

**IN THE HIGH COURT OF FIJI**

**AT LAUTOKA**

**[CRIMINAL JURISDICTION]**

**CRIMINAL CASE NO: HAC 65 of 2020**

**STATE**

**V**

**ERONI TAMANIWERELEVU**

**Counsel** : Mr. Taitusi Tuenuku for the State  
Ms. Keli Vulimainadave for the Accused

**Dates of Trial** : 9-11 August 2022

**Sentence Hearing** : 26 August 2022

**Sentence** : 13 September 2022

*The name of the complainant is suppressed. Accordingly, the complainant will be referred to as "AN".*

## **SENTENCE**

[1] Eroni Tamaniwerelevu, as per the Information filed by the Director of Public Prosecutions (DPP), you were charged with the following offences:

### ***Count 1***

#### ***Statement of Offence (a)***

**ASSAULT OCCASSIONING ACTUAL BODILY HARM:** Contrary to Section 275 of the Crimes Act 2009.

#### ***Particulars of Offence (b)***

**ERONI TAMANIWERELEVU**, between 21<sup>st</sup> March 2020 and 22<sup>nd</sup> March 2020, at Lautoka, in the Western Division, assaulted **AN** thereby causing her actual bodily harm.

## **Count 2**

### **Statement of Offence (a)**

**RAPE**: Contrary to Section 207 (1) and (2) (a) of the Crimes Act 2009.

### **Particulars of Offence**

**ERONI TAMANIWERELEVU**, between 21<sup>st</sup> March 2020 and 22<sup>nd</sup> March 2020, at Lautoka, in the Western Division, had carnal knowledge of **AN** without her consent.

- [2] The Information and Disclosures relevant to the case were filed in Court on 1 June 2020. Your plea was taken on 29 June 2020 and you pleaded not guilty to the two counts in the Information
- [3] After the conclusion of all pre-trial issues, this matter was fixed for trial from 8-12 August 2022.
- [4] The prosecution and the defence consented to treat the following facts as “Admitted Facts”:
1. Eroni Tamaniwerelevu is the accused in this case.
  2. The accused was 35 years old at the time of the alleged incident.
  3. The complainant in this case is AN.
  4. The complainant was 32 years old at that time of the alleged incident.
  5. The complainant is the wife of the accused.
  6. The complainant is a School Teacher by profession.
  7. On the 21 March 2020, the complainant was drinking grog with her sister-in-law and her younger brother.
  8. When the complainant was drinking grog with her sister-in-law and her younger brother, the accused came to them drunk with some of the complainant’s cousins.
  9. The complainant on the 21 March 2020, had escaped from the accused and ran away to get help.
  10. The complainant was rescued by a couple when the complainant ran to their house and asked them for help.
  11. The accused was arrested on the 22 March 2020.

12. The accused was caution interviewed at Lautoka Police Station on the 22 March 2020.

- [5] Since the prosecution and the defence have consented to treat the above facts as “Admitted Facts” without placing necessary evidence to prove them, the above facts are proved beyond reasonable doubt.
- [6] The trial in this matter commenced on 9 August 2022. When your plea was taken at the commencement of the trial, you pleaded guilty to the first count of Assault Occasioning Actual Bodily Harm, and not guilty to the second count of Rape.
- [7] This Court was satisfied that you pleaded guilty to the first count on your own free will and free from any influence. Court found that you fully understood the nature of the charge against you and the consequences of your plea.
- [8] This matter then proceeded to trial in respect of the second count. The prosecution led the evidence of the complainant over a period of two days. However, at the end of the complainant’s evidence the State filed a *Nolle Prosecui* in terms of Section 49 of the Criminal Procedure Act No. 43 of 2009 (Criminal Procedure Act). Accordingly, you were discharged in respect of the charge of Rape.
- [9] During the trial the prosecution tendered to Court the Letter of Withdrawal made by the complainant as Prosecution Exhibit PE1 and the Medical Examination Report of the complainant as Prosecution Exhibit PE2.
- [10] Based on the testimony of the complainant, this Court found your guilty plea to be unequivocal. I found that the facts support all elements of the count of Assault Causing Actual Bodily Harm in the Information, and found the charge proved as per the evidence led in Court of the complainant. Accordingly, I found you guilty on your own plea and I convicted you of the count as charged.
- [11] It was submitted to Court by the complainant that late in the night of 21 March 2020, you had driven off in a vehicle with her. While driving you had started swearing at the complainant and began to slap and punch her. You continued to slap and punch the complainant’s hands, arms, face and head to the point that the complainant could not use her hands to shield herself from the blows.
- [12] When the vehicle came to a stop and the complainant attempted to escape, you had grabbed her and continued to assault her and dragged her back to the vehicle. You had also taken a piece of wood and started to beat the complainant with it on her head resulting in the complainant becoming unconscious.
- [13] As per the Medical Examination Report of the complainant, it is noted that she suffered swelling and bruising on her left occipital area. A defence injury was found on

her right forearm, while abrasions and bruising were noted on her right posterior back and further abrasions were noted on both anterior thigh and supra pubic region.

