

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 123 OF 2018

STATE

V

TEVITA DEVE

Counsel: Ms. S. Swastika with Mr. Y. Prasad and Ms.M. Lomolomo for Prosecution
Mr. J. Rabuku with Ms. M.Tuaci for Defence

Date of Judgment : 2 October 2020

Date of Sentence : 9 October 2020

SENTENCE

1. Tevita Dave, you were charged with Murder and tried before three assessors. The Court found you not guilty of Murder and found you guilty of Assault Occasioning Actual Bodily Harm punishable under Section 275 of the Crimes Act 2009. Having been convicted, you now come before this Court for sentence.

2. At the trial, you voluntarily admitted under oath that you punched your *de-facto* partner in her face.
3. The facts admitted by you are that you were in a relationship with your *de-facto* partner for two years. She returned home after spending a night away from home. You suspected that she had an affair with another man and claimed that she had a 'love bite' on her neck which she said was a scratch mark. You called your mother to bring a mirror so she could see the 'love bite' herself. You did not believe her explanation. You blamed her for cheating you and you punched her on the left hand side of her face. You told her to pack up her stuff and go home. She went and drank Paraquat and died from Paraquat ingestion.
4. Doctor who examined the patient noted an injury to her left eye, swelling, a bruising with greenish discolouration and it was sore when it was touched. Her lips were a bit swollen. The doctor's professional opinion was that the patient would have been hit with a significant force like a punch and that the injuries were consistent with the history given.
5. The maximum sentence for Assault Occasioning Actual Bodily Harm is 5 years' imprisonment and the sentencing tariff 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. (*Jonetani Sereka v The State* 2008. FJHC 88, HAA027,2008), (*State v Anjula Devi*, Crim Case No. 04 of 1998). However, a sentence of 18 months imprisonment has been upheld in domestic violence cases (*Amasi Korovata v State* [2006] 11A 115 of 2006].
6. This is a bad domestic violence case. Violence against women in the domestic setting is most prevalent in Fiji and the statistics are always awful. This type of acts must be publicly denounced and a clear message should be sent to the society that the courts do not tolerate any type of domestic violence.
7. You punched your partner based on an unfounded assumption that she was having an affair with another man. She did not offer any provocation.

8. The domestic violence perpetrated on a partner should attract a sentence from the highest end of the tariff for this offence as prescribed in *Korovata* (supra). You punched your *de-facto* partner thus breaching the trust reposed on you. She received injuries in the offending. These circumstances aggravate the offence.
9. I considered the mitigation submission filed by your Counsel. You are 37 years of age, a father of 5 children, the youngest being only 3 years old. Your personal and family circumstances do not carry much weight in the mitigation but I am conscious of the plight of children who do not get supported by their parents. You are not a first offender. You have 6 previous convictions, four of which are for similar offences. You are not entitled for any discount for your previous good character. I am not convinced that you are genuinely remorseful although you, at the police interview and the trial, have admitted punching to bolster your defence.
10. Having adjusted the sentence for aggravating and mitigating circumstances mentioned above, I arrive at a sentence of 18 months' imprisonment.
11. The active previous convictions and the recidivist tendency indicate that you have not learnt a lesson and not serious about rehabilitation. In view of that an immediate custodial sentence is warranted. However you have already spent 2 years and 3 months in the remand Center with a Murder charge hanging above your head, In view of the remand period that exceeds your term of imprisonment, Section 24 of the Sentencing and Penalties Act does not allow me to send you to the correction centre as I should regard the remand period as the period of imprisonment you have already served.
12. In view of your record of previous convictions, the State Counsel has submitted that you should be declared a habitual offender under Section 11 of the Sentencing and Penalties Act.
13. The offence you have committed is in the nature described in Section 10 of the Sentencing and Penalties Act. Having regard to your previous convictions for offences of a like nature,

I am satisfied that you constitute a threat to the community. Therefore, I declare you to be a habitual offender.

14. Since you have already served your sentence, you are discharged forthwith.
15. 30 days to appeal to the Fiji Court of Appeal.

 
Aruna Aluthge
Judge

At Suva

9 October 2020

Counsel: Office of the Director of Public Prosecution for State
Law Solutions for Defence