

IN THE MAGISTRATES' COURT OF FIJI
AT NAUSORI

Criminal Case No: - 158/2019

STATE

V

SEMI NAISEVUNIVAI

For the prosecution: WPC Siteri

The accused: In person

Date of Hearing: 11th of March 2019

Date of Sentence : 12th of March 2019

SENTENCE

1. **SEMI NAISEVUNIVAI** , you pleaded guilty in this court to one count of Assault Occasioning Actual Bodily Harm contrary to section 275 of the Crimes Act No 44 of 2009("Crimes Act") .
2. You also admitted on 04th December 2018 at Namulomulo, Tailevu assaulting you wife causing injuries. On that day after an argument with your wife about your phone, you slapped her face, strangled her neck and hit her back with a cane knife. You wife had to run out of the house asking for help. She received multiple injuries as per the medical report.
3. I am satisfied that your plea was voluntary and unequivocal. Hence I convict you for this charge.
4. The maximum penalty for Assault Occasioning Actual Bodily Harm under the Crimes Act is 05 years imprisonment.
5. In Matai v State [2018] FJHC 25; Criminal Appeal 108.2017Ltk (26 January 2018) his Lordship Justice Madigan said that the tariff for a domestic violence assault causing actual bodily harm is now from 6 to 18 months imprisonment.

6. In **Kumar v State** [2018] FJHC 583; HAA05.2018 (10 July 2018) his Lordship Justice Aluthge held that the tariff in a domestic violence case is 9- 12 months' imprisonment and if the assault is serious the decision in *State v Prasad* [2015] 493 justifies a sentence up to 18 months' imprisonment.
7. Since this is a domestic violence offence, I am mindful about the section 4(3) of the Sentencing and Penalties Act which the sentencing court must consider in sentencing an accused.
8. In **Laisiasa Koroivuki v the State** (Criminal Appeal AAU 0018 of 2010) his Lordship Justice Goundar discussed the guiding principles for determining the starting point in sentencing and observed :

"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".
9. Considering the objective seriousness of the offence, I select 06 months as the starting point for your sentence.
10. The aggravating factor is using a cane knife for the assault and for that I add 06 months to reach 12 months imprisonment.
11. In mitigation you submitted that you are 35 years old, married with 3 children and seeking forgiveness. The prosecution confirmed that you are a first offender. For these mitigating factors, I deduct 03 months to reach 09 months imprisonment.
12. For pleading guilty early finally I deduct 1/3 to reach 06 months imprisonment.
13. Now I would consider whether to suspend your sentence pursuant to section 24 (2) (b) of the Sentencing and Penalties Act.
14. Even though you are a first offender and pleaded guilty early, this court is not going to condone your behavior of assaulting your partner with the cane knife. She is lucky to escape with minor injuries.

15. Your behavior needs to be denounced and you need to be deterred from behaving in this manner in future against your partner. Hence I find a custodial sentence is justified in this case.
16. SEMI NAISEVUNIVALI , accordingly you are sentenced to 06 months imprisonment for this charge.
17. For the safety of the victim, I also issue a permanent domestic violence restraining order with standard non molestation conditions.
18. 28 days to appeal.



Shageeth Somaratne
Shageeth Somaratne[Mr]
Resident Magistrate