[14] Eroni, I now proceed to pass sentence on you in respect of the first count.

[15] Section 4(1) of the Sentencing and Penalties Act No. 42 of 2009 (“Sentencing and Penalties Act”) stipulates the relevant factors that a Court should take into account during the sentencing process. The factors are as follows:

*4. — (1) The only purposes for which sentencing may be imposed by a court are —*

*(a) to punish offenders to an extent and in a manner which is just in all the circumstances;*

*(b) to protect the community from offenders;*

*(c) to deter offenders or other persons from committing offences of the same or similar nature;*

*(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;*

*(e) to signify that the court and the community denounce the commission of such offences; or*

*(f) any combination of these purposes.*

[16] I have duly considered the above factors in determining the sentence to be imposed on you, which is primarily to deter offenders or other persons from committing such offences and also to signify that the Court and the community denounce the commission of such offences.

[17] In particular, Section 4 (3) of the Sentencing and Penalties Act stipulates the factors that a Court must have regard to in sentencing offenders for a domestic violence offence:

*“(3) In sentencing offenders for an offence involving domestic violence, a court must also have regard to —*

*(a) any special considerations relating to the physical, psychological or other characteristics of a victim of the offence, including —*

*(i) the age of the victim;*

*(ii) whether the victim was pregnant; and*

*(iii) whether the victim suffered any disability;*

*(b) whether a child or children were present when the offence was committed, or were otherwise affected by it;*

*(c) the effect of the violence on the emotional, psychological and physical well-being of a victim;*

*(d) the effect of the offence in terms of hardship, dislocation or other difficulties experienced by a victim;*

*(e) the conduct of the offender towards the victim since the offence, and any matter which indicates whether the offender —*

*(i) accepts responsibility for the offence and its consequences;*

*(ii) has taken steps to make amends to a victim, including action to minimise or address the negative impacts of the offence on a victim;*

*(iii) may pose any further threat to a victim;*

*(f) evidence revealing the offender's —*

*(i) attitude to the offence;*

*(ii) intention to address the offending behaviour; and*

*(iii) likelihood of continuing to pose a threat to a victim; and*

*(g) whether the offender has sought and received counselling or other assistance to address the offending behaviour, or is willing to undertake such counselling or seek such assistance."*

[18] In terms of Section 275 of the Crimes Act No 44 of 2009 (Crimes Act) "A person commits a summary offence if he or she commits an Assault Causing Actual Bodily Harm." The prescribed penalty for this offence is a term of imprisonment for 5 years.

[19] In *State v. Tugalala* [2008] FJHC 78; HAC 25S of 2008S (29 April 2008); Her Ladyship Madam Justice N. Shameem 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)."*

[20] In *Jonetani Sereka v. The State* [2008] FJHC 88; HAA 27 of 2008 (25 April 2008); His Lordship Justice Daniel Gounder 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.).”*

[21] His Lordship Justice Vincent Perera in *Anaiasa Naqialawa v. State* [2017] FJHC 484; HAA 15 of 2017 (29 June 2017); stated thus:

*“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.”*

[22] In *State v McPherson* [2017] FJHC 890; HAC 42.2016 (22 November 2017); *State v Naimoso* [2018] FJHC 345; HAC 95.2016 (27 April 2018); *State v Qalobula* [2020] FJHC 255; HAC 100.2018 (3 April 2020); and *State v. Kurukuvui* [2021] FJHC 133; HAC 296.2019 (24 February 2021) this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment.

[23] Even in the case of *State v Marama* [2020] FJHC 629; HAC 174.2019 (7 August 2020); which was a domestic violence case (where the complainant/injured was the sister-in-law of the accused), and in the case of *State v Nagone* HAC 165.2019 (25 April 2022); which was a domestic violence case (where the complainant/injured was the wife of the accused) this Court held that the tariff for the offence of Assault Causing Actual Bodily Harm should range from 3 months to 12 months imprisonment. The Court considered the domestic relationship between the parties as an aggravating factor.

[24] Having regard to the above authorities, I consider the tariff for the offence of Assault Causing Actual Bodily Harm in the instant case too to range from 3 months to 12 months imprisonment.

