

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 161 - 2019

STATE

-v-

JITENDRA KUMAR

Before : RM Fotofili L.
For Prosecution : Inspector Lenaitasi S. [Police Prosecution]
Accused : In Person
Date of Sentence : 11th February 2020

SENTENCE

BACKGROUND

1. **JITENDRA KUMAR**, 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

JITENDRA KUMAR on the 20th day of July, 2019 at Tavua in the Western Division assaulted **DEV ANAND** thereby causing him 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 aware of your past cases for example, Tavua CF 260 – 17 and Tavua Miscellaneous No. 02 of 2019.
4. It is clear to me that you have a mental history.

5. However in this case for which you are to be sentenced, I found that you are fit to plead or you understand the proceedings and that you were not suffering from any mental impairment at the material time.
6. I find you guilty and convict you of the charge.
7. The victim here is your 54 year old brother. He told you to remove your clothes from the window screen and hang them on the clothes line. You got angry, picked up a stone and threw it at your brother. The stone landed on the palm of his hand.
8. The victim was medically examined about a day later after your violence. Amongst other things, the medical officer observed that there was tenderness to his left hand and left palm and left thumb. The matter was reported and you were subsequently arrested.
9. The defendant is not a first offender. I sentenced him based on his guilty plea in Tavua CF 260 -17 for assaulting and causing back pain to his 76 year old father. I have taken judicial notice of that case. In that case, I also found that the defendant was fit to take his plea and that he was not mentally impaired at the time he committed the offence. The defendant punched his father on the back after his father asked him to keep the noise down as the defendant was singing and shouting early in the morning.
10. The defendant committed that offence against his father on the 21st of October 2017. He was sentenced by this court on the 10th of September 2018. He was sentenced to 4 months imprisonment wholly suspended for 2 years and a final domestic violence restraining order [DVRO] with section 27 standard non-molestation condition was imposed on him. The DVRO was for the protection of his father.
11. As for this case for which the defendant is to be sentenced, he has been in remand since he first appeared on the 22nd of July 2019. He was in remand considering his past case of which was domestic in nature including this one with his brother and that he had to be committed to hospital for a psychiatric assessment.
12. I could have sentenced the defendant in December 2019 or January 2020 but due to an urgent family judgment, I could not and had to defer his case for sentence to today.
13. I will therefore only consider the time he spent in remand from December 2019 as time served and I approximate it to be 2 months and 10 days imprisonment. This time I will deduct from his sentence.

14. The defendant is 50 years old. He has an adult daughter. He seeks forgiveness and promises that he will not reoffend.

LAW

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

TARIFF

16. 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 Kalouterere - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018)].

STARTING POINT

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

AGGRAVATING FEATURES

18. The victim was your brother or a domestic relationship existed.
19. You used a weapon, in this case, a stone.
20. I increase your sentence to 7 months imprisonment.

MITIGATION

21. I do not find any mitigation in your favour.
22. Your sentence remains at 7 months imprisonment.

GUILTY PLEA

23. You have pleaded guilty early and I will reduce your sentence to 4 months and 10 days imprisonment.

SUSPENSION

24. 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**.
25. 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.
26. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

27. You are sentenced to 4 months and 10 days imprisonment.
28. As I have explained, I will deduct 2 months and 10 days from your sentence for the time you have spent in remand.
29. You have 2 months imprisonment remaining.
30. I refuse to suspend this remaining term in part or in whole.
31. You will serve this 2 months imprisonment immediately.
32. I have found you sane and that you were not suffering from any mental impairment at the time. I will not make any orders under the **Mental Health Act 2010**.
33. This finding does not mean that you discontinue taking your medications, continue to do so.
34. I impose a final DVRO with section 27 standard non-molestation conditions on you for the protection of your brother or the victim.
35. Do not misbehave towards your brother or breach any condition of the DVRO. You may be charged with another offence if you do.

36. I direct the court registry to advise the Tavua Hospital, Mental Health Unit of this sentence no later than 7 days from today so that they are apprised of your situation.
37. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 11th day of February, 2020