

IN THE MAGISTRATES' COURT OF FIJI AT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 03 - 2019

STATE

-v-

ETUATE JOSEVA VASU

For Prosecution: WPC Chand A. [Police Prosecution]
Accused: In Person, Waived Right To Counsel
Date of Sentence: 2nd April 2019

SENTENCE

BACKGROUND

1. **ETUATE JOSEVA VASU**, you have pleaded guilty to the following charge:

Statement of Offence

ASSAULT OCASSIONING ACTUAL BODILY HARM: Contrary to section 275 of the *Crimes Act of 2009*.

Particulars of Offence

ETUATE JOSEVA VASU on the 2nd day of January, 2019 at Natolevu Settlement, Tavua in the Western Division assaulted **MERE NAULUIVUDA** thereby causing her actual bodily harm.

2. I am satisfied that your guilty plea to the charge is voluntary and that you understand the consequence of your plea. The evidence also supports your guilty plea. I have found you guilty.
3. The victim here is your 25 year old wife. You had an argument with your mother and brother. The victim was present too and was breastfeeding the baby. She pinched you and you then punched the victim several times on her face and shoulder.
4. The victim was present in court on the day you pleaded guilty. She admitted that she had kicked you first before you punched her. You have apologized to her since.

5. Your wife was medically examined about a day later after you hit her. The medical officer observed amongst other things that there was swelling and tenderness to her left eye, bruising to her shoulder and tenderness to her right forearm.
6. You were arrested later and interviewed by police. You explained that on the day, you had an argument with your mother and she told you to leave the house. You were packing your things when your mother changed her mind but your wife still wanted to leave. Your wife kicked you and that is when you punched her. You said that you punched her face, head and shoulder. You cannot remember how many times you punched her. You admitted causing the injuries as reflected in the medical report of your wife.
7. You are a first offender.
8. You are 24 years old. You seek forgiveness. You have apologized to the victim. You were upset at the time. Your child is now 6 months old. You support your family. You are a farmer.
9. You have not spent any time in remand.

LAW

10. The maximum sentence that is imposable by law for the offence of assault occasioning actual bodily harm is up to 5 years imprisonment.

TARIFF

11. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence and for more serious cases to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example **State v Kalouteretere** - Sentence [2018] FJHC 845; HAC 270. 2018 (12 September 2018).

STARTING POINT

12. Considering the circumstance of your case, a 4 month imprisonment term is selected as a starting point.

AGGRAVATING FEATURES

13. There is a domestic relationship in existence. This was your wife.
14. She was breastfeeding at the time.
15. You punched her several times on her body especially her head and face.
16. I have no trouble accepting that other members of your family were present when you did this, such as your mother.
17. Your sentence is increased to 10 months imprisonment.

MITIGATION

18. I accept that you are remorseful.
19. You have a past good history.
20. You have cooperated with police.
21. I accept that you wife's actions at the time when kicking you had a major part in you becoming violent. This by no means frees you of any guilt. It simply means that I take into account the passion that must have existed at the time and what led up to your actions.
22. Your sentence is reduced to 5 months imprisonment.

GUILTY PLEA

23. You have pleaded guilty early.
24. I reduce your sentence to 3 months and 2 weeks imprisonment.

SUSPENSION

25. I can suspend your 3 months and 2 weeks imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.

26. I also take into account the factors outlined in section 4 of the **Sentencing and Penalties Act 2009** when deciding whether or not to suspend your sentence.
27. Your sentence will be aimed at deterrence and to punish you adequately.

SENTENCE

28. You are sentenced to 3 months and 2 weeks imprisonment.
29. You have not spent any time in remand and so your sentence will not be deducted any further.
30. I am inclined to suspend 2 months and 2 weeks of your sentence for the next 12 months.
31. Commit any other offence in the next 12 months and this term held in waiting maybe activated.
32. You will serve 1 month imprisonment immediately.
33. The DVRO [section 27 standard non-molestation conditions] which was imposed on you and explained to you earlier on the 4th of January 2019 is made final. This is to protect your wife.
34. 28 days to appeal.




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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 2nd day of April 2019