

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAC 006 OF 2022

STATE

vs.

JONE VAKARISE

Counsel:

| | | |
|-----------------------------|---|-------------|
| Ms. Ramoala P and Ms. Ali N | - | for State |
| Ms. Mataika P, Mr. Navuni J | - | for Accused |

SENTENCE

1. **JONE VAKARISE**, you were charged by the Director of Public Prosecution on the following information with four counts under the **Crimes Act of 2009**, as below:

COUNT 1

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM contrary to section 275 of the Crimes Act 2009

Particulars of Offence

JONE VAKARISE JUNIOR alias "**JONE VAKARISI**" on the 26th day of December 2021 at Raiwaqa in the Southern Division assaulted **Catherine Smith** thereby causing actual bodily harm to the said **Catherine Smith**.

COUNT 2

Statement of Offence

ACTS INTENDED TO CAUSE GREVIOUS HARM contrary to section 255 (b) of the Crimes Act 2009

Particulars of Offence

JONE VAKARISE JUNIOR alias "**JONE VAKARISI**" on the 26th day of December 2021 at Raiwaqa in the Southern Division with intent to cause grievous harm to **Catherine Smith** unlawfully wounded the said **Catherine Smith** by striking her with a knife.

COUNT 3

Statement of Offence

ASSAULT CAUSING ACTUAL BODILY HARM contrary to section 275 of the Crimes Act 2009

Particulars of Offence

JONE VAKARISE JUNIOR alias "**JONE VAKARISI**" on the 26th day of December 2021 at Raiwaqa in the Southern Division on an occasion other than that mentioned in Count 1 assaulted **Catherine Smith** thereby causing actual bodily harm to the said **Catherine Smith**.

COUNT 4

Statement of Offence

CRIMINAL INTIMIDATION contrary to section 375 (1) (a) (iv) of the Crimes Act 2009

Particulars of Offence

JONE VAKARISE JUNIOR alias "**JONE VAKARISI**" on the 26th day of December 2021 at Raiwaqa in the Southern Division without lawful excuse threatened Catherine **Smith** with intent to cause the said Catherine **Smith** alarm.

2. At the trial, the Prosecution led the evidence of the victim, **Catherine Pauline Smith** and the evidence of two doctors in relation to injuries sustained by the victim. For the Defense case, the Accused gave evidence and was cross-examined by the Prosecution. The judgement in this matter was delivered on 28/03/2023 and the Accused was convicted for the two counts of Assault Causing Actual Bodily harm and one count of Criminal Intimidation and acquitted for the count of Acts Intended to Cause Grievous Harm. Upon the Prosecution and the Defense making submissions on aggravation and mitigation, today this matter is coming up for the sentence, which is as follows:
3. In comprehending with the gravity of the offences you have committed, I am mindful that the maximum punishment for the offence of **Assault Causing Actual Bodily Harm** under **Section 275** of the **Crimes Act of 2009** is an imprisonment for a term of 05 years, whereas the maximum punishment for **Criminal Intimidation** under **Section 291** of the **Crimes Act 2009** is also an imprisonment term of 05 years.
4. The accepted tariff for **Assault Causing Actual Bodily Harm** and **Criminal Intimidation** depends on the nature and the circumstances under which these offences were committed, and the consequences entailing the commission of the offences to the victims and the society at large.

5. In imposing a sentence for **Assault Causing Bodily Harm** I intend to follow the tariff regime pronounced by **His Lordship Madigan J** in the case of **Matai v State [2018]**¹, where His Lordship had stated as below:

“it must now be said that the tariff for a domestic violence assault causing actual bodily harm is a wide range of 6 to 18 months, wide enough to cater for all kinds of injuries. It would be only in exceptional circumstances that a suspended sentence would be passed for the offence, given that sending the convict back into the family home could well have perilous consequences.”

6. For imposing a sentence for **Criminal Intimidation** this Court will apply the sentencing regime pronounced by **His Lordship Sharma J** in the case of **Sadriu v State [2017]**², where His Lordship has stated, as below:

“In my view an acceptable tariff would be a sentence between 6 months and 2 years imprisonment. Serious cases should be given a sentence in the upper range whilst less serious cases should be given a sentence at the lower end of the scale.”

