

IN THE MAGISTRATES' COURT OF FIJI
AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 21 - 2015

STATE

-v-

SHAH MOHAMMED

Before : RM Fotofili L.
For Prosecution : A/CPL Chand A. [Police Prosecution]
Accused : Mr Chand N. and Mr. Niudamu J. [Niudamu Lawyers]
Date of Trial : 27th October 2020
Date of Judgment : 9th March 2021
Date of Sentence : 22nd February 2022

SENTENCE

BACKGROUND

1. **SHAH MOHAMMED**, having pleaded not guilty and after your trial, I have found you guilty and convicted you of the following:

Statement of Offence

ASSAULT OCCASSIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act No. 44 of 2009*.

Particulars of Offence

SHAH MOHAMMED on the 26th day of December 2014 at Korovou, Tavua in the Western Division assaulted **YASMIN BEGUM**, thereby causing her actual bodily harm.

2. The victim would have been around 47 years old at the material time. You would have been around 50 years old. You and the victim are related through marriage or the victim's daughter, is married to your nephew.

3. The victim's daughter or your daughter in law and your nephew were separated or were having a fight and were not on talking terms. You were told by your nephew not to allow anyone into the house.
4. On the night in question, the victim and other members of her family including your daughter in law had come to Korovou in-order that feeding bottles and other things for the victim's grandchildren were collected.
5. You acting as the 'gate keeper' told the family to park their transport outside the compound of the house which they did.
6. Some words were exchanged between you and the family members during which you said profanities at your daughter in law telling her she was a 'Bajaru' [prostitute] and 'maichod' [fuck your mother].
7. You brought a stick and you tried to hit the victim's son who was holding the grandchildren and that is when the victim stepped in front of you. The stick you wielded hit the victim's forearm causing bleeding to her forearm. The victim has heart problems and runs out of breath quickly. She fainted and fell backwards and had to be helped by her children.
8. The matter was eventually reported to police.
9. You are a first offender.
10. You have not spent any time in remand.
11. Your counsel has filed your written mitigation which I have considered.
12. You are 58 years old, you are retired. You are married and you have children who I presume are all adults. You are a labourer and you earn \$100 weekly. When it is cold, you have problems with your left leg due to an old injury. You say that you made a bad judgment call and you promise not to re-offend.

LAW

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

TARIFF

14. 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)].

INSTINCTIVE SYNTHESIS APPROACH

15. I adopt an instinctive synthesis approach when sentencing you.
16. I emphasise the factors below before your final sentence is pronounced.

AGGRAVATING FEATURES

17. A domestic relationship exists, the victim is your in-law and she was particularly vulnerable considering her health. She fainted.
18. You used a weapon or a stick when committing your violence.
19. You also said those coarse words to your daughter in law which was demeaning and disgusting.
20. Domestic violence is also prevalent.

MITIGATION

21. Although suggested by your counsel, I cannot consider as mitigation that you cooperated with police. No evidence before me suggests this. I also cannot consider that you are remorseful. You denied the allegation for example and was found guilty after trial.
22. However, you are a first offender.
23. I have considered your age and the concerns with your knee.
24. This case too has been looming over you since 2015.

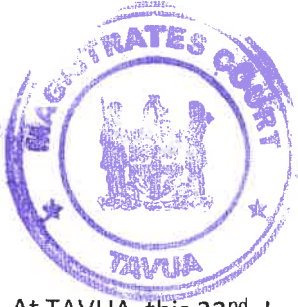
SUSPENSION

25. 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.
26. I also take into account the factors outlined in section 4 and 15 of the Sentencing and Penalties Act 2009 in determining your sentence.
27. Your sentence will be aimed at deterrence and is to punish you adequately.

SENTENCE

28. **SHAH MOHAMMED**, you are sentenced to 1 month imprisonment .
29. No further reduction will be made to your sentence as you did not spend any time in remand.
30. I am inclined to suspend your imprisonment term in whole particularly due to your age and the time elapsed since the offence was committed with no indication that you have misbehaved since then.
31. Your 1 month imprisonment term will be held in suspense for 10 months.
32. Do not commit any other offence punishable with imprisonment or do not commit any other serious offence in the next 10 months because if you do, you risk having this 1 month imprisonment that is held in waiting being activated.
33. You are also fined \$210 to be paid in 28 days. You default and you risk up to 7 days imprisonment.
34. I impose and finalise a Domestic Violence Restraining Order [DVRO] with section 27 standard non-molestation on you for the protection of the victim and your daughter in law. I order that this DVRO expire in 9 months from today pursuant to section 22(c) of the Domestic Violence Act 2009.
35. Behave towards the victim and your daughter in law or do not breach any condition of this DVRO during its operational period as you may be charged with another offence.

36. 28 days to appeal.



At TAVUA this 22nd day of February, 2022

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Lisiate T.V. Fotofili
Resident Magistrate