

**IN THE RESIDENT MAGISTRATES COURT
AT SIGATOKA - CRIMINAL JURISDICTION**

Criminal Case No. 595 of 2018

BETWEEN : The State

Prosecution

AND : Jahur Khan

Accused

For the State : WPC Kini

For the Accused : In-person

SENTENCE

1. The accused has been charged for the offence of **Assault Causing Actual Bodily Harm contrary to section 275 of the Crimes Act 2009**.
2. The accused indicated that he wanted to take his plea after waiving his right to counsel.
3. The charge was put to the accused he pled guilty and admitted the summary of facts.
4. The Court is satisfied that the accused's guilty plea was voluntary and unequivocal. The accused is therefore convicted as charged.
5. The summary of facts tendered by Prosecution states that the accused had hit the complainant (Seisiko Leatao) with a steel rod which landed on her head, face and leg. The complainant is the spouse of the accused.
6. Prosecution also tendered a copy of the medical certificate of the victim which showed that the complainant had bruising over her left eye, and her left thigh.

7. Prosecution informed the Court that the accused was a first offender.
8. The accused submitted in mitigation that he was 55 years old, whom had 5 children. He stated that it was a momentary lapse of sanity on his part as he had stored up anger against the wife for not accepting his advice about sending money.
9. The accused has been remanded for ten (10) days whilst awaiting sentence.
10. This offence has a maximum sentence of 5 years imprisonment.
11. In ***State v Tugalala [2008]*** FJHC 78; HAC025S.2008S (29 April 2008) her Ladyship Madam Justice Shameem (as she then was) stated:

“The tariff for this offence appears to range from an absolute or conditional discharge to 12 months imprisonment.”

12. The accused and the complainant are married and therefore fall under the purview of ***Domestic Violence Act 2009***. In ***State v Prasad [2015]*** FJHC 493; HAA010.2015 (3 July 2015) Madigan J observed:

“A “normal” punishment for a domestic violence assault is a term of imprisonment for a period of between 9 and 12 months with an enhancement up to 18 months if the assault be considered serious. A judicial officer can of course sentence outside that tariff if and only if he or she gives reasons for departing from the tariff.”

13. In ***Prasad*** (supra) Madigan J further emphasized:

“In a domestic violence context, a sentencing tribunal must take into account the factors set out in Section 4(3) of the Sentencing and Penalties Decree. Unfortunately, despite the word must contain in the Section, so many judicial officers don’t.”

14. Section 4(3) of the ***Sentencing and Penalties Act 2009*** states as follows:

“(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.”

15. In reaching the appropriate sentence the court is not only mindful of the above (Section 4(3)) but also considers Section 4(1) of the **Sentencing and Penalties Act 2009** which it regurgitates herein below as follows:

“Sentencing Guidelines

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. Considering the gravity of offending, the accused's culpability, time spent in remand, first offender status and his early plea the court sentences the accused to two (2) months imprisonment which shall be suspended for the next two (2) years.

17. The Court issues a permanent domestic violence restraining order specifically standard non-molestation conditions as per Section 27 of the **Domestic Violence Act 2009**.

18. The clerk will explain this sentence to the accused.

19. 28 days to appeal.

J.N.L. SAVOU
 Resident Magistrate
 Date: 4th January 2019

