

IN THE MAGISTRATES' COURT OF FIJI

AT BA

[CRIMINAL JURISDICTION]

Criminal Case No: CF 412/22

STATE

v.

RINA BIKASHNI DEVI

For Prosecution:	WPC [4897] V. Singh
For Accused:	Appearing with Mr. R. Charan
Plea:	31/8/2022
Trial:	11/12/2023 & 13/12/2024
Judgment:	10/1/2025
Sentence:	4/2/2025

SENTENCE

Background

1. **Rina Bikashni Devi** the accused, you were first produced in Court on 31/8/2022, you appeared with Counsel and preferred the Hindustani language, you were subsequently granted bail on the day and your bail continued to date.
2. **Rina Bikashni Devi** the accused is to be sentenced following her conviction after a fully defended Trial. The accused in this Court's Judgment on 10/1/2025 had found the accused guilty as charged and convicted her for the offence of **Assault Causing Actual Bodily Harm** contrary to Section 275 of the **Crimes Act of 2009**.

3. The defence sought time to file written mitigation of which time was given until 24/1/2025, the same was permitted late filing on 30/1/2025 and this Court has duly considered the same in the passing this Sentence. The Prosecution also submitted to Court that the accused is a first offender.
4. The victim in this proceeding, at the time of the offence being committed by the accused, was a Class 3 student at Ba Sangam Primary School where the accused was his teacher.
5. There is no domestic relationship between you and the juvenile victim in the charge. The victim was your student at the time of offending therefore the Court did not promote reconciliation in line with Section 154 of the Criminal Procedure Act 2009 in light of the nature of the offending not being a personal or private matter and also considering it would not be in the interest of the victims to proceed under Section 154 of the Criminal Procedure Act 2009.
6. The matter was adjourned from the Judgment date to today for Sentencing, the accused was duly extended her bail also to today for Sentence.

SENTENCE

7. In sentencing you the court took into account the factors outlined in Section 4 (1) and (2) of the Sentencing and Penalties Act 2009.
8. The Court heard your Counsel seeking a non-conviction order and the application is made pursuant to **Section 15 (1) (f)** and **Section 16 of the Sentencing and Penalties Act 2009**, your Counsel submitted to Court that any such conviction by this Court will gravely affect the status of your employment with the Ministry of Education. It was submitted that you have been teaching for a good number of years. Your Counsel submitted to Court that the entering of a conviction would lead to the termination of your teaching contract.
9. I digress, for the purposes of clarity, the application sought by your Counsel is made in line with **Section 15 (1) (f)** and **Section 16 of the Sentencing and Penalties Act 2009**, this Court in coming to a decision on the application made by Counsel, will still be guided by the decision of **State v David Batiratu [2012] Revisional Case No. HR 001 of 2012**, it was one of seeking a discharge without conviction which is different from the current application before this Court. The Court in **Batiratu**

considered six (a – f) factors when deciding on a conviction not being entered, this Court considers the same factors in determining your application for a non-conviction.

