

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

Criminal File [CF] No: 226 – 2012 & CF No: 237 – 2012

Both files above are consolidated under CF 226 - 2012

STATE

-v-

AMIT VIKASH - 1st Defendant
SHARMILA SHANKAR - 2nd Defendant
TARA MATI - 3rd Defendant

Before : RM Fotofili L.
For the Prosecution : Inspector Lenaitasi S. [Police Prosecution]
For the 1st and 3rd Defendant : Mr. Samuel K Ram and Mr Patel D. [Samuel K Ram]
For the 2nd Defendant : Mr Datt A. [Messrs Dayal Lawyers]
Trial : 24th June 2019 and 10th February 2020
No Case To Answer Ruling : 19th November 2019
Judgment : 31st March 2020

Sentence : 1st Defendant only
2nd and 3rd Defendants were acquitted

SENTENCE

BACKGROUND

1. This sentence is only for the 1st Defendant Mr. Amit Vikash who I have found guilty and who I have convicted after a trial.
2. The 2nd and 3rd Defendants have been acquitted after trial.
3. The 1st Defendant has been convicted of the following [which is Count One of the consolidated or amended charge] :

Statement of Offence

SERIOUS ASSAULT: Contrary to Section 277 (b) of the Crimes Act of 2009.

Particulars of Offence

AMIT VIKASH on the 17th day of August, 2012 at Dakavono in the Western Division resisted the arrest of **Police Constable Number 4704 VONIANI NAMUA** in the due execution of his duties.

4. An allegation arose that on the 14th of August 2012, the 1st Defendant Amit Vikash assaulted his wife Ms Sharmila Shankar [2nd Defendant] and caused her actual bodily harm. The 1st Defendant was charged for that allegation. Police had taken in Ms Sharmila Shankar the 2nd Defendant in light of the allegation. The 1st Defendant was upset with the police handling of that allegation. On the 17th of August 2012, the 1st Defendant confronted the police officer namely Police Constable Voniani Namua [PC Namua] who happened to be driving past the 1st Defendant's house in a police vehicle. There was another police officer inside the vehicle too. The 1st Defendant and PC Namua were acquainted with each prior to the confrontation by the 1st Defendant. The confrontation happened near the entrance to the 1st Defendant's property near his fence. It was still in public. The 1st Defendant approached the police vehicle. He was angry. He shouted to PC Namua saying 'what did you do?, why did you take my wife from Vatukoula to Nadi?'. The defendant also said 'Fuck all police officers'. PC Namua was both annoyed and concerned about neighbours hearing the 1st Defendant shouting and swearing. PC Namua tried to arrest the 1st Defendant but the 1st Defendant tried to run away and so PC Namua grabbed the 1st Defendant by his trousers. In the struggle, the 1st Defendant's shirt got torn and some buttons came off. The 2nd Defendant Ms Sharmila Shankar and the 3rd Defendant Ms Tara Mati [1st Defendant's mother] heard the commotion outside and came to help the 1st Defendant. The 3rd Defendant had a 'Sasa' broom with her and 'brushed' the broom against the back of PC Namua. When PC Namua saw these ladies, he decided to leave as he did not want them getting injured.
5. The 1st Defendant is a first offender.
6. The 1st Defendant has not spent any time in remand.
7. Written and oral mitigation and sentencing arguments have been submitted on behalf of the 1st Defendant.
8. I have considered these prior to and during sentence.

