

IN THE MAGISTRATES' COURT OF FIJI

AT BA

[CRIMINAL JURISDICTION]

Criminal Case No: CF 142/2021

STATE

v.

SHIVASHNA SHAMAL NAIDU

For Accused:	Appearing with Mr. Anthony & Mr. Bancod. R
Plea:	7/3/2025
Trial:	10/7/2025 & 12/12/2025
NCTA Ruling:	10/7/2025
Judgment:	6/2/2026
Sentence:	27/2/2026

SENTENCE

A. Background

1. **Shivashna Shamal Naidu** the accused, you are before the Court to be sentenced for the offence of **Common Assault** contrary to Section 274 of the Crimes Act 2009.
2. By the Judgement of this Court delivered on 6/2/2026 you have been found guilty and convicted of the offence of Common Assault after a fully defended Trial.
3. Your Counsel sought time to file written mitigation of which time was given until 20/2/2026, the same is before the Court and has been duly considered in the passing of this Sentence. The Prosecution also submitted to Court that you are a first offender.
4. At the time of the offence being committed by the accused, the victim in this proceeding was a Class 1 student at Vatulaulau Sanatan 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.

B. Aggravating & Mitigating Factors:

7. The aggravating factors are:
 - *This is a teacher – student relationship as such there is a breach of trust*
 - *The victim's tender age – being 7 years old at the time of offending*
8. The mitigating factors are:
 - *First offender*
 - *Remorseful (para 6.4 of mitigation)*
 - *Promise not to reoffend (para 6.4 of mitigation)*

C. SENTENCE

9. In sentencing you the court took into account the factors outlined in Section 4 (1) and (2) of the Sentencing and Penalties Act 2009.
10. 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)

11. The Court heard your Counsel seeking a non-conviction order together with the passing of a sentence of a fine 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 of being a Teacher with the Ministry of Education as well as your anticipated travels abroad for migration purposes.
12. 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.
13. 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 this Court is thankful to Counsel for their submission on precedents set forth by the High Court with similar factual matrix, the case of **State v Kissun Sami Krishna HAA 040 of 2007** is of assistance.
14. This Court has, in the past come down hard on teachers who continue to resort to assault in disciplining students – it is simply intolerable. With that being said I am mindful of the tariff for the convicted offence as well as it bearing a maximum of 1 year imprisonment however that is reserved for common assault cases with aggravating features such as malevolent violence accompanied with domestic violence etc as stated in **Kissun Sami Krishna [supra]**.
15. As stated in this Courts Judgement, my finding was that you had resorted to the act of slapping the victim given your demanding role as a teacher and having to look after two classes on the day offending, like any human – there are limits to one's bandwidth of perseverance as such I find that there was nothing that aggravated your offending to the point of requiring an imprisonment term or the recording a conviction. I also accept your Counsels submission that you have your husband who works in Papatoetoe, Auckland – New Zealand as such your aspirations is to also join him in New Zealand, that is considered with what this Court considers to be your unblemished devoted working life to the education of the children of Ba and by extension, of our nation Fiji. I also consider that you have been consistently in attendance before this Court for your matter since its inception in 2021 of which clearly indicates to the Court your ability to comply with the rules and law of the Court system thus casting a reflection on your ability to reform. Lastly, I add, this Court observed you as it passed Judgement on you on 6/2/2026 and it weighed heavy on you – clearly the memory of that day and what this offending and this proceeding has brought you will also serve as a punishment that will deter you in the future.

16. With the above being said and being guided by Section 4 (1) (2), Section 15 (1) (f) and Section 16 (1) of the Sentencing and Penalties Act 2009 I order that you are sentenced as follows:

- The Court orders that the conviction entered against the accused not be recorded
- The Accused is sentenced to a fine of \$300 to be paid within the next 14 days on or before 13/3/2026 at the Ba Magistrates Court. In default of payment of the full amount of fine within the ordered period will have the Court issue an Order of Committal of which you are to be arrested and committed to prison to serve 1 month imprisonment.

17. The assistant court officer will explain to the accused the meaning of the default term.

28 days to appeal to the High Court.

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S. Nasedra [Ms.]
[Resident Magistrate]

*Divisional Prosecuting Officer/Western
Accused – Millbrook Hills Law Partners*