

3. The Summary of Facts submitted by the State Counsel states as follows:

The victim is 32 year old female Karalaini Liku. The accused is her husband, 42 years old male Jeremaia Kalokalo Tuisawau. The victim and her husband are separated and the victim has a de-facto relationship with a third person, a male from another village.

At about 4.00am on 22 September 2013, the victim was at home with her boyfriend Siva. She heard the accused's voice beside her bed. Her husband was telling her boyfriend to get up and leave. She woke up to see her boyfriend putting on his clothes and leaving.

As soon as her boyfriend left, the accused began assaulting the victim. He punched her on her face, head and back. She tried to push him away but he kept punching her. The accused then tried to strangle her neck.

The victim reported the matter at the Lautoka Police Station. She was taken to the doctor at Lautoka Hospital who noted the following injuries:

- 2 bruises on the right upper and lower eyelid – right red eye.
- Bruises on neck, chest and breast, arm, back and back.

The accused was arrested and interviewed under caution where he admitted that he punched the victim several times.

4. After carefully considering the Plea of you to be unequivocal, this Court found you guilty for one count of Assault causing actual bodily harm and accordingly you are convicted for one count under Section 275 of the Crimes Decree.
5. Accused **Jeremaia Kakokalo Tuisawau**, you stand convicted for one count of Assault causing actual bodily harm.
6. The tariff for Assault causing actual bodily harm appears to range from an absolute or conditional discharge to 12 months imprisonment as held by Hon. Madam Justice Nazhat Shameem in **State v Tugalala** [2008] FJHC 78; HAC 025S.2008S (29 April 2008) The extent of the injury which determines the sentence.
7. In **Sereka v State** [2008] FJHC 88; HAA 027.2008 (25 April 2008) Hon. Mr. Justice Daniel Gounder held that 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.

8. You are not a first offender. You have 5 previous convictions for the same offence. In four of these cases the victim was the same complainant, your wife.
9. Considering the above, I commence your sentence at 9 months imprisonment for the charge of Assault causing actual bodily harm.

10. Aggravating factors submitted by the state are:

- (i) The complainant received several injuries as a result of assault made by the accused.
- (ii) Length and nature of the attack.
- (iii) Special vulnerability of the victim.

Considering all, I add 3 months for your sentence now your sentence is 12 months.

11. Mitigating circumstances:

- (i) You claim that you are provoked by seeing your wife sleeping with another man.
- (ii) You say that you are remorseful for what you have done and seeks the courts forgiveness.

I deduct 2 months from your sentence and now your sentence is 10 months.

12. For the guilty plea I deduct 3 months. Now your sentence is 7 months.

13. You were in remand from 24.9.2013 for a period of 5 months. I deduct that period from above sentence. Now your sentence is 2 months.

14. Considering the nature of the offence and the previous record, this court is not inclined to suspend your sentence.

15. Having considered the nature of the relationship you had with the complainant, I order a permanent **Domestic Violence Restraining Order (DVRO)** in place, identifying complainant Karalaini Liku as the protected person. You are hereby ordered not to have any contact with the complainant directly or by any other means, unless otherwise directed by this Court.

Summary;

16. You are sentenced to 2 months imprisonment.

17. 30 days to appeal

Sudharshana De Silva
JUDGE

AT LAUTOKA
6th March 2014

Solicitors for the State: Office of the Director of Public Prosecution, Lautoka
Solicitors for the Accused: Legal Aid Commission