

IN THE MAGISTRATES' COURT OF FIJIAT TAVUA
CRIMINAL JURISDICTION

Criminal Case No: 81 of 2016

STATE

-v-

SHIVNEEL NISCHAL NARAYAN

For Prosecution: WPC Chand [Police Prosecution]
Accused: Ms Henao and Mr Samy [Legal Aid Commission]
Date of Hearing: 19th October, 2018
Date of Judgment: 16th November, 2018
Date of Sentence: 7th of January, 2019

SENTENCE

BACKGROUND

1. **SHIVNEEL NISCHAL NARAYAN**, you are here to be sentenced after the court found you guilty after a trial which was preceded by your 'not guilty plea'.
2. You have been found guilty of the following:

Statement of Offence

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

Particulars of Offence

SHIVNEEL NISCHAL NARAYAN, on the 30th day of March, 2016 at Malele, Tavua in the Western Division, assaulted **RESHMI LATA** by biting her shoulder thereby causing her actual bodily harm.

3. The victim here is your 27 year old wife. She would have been around 25 years old when the incident happened. You both are now separated and have been separated since the incident. The evidence revealed during the trial by the victim shows a consistent history of verbal and physical abuse by you culminating in you then biting her several times on her shoulder and left arm causing bruises after having returned one night from your friend's place drinking grog. She told you it was painful but you continued to bite her.
4. You have not spent any time in remand.
5. You have no previous conviction.
6. In your mitigation, you submit that you are 30 years old. You are divorced. You are a farmer and you support your grandmother who is diabetic and your family is dependent on you. You maintain that the victim consented to at least being bitten once. You say that you have expended a lot of time and resources in that relationship and you have always supported her when you two were together.

LAW

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

TARIFF

8. The sentencing tariff for assault occasioning actual bodily harm ranges between a suspended sentence to 9 months imprisonment depending on the degree of provocation and whether any weapon was used [see for example **Randipni Singh v The State** HAA 13 of 2016 (17th June 2016).

STARTING POINT

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

AGGRAVATING FEATURE

10. This was your wife and your partner. Trust and respect was required from you.
11. You bit her several times.

12. I cannot ignore the atmosphere and circumstance your wife must have endured being in that relationship. It was good at first but then she was treated like she was 'good for nothing' or just being a piece of meat for you to carry out your sadistic desire.
13. She being dependent on you without any earning capacity made her vulnerable.
14. Your sentence is increased to 8 months imprisonment.

MITIGATION

15. I take into account that you still have a family to look after and that they are dependent on you.
16. However I don't find that you are remorseful. Your mitigation suggests to me that you feel like the victim owes you something and that you were entitled to do what you did.
17. I will take some consideration of your past good character though.
18. This case has been looming over you since 2016 and I will also take that into account in your favour.
19. Your sentence is reduced to 5 months imprisonment.

SUSPENSION

20. I can suspend your imprisonment term either in whole or in part pursuant to section 26 (1) and (2) (b) of the **Sentencing and Penalties Act 2009**.
21. 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.
22. Your sentence will be aimed at deterrence and to punish you adequately.

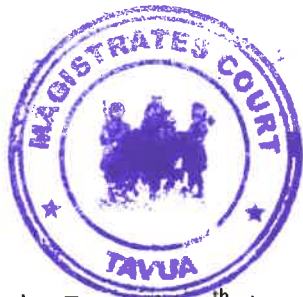
FINAL SENTENCE

23. You are sentenced to 5 months imprisonment.
24. 4 months is suspended for the next 1 year 6 months (18 months) .

25. Commit any other offence in the next 1 year 6 months and your 4 months imprisonment term held in waiting maybe activated.
26. You will serve 1 month imprisonment immediately.
27. The Domestic Violence Restraining Order [DVRO] with standard non-molestation imposed on you on the 31st of March 2016 will remain against you. This is to protect the victim and will be in place even though you both are no longer in a relationship.
28. Breach any condition of this DVRO and you may be charged with a separate offence.

[explained to the defendant]

29. 28 days to appeal.



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Lisiate T.V. Fotofili
Resident Magistrate

Dated at Tavua this 7th day of January, 2019.