7. Considering the circumstances of this case, I see that this is an appropriate case where an aggregate sentence could be imposed in terms of **Section 17** of the **Sentencing and Penalties Act 2009** in view that you were convicted on each count based on the same facts. Hence, I would impose an aggregate sentence for you for Count 1, 3 and 4.
8. In assessing the objective seriousness of offending of you in this matter, I considered the maximum sentence prescribed for the offences under the laws of Fiji, the degree of culpability, the manner in which you committed the offence and the harm caused to the complainant. I gave due cognizance to the sentencing guidelines stipulated in **Section 4** of the **Sentencing and Penalties Act 2009**. This is a series of offences that were committed by you in a domestic background falling within domestic violence circumstances, where the victim was your de-facto partner who lived with you. I am very mindful that offences of this nature disturb the family fabric of our society, where men without any hesitation pounce on their partners due to their personal frustrations without any care or regard to the personal rights and interests of women. We must be mindful that men and women have equal rights in our society and simply because a woman lives with you as your wife or partner, she does not become a punching bag of the man that could be twisted and abused at the liberty of the man. In this regard, the Courts have a bounden duty to discourage and deter this kind of behavior that makes living in the matrimonial home for women unpleasant and risky.

¹ [2018] FJHC 25

² [2017] FJHC 216

9. In this matter the victim was a pregnant lady, therefore in comprehending with this situation and deciding on a starting point for your sentence, I intend to refer and take guidance from the pronouncement made by **Justice Spencer** of the **Court of Appeal Criminal Division of England and Wales** in the case of **R v Saleh [2011]**³, where the **Court of Appeal** had considered an appeal from the Crown Court at Southwark for sentencing a female accused to 12 months' detention in a young offenders' institution. In that matter, the female offender had pleaded guilty to an offence of **assault** occasioning actual bodily harm which involved kicking a young **woman** knowing that the **woman** was heavily **pregnant**. In affirming the sentence passed by the Crown Court, **Justice Spencer** stated, as below:

*“As the judge rightly said, in answer to the submission that a **sentence** of six months at most was appropriate, had such an **assault** been committed by a man upon a **pregnant woman** the starting point would have been in the region of two years.”*

10. Therefore, the above highlighted authority demonstrates the special care an adjudicating authority should give when the victim of bodily harm is a pregnant lady and the aggressor is a man, like in this matter. Having considered all these factors, I would pick a starting point of 18 months imprisonment against you placing your offences in the highest level of harm category in relation to the tariff available for **Assault Causing Actual Bodily Harm** and **Criminal Intimidation** in our jurisdiction.

11. In aggravation, Prosecution highlights that the complainant was 17 years old and 3 months pregnant at the time she was subject to assault causing bodily harm by you. As a result, she had sustained grave injuries, including a fracture to her arm and bruising over her eyes. Most importantly she was pregnant at this juncture, needing care and attention of loved once. Therefore, in considering the vulnerable position of your victim in this matter and the fact that the victim was your partner expecting to be the mother of your unborn child and the seriousness of the injuries she sustained due to your insensitive actions, I increase your sentence by one more year.

12. In mitigation, Defence counsel informs this Court that you are the sole bread winner of a family with 4 children. Further, your counsel has informed this Court that you acted in the manner committing the acts you're convicted of because you were concerned about the welfare of your 3 months pregnant de-factor partner. In this regard, though I am willing to consider the circumstances of your young family with 4 children, by no stretch of any imagination can a person with little common sense could comprehend your submission that you assaulted and almost broke the hand of your 3 months pregnant de-facto partner since you were concerned about her welfare. Concerning your family situation, I reduce your sentence by 5 months.

³ [2011] EWCA Crim 816

13. The prosecution brings to the attention of this Court that you have been in remand for 4 days since your arrest on 30/12/2021 until bail was granted by the Magistrates Court. This period should be deducted from your sentence separately.
14. **Mr. Jone Vakarise**, in considering all the factors analyzed above, I sentence you to 24 months and 26 days imprisonment with a non-parole period of 18 months and 26 days under **Section 18 (1)** of the **Sentencing and Penalties Act of 2009**.
15. You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage", is written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 3rd day of May 2023

cc: Office of the Director of Public Prosecutions
Office of the Director, Legal Aid Commission