

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

Criminal Case No: 97 - 2017

STATE

-v-

LEVENI TUI DRODROLAGI

Before : RM Fotofili L.
For Prosecution : WPC Chand A. [Police Prosecution]
Accused : Mr. Samy A. [Legal Aid Commission]
Date of Sentence : 13th January 2020

SENTENCE

BACKGROUND

1. **LEVENI TUI DRODROLAGI**, you have pleaded guilty to the following charge:

Statement of Offence

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

Particulars of Offence

LEVENI TUI DRODROLAGI on the 31st day of March, 2017 at Nadala Village, Nadarivatu in the Western Division assaulted **JOANA WATI** 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 also supports your guilty plea.
3. I find you guilty and convict you of the charge.
4. The victim here is your 44 year old wife. You questioned her as to why she was going into town. She explained that she was going to collect some money from her sister.

An argument arose between you and your wife. You then punched your wife on the head and other parts of her body causing her injuries.

5. The victim was medically examined about 8 hours later after your violence. The medical officer amongst other things, observed tenderness to the right side of her abdomen.
6. The matter was reported and you were arrested and interviewed by police. You admitted that you told your wife not to go to town. You admitted punching her on her head and body. You cannot recall how many times you punched her. You were angry that she was not obeying you.
7. You were a first offender at the time of this offence.
8. I will not consider any time spent in remand as time served. You had another pending case for assault occasioning actual bodily harm against your wife pending [Tavua CF 55 – 15] when this offence was committed.
9. You also attracted other offences of assault against the same victim while out on bail [see for example Tavua CF 146 – 18 and CF 147 – 18].
10. You are 40 years old. You have 4 children. The youngest is 11 years old. You are a farmer and the sole breadwinner. The victim, your wife still resides with you. You seek a non-custodial sentence.

LAW

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

TARIFF

12. 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

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

AGGRAVATING FEATURES

14. There was a domestic relationship in existence. This was your wife.
15. I am sure that you punched her several times.
16. I increase your sentence to 8 months imprisonment.

MITIGATION

17. You are a first offender.
18. I accept that you are remorseful.
19. You have cooperated with police.
20. You have a family to support.
21. I understand that emotions must have been high at the time.
22. Your sentence is reduced to 4 months imprisonment.

GUILTY PLEA

23. You have not pleaded guilty early. You initially pleaded not guilty on the 26th of June 2017.
24. No reason or satisfactory explanation has been provided to explain why you have pleaded guilty belatedly.
25. However, some discount will still be made for pleading guilty eventually.
26. I reduce your sentence to 3 months imprisonment.

SUSPENSION

27. 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**.
28. 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.
29. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

30. You are sentenced to 3 months imprisonment.
31. As I have explained earlier, I will not consider any time spent in remand as time served and so no further reduction will be made to your sentence.
32. I am not inclined to suspend your imprisonment term whether in whole or in part.
33. I have considered the totality principle and the one transaction rule. I am well aware of your sentence in Tavua CF 55 – 15 which was passed on you today also for assault causing actual bodily harm to the same victim.
34. You will serve this 3 months imprisonment term consecutive to your sentence in CF 55 – 15.
35. There is no need for multiple DVRO's to be ordered. One with section 27 standard non-molestation conditions has been imposed on you and is still in effect in another assault case CF 199 – 17 and that DVRO was imposed on you on the 19th of December 2017 for the protection of the same victim. You had pleaded guilty in that case and sentenced to 4 months imprisonment.
36. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 13th day of January, 2020