

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

Criminal Case No: 168 - 2019

**STATE**

-v-

**WAICEVATA MATALAU**

Before : RM Fotofili L.  
For Prosecution : WPC Chand A. [ Police Prosecution ]  
Accused : In Person, Waived Right To Counsel  
Date of Sentence : 18<sup>th</sup> February 2020

**SENTENCE**

**BACKGROUND**

1. **WAICEVATA MATALAU**, 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**

**WAICEVATA MATALAU** on the 23<sup>rd</sup> day of July, 2019 at Nadarivatu, Tavua in the Western Division assaulted **KINISIMERE BOLETAKANAKADAVU** 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 here is your 25 year old wife. You argued with her about a number appearing on your phone. You suspected that it maybe your wife's former boyfriend

who had called your wife as your wife was using the phone the night earlier. During the argument, you punched her head, back and chest several times. Your wife managed to evade you and was then taken to a nearby health centre.

5. Your wife, the victim was medically examined about 12 hours later after your violence. Amongst other things, the medical officer observed that there was bruising to both her left and right cheek, multiple bruising to the right side of her flank, abrasion to her right thigh and a cut to the back of her head.
6. The matter was reported and you were arrested and then interviewed under caution by police. You admitted that you confronted her about a missed call on your phone. You suspected she was calling her former boyfriend. You said that you could not control yourself. You were really angry. You punched and kicked her. You admitted punching her face. You admitted kicking her back.
7. You are a first offender.
8. You have not spent any time in remand.
9. You are 40 years old. You seek forgiveness. You are still with the victim. You have apologised to your wife already. You are a farmer and the sole breadwinner. You have a 5 year old and 1 year old child. You are also looking after your grandmother.
10. Your wife was present in court and verifies that you have apologized to her. You two are still together.

#### 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. The victim was your wife or a domestic relationship existed.
15. You hit her several times. You punched her face and kicked her back. The various injuries on different parts of her body are indicative of the beating you gave.
16. I increase your sentence to 9 months imprisonment.

### **MITIGATION**

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

### **GUILTY PLEA**

23. You have pleaded guilty early and I will reduce your sentence to 2 months and 16 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 have not spent any time in remand and so your sentence will not be reduced any further.
28. You are sentenced to 2 months and 16 days imprisonment.
29. I am inclined to suspend your imprisonment term but only in part.
30. 1 month imprisonment is suspended for the next 18 months.
31. Do not commit any other offence punishable with imprisonment in the next 18 months or you risk this 1 month imprisonment held in waiting being activated.
32. You will serve 1 month and 16 days imprisonment, immediately.
33. The Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation which was imposed and explained to you on the 2<sup>nd</sup> of August 2019 is finalised against you. This is to protect your wife forever unless the DVRO is cancelled or varied.
34. Do not breach any condition of this DVRO or you may be charged with another offence.
35. 28 days to appeal.



Dated at Tavua this 18<sup>th</sup> day of February, 2020

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