10. The High Court decision of ***Chandra v State [2022] HAA028.2022*** has clearly laid out the difference between the seeking of 'not entering a conviction' and a 'not recording a conviction'. The Magistrates Court upon finding an accused guilty must convict before proceeding to sentence under the Sentencing and Penalties Act. The effect of **Section 15 (1) (e), (f), (i) or (j) of the Sentencing and Penalties Act** is to give a discretion to the sentencing Court not to record a conviction or dismiss the charge as a sentencing option based on the mitigation factors and the nature of the offence committed.
11. This Court has found you guilty and has entered your conviction. This Court now decides whether to have the conviction recorded against you or not. I direct my mind to **Section 16 of the Sentencing and Penalties Act**, and I find that the nature of the offence is serious – it is well settled that assault of any kind will not be tolerated, most especially in school settings, teachers are not to assault students and teachers such as yourself who are trained professionals are well aware of such laws/rules and guidelines of your employment. While you are a first offender and that is in your favor in terms of your mitigation, the impact of the recording of a conviction has not been substantiated by your Counsel other than submitting that a conviction will take away your employment and will affect you economically and socially (paragraph 27 Mitigation) – nothing has been provided to the Court to confirm if that surely will be the case.
12. This Court is assisted by the provisions of the ***Fiji Teachers Registration Act of 2008*** under Section 32 which deals with '***Disciplinary Actions on Convictions***' and I reproduce it below;
 - 32 (1) If a registered teacher is convicted of an offence in Fiji, the Commissioner of Police or the Director of Public Prosecutions shall cause to be sent to the Board a written notice stating the name of the registered teacher, the nature of the offence and the penalty imposed by the Court.
 - (2) A registered teacher who is convicted of an offence in another country must, within 28 days after conviction notify the Board, in writing of –
 - (a) the conviction; and
 - (b) the circumstances in which the offence was committed.
 - (3) When the Board receives a notice under subsection (1) or (2), the Board may –
 - (a) caution the teacher; or
 - (b) if it is of the opinion that the circumstances of the offence render the teacher unfit to teach –

- (i) suspend the teacher's registration for any period, and subject to any conditions; it considers appropriate; or
- (ii) cancel the teachers registration

(4) The Board, on suspending the registration of a teacher under subsection (3) (b) (i), may substitute a provision registration for any period, and subject to any conditions, the Board thinks fit.

13. In being guided by the above provision, the Court finds that the impact of recording a conviction on the offenders' employment prospects may not be gravely affected to the extent that the defence submit. Section 32 of the **Act** (aforementioned) reveals three options of reprimand left to the Ministry concerned. I cannot accept the premise that this Court is to consider what may or may not happen to your employment contract with no certainty of its result from your part, to avoid any form of punishment that this Court will pass against you.

14. I also find that your offending is not one of which a fine is an acceptable punishment, the general and specific deterrence principles demand an imposition of a punishment that meets the seriousness of offending. This Court is guided by the decision in **State v Prasad [2020] HAR02.2019** where the case of **State v Nand Kumar [HAA014 of 2000]** was referred to, a decision by his Lordship, Justice Gates. J (as he was) stating that;

'In this case, general and specific deterrence demands the imposition of a penalty and not a dismissal of the charge without conviction. The imposition of a fine or a term of imprisonment will override the mitigating factors such as previous good character or guilty plea or other personal mitigating factors in cases of this nature. The impact of a conviction on the respondent/accused is a secondary issue here since the offending is serious particularly when it is directly concerned with administration of justice.'

15. In considering the above, I therefore find that the recording of a conviction is warranted in light of the nature of offence being serious, the consideration that you have been a teacher for a good number of years to date and in the length of your employment ought to have known not only that what you did will not be tolerated but also the impacts from which such actions will arise of which a criminal proceedings and a conviction is included. Lastly, I find no grave impact to your employment prospects as discussed prior.

16. In finding that an imprisonment term is warranted, I consider the tariff of the offence of Assault Causing Actual Bodily Harm. The maximum sentence for **Assault Causing Actual Bodily Harm** is 5 years imprisonment.

17. In **State v. Tugalala** [2008] FJHC 78; HAC 25S of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem (as she was then) said:

*"The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment. The High Court said in **Elizabeth Joseph v. The State** [2004] HAA 030/04S and **State v. Tevita Alafi** [2004] HAA073/04S, that it is the extent of the injury which determines sentence. The use of a pen knife for instance, justifies a higher starting point. Where there has been a deliberate assault, causing hospitalization and with no reconciliation, a discharge is not appropriate. In domestic violence cases, sentences of 18 months imprisonment have been upheld (**Amasai Korovata v. The State** [2006] HAA 115/06S)."*

18. In **Sereka v. The State** [2008] FJHC 88; HAA 27 of 2008 (25 April 2008); His Lordship Justice Daniel Goundar held:

*"The tariff for assault occasioning actual bodily harm ranges from a suspended sentence where there is a degree of provocation and no weapon used, to 9 months imprisonment for the more serious cases of assault (**State v Anjula Devi**, Criminal Case No. 04 of 1998 Lab.)."*

19. In **Nagialawa v. State** [2017] FJHC 484; HAA 15 of 2017 (29 June 2017) His Lordship Justice Perera stated:

"It is pertinent to note that 12 months is only a one fifth of a 5 year imprisonment which is the maximum sentence for the offence of assault causing actual bodily harm under section 275 of the Crimes Act. All in all, I am of the view that it is appropriate to have 12 months imprisonment as the higher end of the tariff for the said offence.

