Magistrate