[25] In determining the starting point within the said tariff, the Court of Appeal, in *Laisiasa Koroivuki v State* [2013] FJCA 15; AAU 0018 of 2010 (5 March 2013); has formulated the following guiding principles:

*“In selecting a starting point, the court must have regard to an objective seriousness of the offence. No reference should be made to the mitigating and aggravating factors at this time. As a matter of good practice, the starting point should be picked from the lower or middle range of the tariff. After adjusting for the mitigating and aggravating factors, the final term should fall within the tariff. If the final term falls either below or higher than the tariff, then the sentencing court should provide reasons why the sentence is outside the range.”*

[26] Eroni, in the light of the above guiding principles, and taking into consideration the objective seriousness of the offence, I commence your sentence at 6 months imprisonment.

[27] The aggravating factors in this case are as follows:

- (i) The complainant is your wife. Thus there was a domestic relationship between you and the complainant.
- (ii) Due to the fact that you were the complainant’s husband the complainant trusted you and depended on you. Being so, you should have protected and safeguarded the complainant. Instead you have breached the trust expected from you and the breach was gross.
- (iii) The assault on the complainant was prolonged and continuous.
- (iv) The actual bodily harm you caused to the complainant was quite serious as depicted in her Medical Examination Report.
- (v) You committed this assault on the complainant in a secluded area limiting the complainant’s ability to defend herself or escape.

[28] Emoni you cannot be considered as a person of previous good character. You have five previous convictions, out of which four are over 10 years. This includes similar offences of Assault Causing Actual Bodily Harm. In addition, on 4 December 2012, you were sentenced to 2 years imprisonment with a non-parole period of 14 months by the Nadi Magistrates’ Court for a case of Robbery.

- [29] You have submitted in mitigation that you are now remorseful of your actions, and seeks forgiveness from your parents, your family, the complainant and from this Honourable Court. It is stated that you have reconciled with the complainant. You have submitted that you are willing to reform if given an opportunity. You have also assured Court that you will not re-offend in the future. It is also submitted that you fully co-operated with the Police during the course of the investigations in this case.
- [30] With regard to your plea of guilt, it must be noted that you pleaded guilty only on the day of trial and as such very little weight should be given to your belated plea of guilty.
- [31] Accordingly, considering the objective seriousness of the offence and taking into consideration the nature and the gravity of the offence and your culpability and degree of responsibility for the offence, and also taking into consideration the aggravating factors and mitigating circumstances relevant to this case, I impose on you a sentence of 2 years imprisonment.
- [32] The next issue for consideration is whether your sentence should be suspended in terms of Section 26 of the Sentencing and Penalties Act.
- [33] Section 26 of the Sentencing and Penalties Act provides as follows:
- (1) *On sentencing an offender to a term of imprisonment a court may make an order suspending, for a period specified by the court, the whole or part of the sentence, if it is satisfied that it is appropriate to do so in the circumstances.*
  - (2) *A court may only make an order suspending a sentence of imprisonment if the period of imprisonment imposed, or the aggregate period of imprisonment where the offender is sentenced in the proceeding for more than one offence,—*
    - (a) *does not exceed 3 years in the case of the High Court; or*
    - (b) *does not exceed 2 years in the case of the Magistrate’s Court.*
- [34] Eroni it has been submitted that you are 37 years old and have a son of 10 years with the complainant. You are not said to be a farmer by occupation, residing in Buabua, Lautoka.
- [35] You had been arrested for this case on 20 March 2020. You were granted bail by the Lautoka High Court on 29 July 2020. Therefore, you had been in remand custody for this case for over four months.
- [36] Considering all the above factors, especially the fact that you are now remorseful for your actions, that you have now reconciled with the complainant, that you have



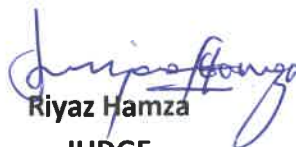
assured Court that you will not re-offend and are willing to reform, that you pleaded guilty, although belatedly, and the fact that you have spent more than four months in remand custody for this case, I deem it appropriate to suspend your sentence.

[37] However, in order to deter you and other persons from committing offences of the same or similar nature, and also to protect the community we live in, I suspend your sentence for a period of 7 years.

[38] In the result, Eroni Tamaniwerelevu your final sentence of 2 years imprisonment, is suspended for a period of 7 years. You are advised of the effect of breaching a suspended sentence.

[39] You have 30 days to appeal to the Court of Appeal if you so wish.



  
Riyaz Hamza

**JUDGE**  
**HIGH COURT OF FIJI**

AT LAUTOKA

Dated this 13<sup>th</sup> Day of September 2022

**Solicitors for the State** : **Office of the Director of Public Prosecutions, Lautoka.**  
**Solicitors for the Accused** : **Office of the Legal Aid Commission, Lautoka.**