9. The 1st Defendant is 43 years old, lives with his parents and his wife and 2 children who are 10 years and 5 years old respectively. The 1st Defendant is businessman who runs a taxi and rental car business. He is the sole breadwinner. His father is sickly and needs support.
10. Incidentally, I cannot agree with defence counsel's submission and accept as mitigation that the 1st Defendant has cooperated with police by going to the police station. The police were entitled to arrest the Defendant if he did not surrender himself. It cannot be counted as cooperation if you were required to present yourself at the Police Station if sufficient grounds exist for an arrest and there is a reasonable suspicion that he has committed an offence. As I have found and explained in the judgment, police were entitled to arrest the 1st Defendant and would have completed the arrest but for the defendant's resistance and the ladies joining in the commotion. The police had to terminate arresting the defendant for the safety of the ladies.
11. Furthermore, I accept that the defendant's words and actions were uttered or done on the 'spur of the moment' but this emanated from his bitter feelings towards the police earlier about how they handled his wife's complaint. It was the 1st Defendant who initiated the confrontation and approached PC Namua. Even though they knew each other, the defendant's words was addressed to and intended to insult the police force. It was also said in public. The 1st Defendant created a scene.

LAW

12. Since there was no biting, spitting, throwing or application of fluid or faeces and that there was no weapon involved or pretence of that and no bodily harm was caused to PC Namua, the maximum sentence that is imposable by law then for the 1st Defendant Mr. Amit Vikash is up to 5 years imprisonment.

TARIFF

13. The courts sentencing preference for this offence is by imposing a 6 to 9 months imprisonment term [**Epeli Talakubu v. The State** Criminal Appeal No HAA 37 of 2016.

STARTING POINT

14. Considering the objective seriousness of the case, I select 6 months imprisonment as a starting point.

AGGRAVATING FEATURE

15. The offence was committed in public.
16. The 1st Defendant intended to demean the police force and was resentful about how they handled his wife's complaint. I see no impropriety in how police had conducted themselves when dealing with the wife's complaint. Essentially, the 1st Defendant harboured ill feelings towards the police for doing their job.
17. The defendant uttered profanities and was creating a scene in public.
18. It was a good decision by PC Namua to terminate the attempted arrest of the 1st Defendant, especially when the ladies became involved. This de-escalated the situation and reduced the chances of any other person getting hurt. The 1st Defendant put his safety and the safety of his family members who came out to assist him and the safety of the police officers at risk, when the 1st Defendant refused to submit himself cooperatively to being arrested.
19. I increase the 1st Defendant's sentence to 10 months imprisonment.

MITIGATION

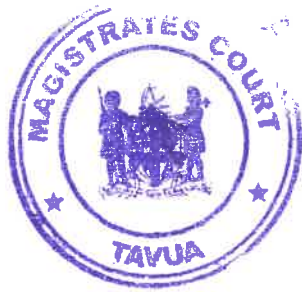
20. The 1st Defendant is a first offender.
21. He has a family to support and is the sole bread winner.
22. There are ways of dealing with complaints against police or any public official. The 1st Defendant did not raise his concerns in the proper way. However, I understand that passion and emotion must have been high at the time and that his emotions boiled over when seeing the police vehicle come by his house by chance.
23. I also take into account the time that this case has been looming over the 1st Defendant for almost 8 years.
24. I reduce his sentence to 3 months imprisonment.

SUSPENSION

25. I can suspend his imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
26. 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 the sentence.
27. Bear in mind, his sentence will be aimed at deterrence or to send a message to the community about interfering with the lawful work of the police and it is also aimed at punishing him adequately.

SENTENCE

28. You are sentenced to 3 months imprisonment.
29. No further time will be deducted from this sentence as you did not spend any time in remand.
30. I am inclined to suspend your imprisonment term but only in part.
31. 2 months and 14 days of your imprisonment term will be suspended for the next 12 months.
32. Do not commit any other serious offence or offence punishable with imprisonment in the next 12 months or you risk this 2 months and 14 days that is held in reserve being activated.
33. You will serve 14 days imprisonment immediately.
34. I appreciate that your sentence falls below the tariff for this type of offence. The tariff is a guideline and it is not necessary that all sentences fall within the tariff. Your sentence was reached after considering the tariff, the circumstance of the case and your circumstance particularly that this case has been looming over you the past 8 years.
35. 28 days to appeal if you any party is dissatisfied with the sentence.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at TAVUA this 19th day of May, 2020