Needless to say, the selecting of a starting point is not that difficult where the relevant sentencing tariff indicates the lower end of the imprisonment term applicable to a particular offence as opposed to other sentencing options that may be considered.

If the sentencer decides that an imprisonment term is the appropriate punishment for an offender who is convicted of the offence of assault causing actual bodily harm under section 275 of the Crimes Act and not to opt for an absolute or conditional discharge, it is important for the sentencer to have a clear opinion on the minimum imprisonment term the offence should attract considering its objective seriousness. In my view, an imprisonment term of 3 months would appropriately reflect the objective seriousness of the offence of assault causing actual bodily harm under section 275 of the Crimes Act."

20. The aggravating factors are:

- ***This is a teacher – student relationship as such there is a breach of trust***
- ***The victim was injured on his head, lacerations was noted by the examining Doctor and the victim needed follow up medication therefore the extent of the injury is also an aggravating factor***

- *Use of the watch buckle as a weapon to assault the victim*
- *Your attempt to conceal your wrong doing by the washing of the victim's shirt with blood stains on it is also an aggravating factor this Court considers – this came out in evidence at Trial*
- *Lack of remorse – although your Counsel submits you are genuinely remorseful I find the same to not be true, you submit remorse only now following your conviction*

21. The mitigating factors are:

- First offender
- Promise not to repeat such offending again

Your family circumstances I consider to not be meaningful mitigation. The Court considered also the case precedent submitted by your Counsel, *State v Pranish Chand Criminal Case No: 85/19*, a Magistrates Court decision of which has no persuasion on this Court for reasons that the victim in that case was the wife of the accused and is not a juvenile such as in the present case.

22. Taking into consideration the seriousness of the offence because of its maximum sentence, the Court takes a starting point of 3 months imprisonment and I add 6 months for the aggravating factors so the interim sentence is 9 months imprisonment. I deduct 2 months for the mitigating factors so the final sentence comes to 7 months imprisonment.

23. I am mindful of section 26 of the Sentencing and Penalties Act 2009 that I have the discretion to suspend the final sentence when it is below 2 years imprisonment.

24. The Court looks at the sentencing remarks of Goundar J in *Balagan v State* [2012] HAA 31/11S 24 April 2012 at [20] in considering to suspend a sentence:

'Whether an offender's sentence should be suspended will depend on a number of factors. These factors no doubt will overlap with some of the factors that mitigate the offence. ... The final test for an appropriate sentence is – whether punishment fits the crime committed by the offender?' (my underlining)

25. This Court denounces your offending on the victim.

26. Considering the accused criminality, this is not an appropriate case for a fully suspend sentence and deterrence is the principle to be met.

27. The Court sentence the accused to 7 months imprisonment, of which she is to serve 2 months imprisonment immediately and the remainder of the 5 months is suspended for a term of 3 years.

28. The accused is warned by the court that when she commits another offence within 3 years, the accused may be charge with **Breach of Suspended Sentence** pursuant to Section 28 of the Sentencing and Penalties Act 2009. If the accused is convicted for Breach of Suspended Sentence then the sentencing court may activate the sentence in paragraph 27.
29. The assistant court officer will explain to the accused the meaning of a *suspend sentence* (explained).
28 days to appeal to the High Court.

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S. Nasedra [Ms.]
[Resident Magistrate]

*Divisional Prosecuting Officer/Western
Accused – Ravneet Charan Lawyers*